

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 14.08.2020
Pronounced On : 19.08.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.2802 of 2020

V.Rajamohan

.. Petitioner

Vs

1. The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Transport Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2. The Principal Secretary / Transport Commissioner,
Chepauk,
Chennai - 600 005.

3. The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Ramakrishna Road,
Salem - 7.

4. The General Manager,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.

.. Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondents to pass orders for granting pensionary benefits to the petitioner for the services rendered by the petitioner in Tamil Nadu State Transport Corporation (Salem) Ltd., from 01.02.1985 to 05.11.2009 (25 years), based on the representation submitted by the petitioner dated 25.12.2019 in the light of the orders passed in WA No.1585 of 2019 dated 18.06.2019, with all consequential benefits including the arrears of pension within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.J.Ramesh, AGP (for R1 & 2)

Mr.D.Raghu, (for R3 & R4)

Standing Counsel for TNSCT

O R D E R

The petitioner has approached this Court, seeking the following relief:

"To issue a Writ of Mandamus, directing the respondents to pass orders for granting pensionary benefits to the petitioner for the services rendered by the petitioner in Tamil Nadu State Transport Corporation (Salem) Ltd., from 01.02.1985 to 05.11.2009 (25 years), based on the representation submitted by the petitioner dated 25.12.2019 in the light of the orders passed in WA No.1585 of 2019 dated 18.06.2019, with all consequential benefits including the arrears of pension within a time frame to be fixed by this Court."

2. The case of the petitioner is that he was a qualified Engineer in Mechanical Engineering and was selected and appointed to the post of Junior Engineer in the 3rd respondent Transport Corporation in 1985. He was promoted to the post of Assistant Engineer and further to the post of Senior Assistant Engineer and was granted Selection Grade Assistant Engineer and had rendered 25 years of service in the State Transport Corporation, Salem, Dharmapuri Region.

3. While serving in the State Transport Corporation, the petitioner after obtaining due permission participated in the selection for appointment to the post of Motor Vehicle Inspector Gr.II conducted by the Tamil Nadu Public Service Commission, vide its notification dated 18.04.2007. After completion of the selection process, the petitioner was selected for appointment to the post of Motor Vehicle Inspector Gr.II and an appointment order was issued on 15.10.2009 by the 2nd respondent.

4. Since the petitioner was selected and appointed to the post of Motor Vehicle Inspector Gr.II on 15.10.2009, he resigned the post of Selection Grade Assistant Engineer from the State Transport Corporation, after rendering nearly 25 years of service. The petitioner's probation in Motor Vehicle Inspector (Gr.II) was declared and in fact he was included in the panel for promotion to the post of Motor Vehicle Inspector Gr.I, for the year 2012-13, as the petitioner had cleared the departmental examination for the said consideration.

5. While the matter stood thus, one M.Senthilkumar, who was an unsuccessful candidate in the said selection for the post of Motor Vehicle Inspector Gr.II, filed WP No.22647 of 2010, challenging the selection of some candidates. The writ petition was dismissed by a learned Single Judge on 12.11.2011 and

therefore, WA No.2175 of 2011 was preferred and a Division Bench of this Court passed orders on 12.06.2012, allowing the writ appeal by setting aside the selection of the private respondent including the petitioner herein. The Division Bench also directed the Tamil Nadu Public Service Commission to redo the entire exercise afresh. Against the order of the Division Bench, a Special Leave Petition was filed by this petitioner in SLP No.22185 of 2012. But, however, the same was dismissed. Thereafter, a review petition was filed in R.A.No.131 of 2013 before a Division Bench. But the same was also dismissed on 18.02.2014.

6. In view of the unfortunate development as above, the services of the petitioner came to be terminated by an order of the 2nd respondent dated 28.06.2013. The petitioner has therefore approached this Court by filing WP No.29955 of 2014 challenging the termination order dated 28.06.2013 and to direct the respondent to conduct oral test for selection to the post of Motor Vehicle Inspector Gr.II or in the alternative allow the petitioner to continue in service in the existing vacancy. Subsequently, it appears that the petitioner had filed WMP No.9883 of 2019, to amend the prayer to direct the Transport Corporation to reinstate the petitioner into service as Selection Grade Assistant Engineer.

7. The above said WP No.29955 of 2014, came to be disposed of on 27.03.2019, by giving liberty to the petitioner herein to approach the respondent Corporation in terms of the order passed on 27.09.2018 in another identical claim in WP No.12524 of 2014. The petitioner submitted a representation to the 3rd and 4th respondents on 25.12.2019 and as the representation not being considered or no orders having been passed, the petitioner is before this Court seeking for an issuance of a writ of mandamus.

8. The learned counsel Mr.G.Sankaran, appearing for the petitioner would submit that in identical circumstances, wherein another co-employee, who was working in the same Transport Corporation opted to become Motor Vehicle Inspector Gr.II, in the same selection and he also made the same request as that of the petitioner herein. On consideration of the entire circumstances, this Court has passed orders on 27.09.2018 in WP No.12524 of 2014. The operative portion granting relief to the petitioner therein are extracted hereunder.

