



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD).No.13909 of 2015

C.Parthasarathy

.. Petitioner

Vs.

1.The Managing Director,
Tamilnadu State Transport Corporation,
(Madurai Division - I), Ltd.,
Bypass Road, Madurai - 10.

2.The General Manager,
Tamilnadu State Transport Corporation,
(Madurai Division - I), Ltd.,
Bypass Road, Madurai - 10.

3.The Administrator,
Tamilnadu State Transport's Employee's Pension Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai - 2.

.. Respondents

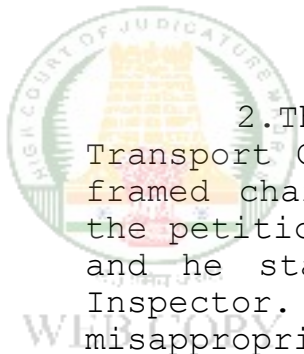
Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the respondents resulting in the 2nd respondent's impugned order, dated 15.02.2014 and quash the same insofar as rejecting the claim of the petitioner regarding the retirement benefits and monthly pension and direction directing the respondents to disburse all the retirement benefits and monthly pension with eligible interest within a time frame fixed by this Court.

For Petitioner : Mr.V.R.Venkatesan

For Respondents: Mr.J.Senthil Kumaraiah for R1 and R2
Mr.A.Swaminathan for R3

ORDER

This writ petition is filed for issuance of Writ of Certiorarified Mandamus to quash the proceedings of the first respondent, dated 15.02.2014 rejecting the petitioner's claim regarding retirement benefits and monthly pension and to direct the respondent to disburse all the retirement benefits including the monthly pension to the petitioner.



2.The petitioner was working as a Conductor in the respondent Transport Corporation for more than 23 years. The first respondent framed charges against the petitioner. The charge framed against the petitioner was that he failed to issue tickets to the passengers and he started to issue tickets only when he saw the Checking Inspector. The allegation is that he made an attempt to misappropriate a sum of Rs.81.25 which is the value of 25 tickets. Pursuant to the charges, he was placed under suspension. Since the petitioner denied the charges, the first respondent ordered for domestic enquiry and the Enquiry Officer found him guilty of charges. Based on the Enquiry report, the first respondent imposed the punishment dismissing the petitioner from service with effect from 23.12.2000.

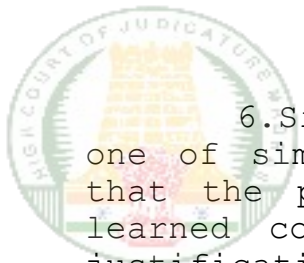
3.The order of punishment was challenged by the petitioner by raising industrial disputes in I.D.O.P.202/2002 before the Labour Court, Madurai. The Labour Court after considering the issues, modified the punishment from dismissal of service to discharge from service with specific finding that the petitioner should be made eligible to get pensionary benefits. The finding of the Labour Court that the punishment is disproportionate to the charges was not challenged by the management namely the first respondent by filing any writ petition.

4.The petitioner attained the age of superannuation on 31.05.2005. By virtue of the order of Labour Court modifying the punishment, the petitioner claimed retirement benefits. He also filed a writ petition in W.P.(MD).No.16503 of 2012 before this Court for a direction to the respondents to disburse the retirement benefits with interest on the payment. This Court disposed of the writ petition directed the first respondent to consider the petitioner's representations on merits within a period of eight weeks from the date of receipt of the copy of the order. Thereafter, the first respondent passed the impugned order on 15.02.2014, stating that the petitioner is entitled to receive only gratuity and provident fund and that he is not entitled to other retirement benefits and monthly pension as per the standing order. Against the said order, the present writ petition is filed.

5.The learned counsel for the petitioner submitted that Rule 21 of Tamilnadu State Transport Corporation Exmployees pension Fund Rules (herein after referred as the Rules) guaranteed pensionary benefit to be extended to all except persons who are removed from service. Rule 21(a) of the Rules specifically reads as follows:

"21.GUARANTEE OF PENSIONARY BENEFITS

a) The payment of benefits will be guaranteed by the Pension Trust. Provided further, a member removed or dismissed from service shall have no claim over pension/pensionary benefits."

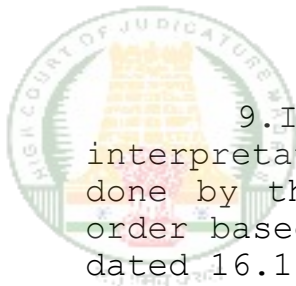


6. Since the punishment was modified by the Labour Court to one of simple discharge from service with a specific observation that the petitioner is entitled to the pensionary benefits, the learned counsel for the petitioner submitted that there is no justification on the first respondent to deny the petitioner's pensionary benefit. Learned counsel then submitted that the respondent having accepted the award of the Labour Court, ought not to have passed the impugned order contrary to the order of Labour court. Learned counsel for the respondent however relied upon the counter affidavit, wherein it is stated that the Government has clarified Rule 21 of the Rules. As per the clarification, the management of all the Transport Corporations are directed to treat the case of simple discharge by Labour Court also as one of removal from service to get monetary benefits, but without sanction of pension. Relying upon the clarification letter of Government, learned counsel appearing for the respondent submitted that the Government is the competent authority to clarify the Rule applicable under the Tamilnadu State Transport Corporation Employees Pension fund Rules and that the respondent is justified in passing the order impugned in the writ petition.

7. The impugned order shows that it is based on the clarification letter, dated 16.11.2006. The clarification letter is extracted in the counter affidavit which runs as follows:

"I am directed to invite attention to your letter cited and to request you to give the benefits under Section 21 of Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules and also to treat this case as removal/discharge from service to enable him to get some monetary benefits, but without sanction of pension."

8. Rule 21(a) of the Rules stipulates that a member removed or dismissed from service shall have no claim over pension/pensionary benefits. It is only to avoid the applicability of Rule 21(a) of the Pension Rules, the Labour Court in its award modified the punishment as one from removal from service so as to enable the petitioner to get the pensionary benefits. However, the punishment of discharge from service has now been altered by the impugned order was to circumvent the order of Labour Court. The interpretation which is given by the Government in the letter, dated 16.11.2006 cannot override the judicial order which is binding on parties. The interpretation of an award of Labour Court contrary to the terms based on clarification letter is unconstitutional. In other words, the attempt made by the Government was to interfere with the Labour Court award by exercising the power of judicial review which is beyond the scope of the power enjoyed by the Government which is entrusted only with Executive function.



9.In that view of the matter, this Court can not accept the interpretation given by the Government in the line in which it was done by the letter, dated 16.11.2006. Consequently, the impugned order based on the un-authorised interpretation found in the letter, dated 16.11.2006 is un-sustainable.

10.Hence, the writ petition is allowed and the impugned order, dated 15.02.2014 passed by the second respondent is quashed. The respondents are directed to disburse the retirement benefits including the monthly pension payable to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

TO

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Tamilnadu State Transport Corporation,
(Madurai Division - I), Ltd.,
Bypass Road, Madurai - 10.

2.The General Manager,
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Tamilnadu State Transport's Employee's Pension Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai - 2.

+1 CC to M/s.J.SENTHIL KUMARIAH, Advocate (SR-89952[F] dated 27/09/2019)

W.P. (MD) .No.13909 of 2015
25.09.2019

TM

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