



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.4985 of 2020

S.Mokkaiahamsy

... Petitioner

vs.

1.The Principal Secretary to
Government of Tamil Nadu
Transport Department and
Chairman of Transport Corporation
Fort. St.George, Chennai -9

2.The Management of Tamil Nadu
State Transport Corporation
(Madurai) Limited
Represented by its Managing Director
Bye-Pass Road, Madurai 10

3.The General Manager
Tamil Nadu State Transport Corporation
(Madurai) Limited, Dindigul Region, Dindigul

4.The Administrator
Tamil Nadu State Transport Corporation
Pension Fund Trust, Thiruvalluvar House, Pallavan Salai
Chennai -2

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the third respondent vide his proceedings in Reference: DGL/R.O/CES/403, dated 31.08.2019 and quash the same as illegal and consequently direct the respondents to sanction pay arrears for his promotion post of Checking Inspector with effect from 01.09.2010 and to sanction pension arrears with effect from 31.07.2011 and to pay difference amount of retirement benefits based on the revised scale of pay with interest as per the proceedings of the second respondent in Ref.Ku.Sa/W.P.No.6975/2016, dated 25.07.2016 and for other reliefs.

For Petitioner : Mr.J.Lawrance

For R1 : Mr.M.Murugan
Government Advocate

For R2 to R4 : Mr.J.Senthil Kumariah



O R D E R

This Writ petition has been filed to call for the records pertaining to the impugned order passed by the third respondent vide his proceedings in Reference: DGL/R.O/CES/403, dated 31.08.2019 and quash the same as illegal and consequently direct the respondents to sanction pay arrears for his promotion post of Checking Inspector with effect from 01.09.2010 and to sanction pension arrears with effect from 31.07.2011 and to pay difference amount of retirement benefits based on the revised scale of pay with interest as per the proceedings of the second respondent in Ref.Ku.Sa/W.P.No.6975/2016, dated 25.07.2016 and for other reliefs.

2.By consent of parties, this writ petition is taken up for final disposal at the stage of admission itself.

3.The learned counsel for the petitioner would submit that the petitioner joined service of the respondents Transport Corporation as a Conductor on 05.09.1973 and he was promoted to the post of Checking Inspector on 04.05.2008 and after completion of 38 years of service, he retired from service on 31.07.2011. The service conditions of the employees of the Transport Corporation are governed by periodical settlements entered into between the management and the representatives of the Trade Union under Section 12(3) of Industrial Disputes Act, 1947 and pay fixation is also made based on the settlement. The settlement dated 22.01.2011 was entered into between the second respondent management and the representatives of the Trade Unions. Clause 4 of the said settlements, the employees are entitled to the revised pay. Further the first respondent issued G.O.Ms.No.51, Transport (C1) Department dated 14.03.2013 ordered for revision of pay for the post of Checking Inspector with retrospective effect from 01.09.2010. As there was an anomaly in the pay of the Checking Inspector, the first respondent has passed the revised order in G.O(Ms).No.61 Transport (C) Department, dated 30.04.2015, fixing the new scale of pay of Driving Inspectors on par with the Checking Inspectors. As the duties and responsibilities of the above two posts are one and the same.

4.According to the petitioner, he is entitled to arrears of pay as per G.O.Ms.No.61 Transport (C) Department dated 30.04.2015. While so, the present impugned order has been passed by the third respondent, refusing to disburse the monetary benefits by citing subsequent settlement deed dated 04.01.2018. According to the petitioner, the terms of the said settlement dated 04.01.2018 are not applicable to him, as he was allowed to retire from service on 31.07.2011 itself. Against which, the present Writ petition has been filed.

5.The learned counsel for the petitioner rely the order made in W.P(MD).No.1776 of 2019, dated 30.01.2019, stated that under similar circumstances, the respondent has passed the following order.

<https://hcservices.mca.gov.in/hcservices/>



"2.The second respondent has concluded that the petitioner is entitled to the benefits of the settlement entered into under Section 12(3) of the Industrial Dispute Act between the management and the workers.

3.In view of the same, the writ petition is disposed of with a direction to the respondents to sanction pay arrears with effect from 01.05.2012 and pension arrears with effect from 31.05.2014 by considering the representation of the petitioner dated 19.11.2018, within a period of six weeks from the date of receipt of a copy of this order. The amounts that may be found eligible, shall be paid within a period of six weeks thereafter. No costs"

6.Complaining that the said order, dated 30.01.2019 was not complied with, the petitioner therein filed a contempt petition whereas the respondents Transport Corporation filed a review petition in Rev.Application No.178 of 2019 where this Court has passed the following order, dated: 19.12.2019.

"9.The settlement under Section 12(3) of the Industrial Disputes Act, dated 04.01.2018, clearly states that it will come into force on 01.09.2016 and it is valid till 30.01.2019. Admittedly, the first respondent employee has retired in the year 2014 and therefore, the present 12(3) settlement dated 04.01.2018 would not affect his rights that accrued to him under the earlier settlement, dated 21.02.2014. In fact, while disposing of the representation of the petitioner pursuant to the orders of this Court made in W.P(MD).No.1029 of 2016, the respondent corporation had conceded that the workmen would be entitled to the benefits of the settlement under Section 12(3) of the Industrial Disputes Act, dated 12.01.2011 and had acknowledged the entitlement of the petitioner to 5th review benefits from 01.05.2012. I therefore, find no substance in the claim of the petitioner that in view of the settlement under Section 12(3) of the Industrial Disputes Act entered into, after the retirement of the employee, his position will be altered. I therefore seen no grounds to entertain the review petition and the review petition fails and accordingly it is dismissed"

7.The petitioner also stands in the same footing. In my considered opinion, the impugned order has been passed without taking note of the order passed in W.P(MD).No.1776 of 2019 and the order passed in the review application (MD).No.178 of 2019 and therefore, the impugned order dated 31.08.2019 is set aside and the matter is remitted back to the respondents to pass fresh order in the light of the order passed in W.P(MD).No.1776 of 2019, dated 30.01.2019 and the Review Application(MD).No.178 of 2019,



dated 19.12.2019, within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AD-II)

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// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa

To:-

- 1.The Principal Secretary
Government of Tamil Nadu
Transport Department and
Chairman of Transport Corporation
Fort. St.George, Chennai -9
 - 2.The management of Tamil Nadu
State Transport Corporation
(Madurai) Limited
Represented by its Managing Director
Bye-Pass Road, Madurai 10
 - 3.The General Manager
Tamil Nadu State Transport Corporation
(Madurai) Limited, Dindigul Region, Dindigul
 - 4.The Administrator
Tamil Nadu State Transport Corporation
Pension Fund Trust, Thiruvalluvar House, Pallavan Salai
Chennai -2
- +1 CC to M/s.J.SENTHIL KUMARIAH, Advocate (SR-10929[F] dated 10/03/2020)
- +1 CC to M/s.J.LAWRENCE, Advocate (SR-11038[F] dated 11/03/2020)

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AP(01/06/2020) 4P 7C