"9. This Court has given its anxious consideration to the submissions made by the learned Senior Counsel appearing for the petitioner as well as learned Special Government Pleader for the respondents.

10. As rightly submitted by the learned Senior Counsel, this is not a run off the mill case where the

relief could be put in a straight jacket formula. In view of the peculiarity of the case and in extraordinary situation which calls for extraordinary remedy, an out of box relief need to be conceived and had to be rendered by this Court which is exercising inter alia equitable jurisdiction. Admittedly, the petitioner has rendered 26 years of service earlier as J.E./S.A.E.(S.G.) having been appointed originally, from 1983 and worked till 2009 before he migrated to become Motor Vehicle Inspector Grade II in 2009. Admittedly, an application was forwarded through his Department and even the resignation was submitted to his earlier Department to relieve him officially. But unfortunately, the situation which prevailed then, it was not treated as a technical resignation or there was no requirement to hold as such, as the petitioner did not continue in service for long as Motor Vehicle Inspector Grade II in view of the decision of the Division Bench of this Court which rendered on 12.6.2012 itself within three years from the date of appointment of the petitioner as Motor Vehicle Inspector Grade II. The petitioner was also placed in a pathetic situation since he was qualified in the second selection also to be called for interview for appointment to the post of Motor Vehicle Grade II, but he could not be called for the interview because by then, he had already been appointed as Motor Vehicle Grade II in the earlier selection. If only the petitioner known about the impending situation of setting aside his appointment, he could have participated in the second selection de hors the appointment of the earlier selection. Unfortunately, the petitioner could not be aware of the impending danger of his losing job at that point of time. The result of such unfortunate circumstance which be fallen the petitioner had taken away the entire service rendered by him in the Government from 1983 onwards. Ultimately, the petitioner neither had the benefit of service as Selection Grade Senior Assistant Engineer nor as Motor Vehicle Inspector Grade II and unfortunately, by the orders of this Court, he was terminated not because he was not qualified, but because the other persons who had moved this Court were more qualified. Therefore, it cannot be gainsaid that the situation was brought upon by the petitioner's own action, as the petitioner could not have foreseen such disastrous consequence would fallow in respect of his appointment as Motor Vehicle Inspector Grade II within a matter of three years.

11. Although the alternative prayer as such made in the Writ Petition to reinstate the petitioner in the post of Selection Grade Senior Assistant Engineer, but in view of the pendency of the litigation for some time, such relief could not be granted as by now the petitioner might have reached the age of superannuation. In any event, this Court is of the view that the ends of justice need to be served particularly in the present case where the petitioner had lost the entire service benefits not because of his fault or because of his contribution, but because of the order passed by this Court. Therefore, the petitioner ultimately cannot be left high and dry when he admittedly served the Government for nearly 26 years from 1983 till 2009 as J.E./S.A.E.(S.G.). Being a Constitutional Court, this Court has to see how best to secure ends of justice when the law becomes an obstacle to dispense justice, then the Court has to search for equity based solution. This is a fit case in the opinion of this Court to apply larger principles of equity in order to secure the noble ends of justice. In fact, this Court has inherent power and jurisdiction to deal with any extraordinary situation, particularly in the larger interest of administration of justice and in order to prevent manifest injustice being done. In this case, absolutely, there was no fault on the part of the petitioner, but because of the authorities who had not properly selected more qualified persons than the petitioner, which led to removal of the petitioner from the post of Motor Vehicle Inspector Grade II. Had the authorities properly done the selection, the petitioner would have remained in his erstwhile post or he might have been selected as Motor Vehicle Inspector Grade II in the second selection, wherein, he was selected for interview. In view of these peculiar circumstances and taking note of the subsequent changed circumstances, this Court, in order to render substantial justice, is inclined to mould the relief and grant the appropriate relief to the petitioner.

12. For the above said reasons, this Court directs the respondents to treat the resignation letter of the petitioner dated 30.10.2009 as one of the voluntary retirement from service with the Transport Corporation wherein he worked from 1983 to 2009 by treating the resignation as VRS and the petitioner shall be paid all retirement benefits as admissible to any other regular employee who goes on VRS. It is made clear that this order is passed in the peculiar circumstances of the case in order to render justice. The respondents are

directed to pass orders by treating the resignation of the petitioner as one of VRS and pay him all retirement and other pensionary benefits as admissible and payable to him, within a period of eight weeks from the date of receipt of a copy of this order."

9. Against the above said order, a writ appeal has been filed in WA No.1585 of 2019 and the appeal was disposed of on 18.06.2019, substantially complying with the directions passed by the learned Single Judge, but with a slight modification as under.

