



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE **S.M.SUBRAMANIAM**

W.P.(MD)No.10207 of 2014

and

M.P.(MD)No.1 of 2014

S.Selvaraj

... Petitioner

Vs

The Management of
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Karaikudi Region,
Rep.by its General Manager,
Karaikudi.

... Respondent

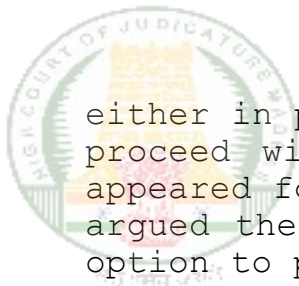
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records from the respondent relating to the order dated 08.05.2014 passed in Ref.TNSTC /Legal/Sal/247, quash the same and consequently to direct the respondent to treat the period of non-employment of the petitioner from 30.04.2003 to 27.09.2007 as his service period for all purpose by paying yearly increments for the same and by counting the same with the earlier period of his service for the review, service weightage and other benefits by compiling with the order of this Court dated 06.04.2006 in W.P.No.5550 of 2005 and based on such treating, to fix him in correct scale of pay from 28.09.2007 and also to pay him all the consequential benefits including the arrears of wages, award cost.

For Petitioner : No Appearance

For Respondent : Mr.D.Sivaraman
Standing Counsel

ORDER

This writ petition is pending for about past six years. The writ petition was listed for hearing on 06.10.2020. Since none appeared for the petitioner on that date, the case was again listed on 08.10.2020. On that date, this Court passed an order directing the Registry to issue notice to the petitioner either to appear before this Court in person or through video conferencing. Thus, notice was issued to the petitioner with a direction to appear



either in person or through video conferencing enabling the Court to proceed with the matter. When the matter is listed today, none appeared for the petitioner. The learned counsel for the respondent argued the matter by placing facts. Thus, this Court has no other option to proceed with the matter and pass orders.

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2. The order dated 08.05.2014, rejecting the claim of the writ petitioner claiming promotion of the period in which the petitioner was not in service, is under challenge in the present writ petition.

3. The petitioner claims promotion in the post of Driver. However, he was provided with an alternative job of helper. When the petitioner was provided with an alternative employment in the cadre of Helper, he cannot seek promotion in the post of Driver.

4. The petitioner was appointed as Driver in the year 1991 and during the regular medical examination to the Medical Board on 17.02.2003, it was found that the petitioner is not fit for the post of Driver. Thus, the petitioner was removed from service. The petitioner filed W.P.(MD)No.5550 of 2005, which was allowed and the respondent was directed to revisit the case of the petitioner. The respondent Management's writ appeal was dismissed. Thereafter, the writ petitioner was provided with an alternative employment in the post of Helper with effect from 28.09.2007. The writ petitioner was appointed in the post of Helper and now reached the age of superannuation.

5. The grievance of the writ petitioner is that from the date of removal till the date of alternative employment, he was not in service. The writ petitioner was reinstated in service with full backwages and continuity of service. Therefore, the period has to be counted for the purpose of promotion to the higher post.

6. The fact remains that the petitioner was not allowed to continue in the post of Driver. Contrarily, he was medically declared as not fit to continue in the post of Driver and subsequently, the respondent has appointed the writ petitioner in the post of Helper. Therefore, question of granting promotion in the post of Driver would not arise at all. This apart, the entire backwages were already paid. Continuity of service was also given for the purpose of counting of the qualifying services. Pay protection was also given to the writ petitioner and other consequential benefits were also granted. This being the factum now established, this Court is of the considered opinion that the non-employment period from 2003 to 2007 would not be taken into account for the purpose of promotion in the post of Driver as the petitioner was provided with an alternative employment in the post of Helper. However, the non-employment period shall be counted for the purpose of counting qualifying service, pensionary benefits and all other consequential benefits.



7. With this clarification, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P & A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Management of
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Karaikudi Region,
Rep.by its General Manager,
Karaikudi.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-21246[F] dated 05/11/2020)

W.P. (MD) No.10207 of 2014

05.11.2020

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ARK(CO)

KK(18.11.2020) 3P 3C