



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.4968 of 2014

S.Periyasamy

... Petitioner

vs.

1.The Management of
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Represented by its Managing Director
Kumbakonam

2.The General Manager
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam Region
Kumbakonam

3.The Administrator
Tamil Nadu State Transport Corporation
Pension Fund Trust
Thiruvallurvar House
Pallavan Illam
Chennai 600 002

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Declaration, declaring that the action of the respondents in treating the petitioner service period from 03.07.1989 to 18.02.1999 rendered by him as " Non-employment period " is illegal, arbitrary and contrary to award passed in I.D.No.255 of 2012 dated 18.02.1999 by the Labour Court, Cuddalore as confirmed by the Principal Seat of this Court in W.P.No.17534 of 1999 dated 19.01.1999 and consequently, direct the respondents to pay pension to the petitioner by taking into account of entire service period rendered by him from 20.09.1985 to 31.12.2004 and to pay arrears of pension benefits including monthly pension, gratuity and all other attendant benefits payable to the petitioner with effect from 31.12.2014 to till date within the time stipulated by this Court and continue to pay his monthly pension every month.

For Petitioner : Mr.A.Rahul

For R1 & R2 : Mr.D.Sivaraman



For R3

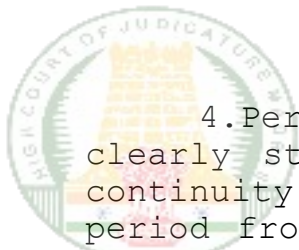
: Mr.A.Swaminathan

O R D E R

The above Writ petition has been filed to declare the action of the respondents in treating the petitioner service period from 03.07.1989 to 18.02.1999 rendered by him as " Non-employment period " is illegal, arbitrary and contrary to award passed in I.D.No.255 of 2012 dated 18.02.1999 by the Labour Court, Cuddalore as confirmed by the Principal Seat of this Court in W.P.No.17534 of 1999 dated 19.01.1999 and consequently, direct the respondents to pay pension to the petitioner by taking into account of entire service period rendered by him from 01.11.1986 to 31.12.2004 and to pay arrears of pension benefits including monthly pension, gratuity and all other attendant benefits payable to the petitioner with effect from 31.12.2014 to till date within the time stipulated by this Court and continue to pay his monthly pension every month.

2.The case of the petitioner is that he was appointed as Driver on daily wage basis in the first respondent Corporation with effect from 01.10.1985. His service was regularized with effect from 01.11.1986. While so, a charge memo dated 14.02.1989 was issued to the petitioner alleging that while he was working as Driver, on 03.02.1989, the bus met with an accident and the above accident took place due to the rash and negligent driving of the petitioner. After conducting enquiry, the petitioner was dismissed from service by an order dated 03.07.1989. Against which, the petitioner has raised an Industrial dispute before the Labour Court, Cuddalore in I.D.No.255 of 1992, where the learned Judge by an award dated 18.02.1999, directed the respondents to reinstate the petitioner with continuity of service but without back wages. Aggrieved against the said award, the first respondent management preferred a Writ petition in W.P.No.17534 of 1999 before the Principal Seat of this Court and the same was dismissed by an order dated 19.01.2009. In these circumstance, the respondents reinstated the petitioner into service by an order dated 05.05.2011 wherein, it was mentioned that the continuity of service for non-employment period ie. from 03.07.1989 to 18.02.1999 without wages and the petitioner is entitled to wages from 19.02.1999 to 31.12.2004, the date on which he attained the age of superannuation. The petitioner was not paid with pension, therefore, he filed R.T.I application, for which, reply was given to the effect that the period from 03.07.1989 to 31.12.2004 was treated as leave on loss of pay, which will not count for pension. Aggrieved over the same, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and the learned counsel for the third respondent.



4.Perusal of record shows that when the Labour Court has clearly stated in its award that the petitioner was entitled to continuity of service, the respondents ought not to have treated the period from 03.07.1989 to 18.02.1999 as non-employment period. The learned counsel for the petitioner has relied on the Judgment of this Court, dated 02.06.2017 in W.P(MD).No.428 of 2016 (G.Alagarsamy Vs. TNSTC (Kumbakonam) Ltd., and others) where, this Court directed the respondents therein to treat the period of non-employment as pensionable service and disbursed gratuity, E.L benefit and also pension, in which, the learned Judge has relied upon a Judgment of Hon'ble Division Bench of Delhi High Court in the case of **Mahabir Prasad Vs.Delhi Transport Corporation reported in 2014-IV-LLJ-413**. In the said Judgment, the term "continuity of service " was defined as follows:

" The " continuity of service" means workman had to be given notional increment for the duration he was out of employment, in the grade and equivalent scale which replace it later till he reached the end of pay scale.

The "notional pay fixation" means, the workman will be entitled to reckon the period from the date of removal to the date of reinstatement as having been in employment for the purpose of pension, gratuity and contribution to P.F. as held in the case of Mahabir Prasad Vs.Delhi Transport Corporation"

5.According to the petitioner, the similar view was taken in W.P(MD).No.13739 of 2016, dated 22.12.2016, where this Court directed the management to pay employer's contribution of Provident Fund for the non-employment period. In para 5, it has been held that *" once there is an award of reinstatement with continuity of service, the entire period of service from 1993 to 2016, will have to be taken into account for all purposes except for paying back wages. It is duty cast upon the employer to remit amount in the PF account so as to enable the petitioner therein to get pension".*

6.The above Judgments are squarely applicable to the facts of the present case. Therefore, this Court is inclined to interfere with the order passed by the respondents. The action of the respondents in treating the petitioner's service from 03.07.1989 to 18.02.1999 as non-employment period is illegal arbitrary and contrary to the award passed by the Labour Court, Cuddalore in I.D.No.255 of 1992, dated 18.02.1999 as confirmed by the Principal Seat in W.P.No.17534 of 1999. It is brought to the notice of this Court that due to the pendency of the Writ petition filed by the management, the employer's contribution of provident fund has not been paid. Therefore, the respondents 1 and 2 are directed to forward the pension proposal to the third respondent by taking into account of entire service rendered by the petitioner from 01.11.1986 to 31.12.2004, within a period of twelve weeks from the date of receipt of a copy of this order. On such proposal, the third respondent is directed to sanction the arrears of pension



benefits including monthly pension, gratuity and all other attendant benefits payable to the petitioner with effect from 31.12.2014 to till date, within a period of twelve weeks therefrom.

7. In the result, this Writ petition is allowed. No costs.

WEB COPY

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

msa

+1 CC to M/s.A.RAHUL, Advocate (SR-6553[F] dated 14/02/2020)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-6174[F] dated 13/02/2020)

+1 CC to M/s.A.SWAMINATHAN, Advocate (SR-6197[F] dated 13/02/2020)

W.P. (MD) No.4968 of 2014
13.02.2020

JMN(13.03.2020) 4P : 4C