"16. The other question is as to whether the first respondent is eligible for pension under the Tamil Nadu Transport Employees Pension Rules. The first respondent was having the required service, making him eligible for pension. He was in the service for a period of 26 years. The first respondent is therefore eligible for pension but for his resignation. The resignation was only for the purpose of taking up employment under another Government Department. The application for appointment was routed through the Tamil Nadu State Transport Corporation. The resignation was also for the purpose of taking up appointment as Motor Vehicle Inspector under the Tamil Nadu Motor Vehicle Service. The pensionary benefits would have been transferred to the account of the new employer but for the judgment in W.A.No.2175 of 2011 setting aside the appointment of the first respondent. Since the appointment was set aside at the instance of another candidate only on the ground that his preferential qualification was not considered, the first respondent would be entitled to the benefits of the Tamil Nadu State Transport Corporation Employees Pension Fund. The pensionary benefits transferred to the new employees pension fund in such cases would revert back to the Tamil Nadu State Transport Corporation Ltd. We are therefore of the view that the learned Single Judge was correct in directing the appellants to pay pensionary benefits to the first respondent.

17. The order passed by the learned Single Judge with respect to the direction to treat the resignation as one of voluntary retirement and payment of retirement benefits is set aside. The direction for payment of pensionary benefits is sustained.

18. We direct the appellants to calculate the pension payable to the first respondent taking into account his service for the period from 28 July 1983 to 31 October 2009 and pay him the pensionary benefits.

Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment."

10. The learned counsel for the petitioner would submit that the above orders of the learned Single Judge as well as the Division Bench of this Court may have to be applied to the present case as well and the same benefit may be extended to this petitioner.

11. Notice was issued to the respondents and in response to the notice, Mr.J.Ramesh, learned Additional Government Pleader and Mr.D.Raghu, learned Standing Counsel for Tamil Nadu State Transport Corporation, has entered appearance and a detailed counter affidavit has been filed.

12. The learned standing counsel would submit that the Transport Corporation is facing severe financial crunch in disbursing pensionary benefits to its own employees, who retire on attaining the age of superannuation or under Voluntary retirement Scheme. The inflow towards pensionary benefits is far too less than the outflow and in such circumstances, it is difficult for the State Transport Corporation to pay the pensionary benefits, at this point of time. Other than the said difficulty, no other reasons have been stated on behalf of the respondent Corporation.

13. Nevertheless, the fact of the matter is that in identical circumstances, this Court has passed positive directions extracted supra and it also appears that the directions of this Court have been implemented subsequent thereto.

14. From the above narrative, indisputably, the petitioner herein is identically placed as that of the other employee of the Corporation viz., S.Chellamuthu, who was the petitioner in WP No.12524 of 2014. When this Court has ordered relief to the petitioner therein, which relief was also affirmed by the Division Bench of this Court in their order dated 18.06.2019 in WA No.1585 of 2019, this Court cannot treat the petitioner herein differently, by accepting the submissions of the respondent Corporation, as reflected in the counter affidavit. No doubt, the Transport Corporation is facing severe financial strain in disbursement of salary and pensionary benefits to the existing / retired employees. But, that cannot be the reason for denying the benefit of pensionary benefits to this petitioner, who had rendered nearly 25 years of service in the Respondent Corporation as early as from 01.02.1985 to 05.11.2009. In fact, this Court while passing the direction granting relief to the petitioner is constrained to pass the same in view of the peculiar circumstances of this case.

15. The observations made by this Court in the above writ petition do apply to the factual matrix of the present case as well and when the relief granted by this Court was in fact affirmed by the Division Bench of this Court in the above order of the writ appeal, the petitioner's entitlement to be treated fairly and equally cannot be lost sight of. However, considering the financial position of the State Transport Corporation, as averred in the counter affidavit, it may be difficult for the Corporation to grant the entire pensionary benefits due to the petitioner upfront. But at the same time, the petitioner cannot be deprived of his pensionary benefits in the teeth of his rendering almost 25 years of substantial service in the Corporation.

16. Therefore, balancing the individual interest of the petitioner and the interest of the Corporation, the directions ultimately issued by the Division Bench of this Court in the writ appeal, as extracted above would hold good for this petitioner as well. However, the implementation of the direction is concerned, the Corporation is directed to settle the pensionary benefits due to the petitioner including grant of monthly pension, within a reasonable time and the petitioner shall be informed as to the time frame within which action would be taken by the Corporation to settle the relief as per the entitlement of the petitioner.

17. In any case, the Corporation cannot indefinitely postpone the settlement without any definite time frame and such time frame needs to be communicated to the petitioner, within a period of two months from the date of receipt of a copy of this order. The writ petition is allowed as indicated above. No Costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Principal Secretary to Government,
State of Tamil Nadu,
Transport Department,
Secretariat, Fort St. George,
Chennai - 600 009.

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Dharmapuri.

WP No.2802 of 2020

RJI (CO)
SP(09/09/2020)



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