



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2020

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.14995 of 2011 and
MP(MD) .No.1 of 2011

C. Parameswaran

...Petitioner

VS.

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Tirunelveli, Tirunelveli District.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Nagercoil,
Kanyakumari District.

...Respondents

PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 2nd respondent dated 29.09.2011 issued in his letter No.4033/A4/TNSTC (TVLY)/NGL/2009 and quash the same and direct the respondents to pay the pension to the petitioner together with consequential arrears arising thereon and granting such other or further relief.

For Petitioner : Mr. K. Muthumalai

For Respondents : Mr. K. Sathyasingh

ORDER

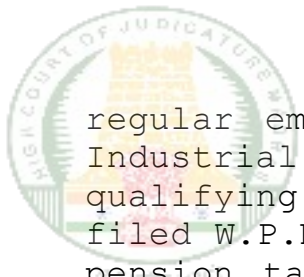
This Writ Petition has been filed to quash the impugned order of the 2nd respondent dated 29.09.2011 issued in his letter No.4033/A4/TNSTC (TVLY)/NGL/2009 and direct the respondents to pay the pension to the petitioner together with consequential arrears arising thereon.

2. The case of the petitioner is that he was temporarily appointed as Cleaner at Kuzhithurai Branch in Nagercoil on daily



wage basis on 09.02.1967 and he became permanent staff in the year 1968 and his Staff Number was 700. He was continuously working as Cleaner and on 15.05.1971 he was appointed as workshop driver. Later, he was deputed to the erstwhile Kattapomman Transport Corporation Limited with effect from 01.01.1974 and subsequently, absorbed in Kattapomman Transport Corporation with effect from 01.05.1976 and he has been paid under the Madras Liberalised Pension Rules 1960 and Madras Government Servants Pension Rules, 1964. He was also awarded " Safety Driver Award" for accident free driving and Rs.100/- was sanctioned to him in this regard. He became sick in March 1982 and submitted leave application and he was granted leave, but it was not extended subsequently. So it is not a case of absence without leave, but, it was only a case of non joining the duty after expiry of leave. The same was raised as dispute at the time of settlement. Later it was ratified by treating the period as leave in one way or other including the leave on loss of pay. However, the first respondent terminated his service by its order dated 19.07.1982, but, the termination order was directed to be operated retrospectively with effect from 01.03.1982. The leave on loss of pay was sanctioned to him from 01.03.1982 to 30.04.1982 as per the entries in his service Register. He has also been sanctioned Rs.100/- towards safety driver award for the accident free driving for the year 1981 to 1982 by the respondent in the order dated 15.07.1982, but, immediately his service has been terminated on 19.07.1982.

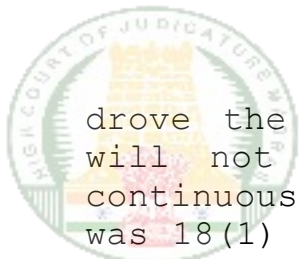
3. The settlement was arrived at between the petitioner and the respondent erstwhile Nesamani Transport Corporation Limited, Nagercoil under Section 18(1) of the Industrial Disputes Act, 1947 to appoint him as a driver afresh in a time scale of pay and he worked there for one year. The period between 01.03.1982 to 27.04.1984 has been regulated as duty period without salary and he was given driver post and worked for one year at Ranithottam Branch No.II. So he had continuous service from 1968 till 1985. Since the cut off date for calculating pension and terminal benefits of the transport employees was fixed as 01.04.1982 as per the direction of the Hon'ble Supreme Court, the respondent issued the termination order dated 19.07.1982 with effect from 01.03.1982 purposely in order to deprive him from getting the pension and other benefits. However, the first respondent terminated his service treating it as absence from duty. It cannot be so because he was relieved from duty on availing the leave granted. Till he joined duty, it cannot be stated that he was absent from duty. The question of absence from duty will arise only when the employee was on duty but not attended the duty. Hence, no order of punishment can be passed without hearing the employee and without giving reasonable opportunity. It is gross violation of principles of natural justice. He was continuously in service during the year 1982. In the year 1984, he was placed as a



regular employee in a time scale of pay under Section 18(1) of Industrial Disputes Act for one year. He was having 17 years of qualifying service to get pension. Earlier, the petitioner had filed W.P.No.7116 of 2011, seeking for a direction to sanction the pension taking into consideration of the scale of pay as it was applicable to the post of the petitioner and continue to pay the same together with the consequential arrears, wherein this Court by order dated 01.07.2011 directed the petitioner to send the copy of the representation dated 21.08.2010 to the first respondent within a period of one week from the date of receipt of a copy of that order and on receipt of the same, the first respondent has to consider the same and pass orders on the said representation within a period of six weeks. As per the order of this Court, the second respondent has passed the impugned order on 29.09.2011 which was communicated in a letter No. 4033/A4/TNSTC (TVLY) / NGL / 2009 to the petitioner informing him that as he is not eligible to get pension as per G.O.Ms.No.42, dated 27.05.2005. Aggrieved by the said order, the petitioner has filed the present Writ Petition with the above said prayer.

4. A counter affidavit has been filed by the second respondent denying all the averments. It is submitted that the petitioner was appointed only as temporary Cleaner in the year 1967 and he was made permanent in the year 1968 and all the other facts were accepted. He has opted for pension scheme in 1960 under MLPR and Madras Government Servants Family Pension Rule, 1964. He fell sick in the year 1982 and he had submitted leave application and was granted leave only for 2 days viz., 27.02.1982 and 28.02.1982 and thereafter, the leave has not been extended beyond two days. He was continuously absent from duty without prior permission or leave being granted to him. Hence, he was terminated on 19.07.1982 from service with effect from 01.03.1982. The petitioner has not challenged the order of termination. After 30 years, he has filed the Writ Petition indirectly challenging the said order. It is found that termination order has been passed for misconduct viz., continuous unauthorised absent from service without prior permission for which, proper and prescribed punishment is dismissal. The petitioner has ignored material fact that he was working as a driver in a Public Transport Department which is an essential service, commuting several lacks of passenger everyday at a nominal cost had absented unauthorisdelly.

5. Further, the service records of the petitioner does not reveal that he was sanctioned leave from 01.03.1982 to 30.04.1982. So the allegation that he was on leave on loss of pay allegedly sanctioned from 01.03.1982 to 30.04.1982 is false and no proof is filed. He further submitted that the Award referred by the petitioner is being given every year to those drivers who



drove the vehicle free of accident in a particular year, which will not be a ground under law to justify his unauthorised continuous absence from service. Further, it is denied that there was 18(1) settlement between the petitioner and Nesamoni Transport Corporation according to which, the petitioner was allegedly appointed, afresh from 01.03.1982 to 27.04.1984 and he was regularized and worked for one year is not correct. G.O.Ms.No.42 has been issued, in order to enable the erstwhile Tamil Nadu State Transport Department employees absorbed in Tamil nadu State Transport Corporation and to provide benefit to the retired employees before 01.01.1988 or after 01.01.1988, but before 01.09.1998 will be paid pension only if they had put in the qualifying service of 10 years as on 01.04.1982. In a clarification issued to G.O.Ms.No.42, dated 27.06.2005 vide Government Letter No.18834/Tpt/TBC-1/2005-1, dated 13.02.2006 it has been informed that the payment of terminal benefits for the portion of Government service will be considered and finalized if it is satisfactory one and the service claimed is established and shall be admitted as if the cases were finalised immediately after the absorption ignoring the fact of removal / dismissal / resignation in Corporation service which service will not be counted for calculating requisite length of service to earn pension / gratuity. As he was in unauthorised leave without permission as stated in the clarification letter his government service viz., his service in the Government State Transport Department from 09.02.1967 upto 01.03.1982 should not be considered for calculating the pension eligibility period of 10 years and he is not eligible and he is not entitled for pension as he has not satisfied minimum 10 years length of service to get pension. The conjoined reading of the G.O.Ms.No. 42 Transport (RW) Department and said Government letter makes it clear that the petitioner has not fulfilled the required minimum length of service of 10 years and therefore, his claim for pension was rightly dismissed by the impugned order. Wherein it has been held that period of daily paid service, leave on loss of pay and suspension treated as specific punishment should be excluded while arriving the net qualifying a service. The petitioner is not granted pension as he did not satisfied the minimum length of 10 years of service to claim pension.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. On going through 18(1) settlement and the Service Register produced show that the petitioner was on sick leave for two days viz., 27.02.1982 and 28.02.1982 and unauthorized leave from 01.03.1982 to 30.04.1982. But, the petitioner was subsequently sanctioned leave from 01.03.1982 to 30.04.1982 on loss of pay. It is also seen from his service register that on



15.07.1982 he was awarded Rs.100/- for safety driver Award for the year 1981-1982. As the unauthorised leave from 01.03.1982 to 30.04.1982 has been regularized by treating it as leave on loss of pay, it has to be taken into account while calculating his pension. When the service register signed by the officails of the respondent itself clearly shows that the said leave was sanctioned it shows that suppressing the same and purposefully they have not taken into account the said period and stated that he was in unauthorised leave during the period and awarded retrospective punishment of dismissal from service in the month of July. It is seen that 18(1) settlement was entered into between the petitioner and Nesamoni Transport Corporationm, by which he was appointed afresh in the time scale of pay Rs.430-7-490-10-550 on 17.04.1984. It is clear that the petitioner was again appointed as driver. The dismissal order of the petitioner dated 19.07.1982 shows that he was terminated with effect from 01.03.1982. Suppressing the regularization of leave by sanctioning as loss of pay till 30.04.1982. It is clear that the petitioner was not served with any order on that date and no opportunity of hearing was given to him before issuing the impugned order. That being the case the respondent has to review its order. Accordingly, the impugned order is set aside and the matter is remanded back to the authority concerned to decide that matter afresh after giving an opportunity of hearing to the petitioner and pass appropriate orders within a period six months from the date of receipt of a copy of this order.

8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

To

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Tirunelveli, Tirunelveli District.



2.The General Manager,
Tamil Nadu State Transport Corporation,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.K.MUTHUMALAI, Advocate (SR-12547[F] dated 19/03/2020

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-12734[F] dated
20/03/2020)

W.P (MD) No.14995 of 2011 and
MP (MD) .No.1 of 2011
19.03.2020

AL (CO)
TR (09.06.2020) 6P 5C