

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.12356 of 2004

G.Duraikannu

..Petitioner

Vs

1.The Management of Tamil Nadu  
State Transport Corporation (Villuputam Division-II) Ltd.,  
Rep. by its Managing Director, Rangapuram, Vellore-9

2.Tamil Nadu State Transport Corporation  
Employees Pension Trust  
Rep. by its Administration  
Pallavan Salai, Chennai-2

..Respondents

Prayer : Writ Petition filed praying to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order dated 24.03.2004 passed by the 1<sup>st</sup> respondent in Letter No.17/13754/PF.4/TNSTC/Pension/2001, quash the same and consequently direct the respondents to pay the petitioner monthly pension with Dearness allowance and health allowance for the petitioner entire service from 01.05.1975 to 31.05.2001, without deducting the pension that the petitioner receiving from the Government of Tamil Nadu for the service rendered in the State Transport Department, with effect from 01.06.2001 with all arrears and consequential benefits and interest at the rate of 18%, Award costs and render justice.

For Petitioner : Mr.V.Ajoy Khose

For respondents : Mr.C.S.K.Sathish

ORDER

The petitioner joined the services of erstwhile State Transport Department as a conductor on 11.10.1963. When the Pallvan Transport Corporation was formed, the petitioner was absorbed with continuity of service. For certain alleged misconduct, the petitioner was dismissed from service by an order dated 19.10.1981, The petitioner therefore, raised an Industrial Dispute and it ended in failure. According to the

petitioner, the Department did not refer the dispute for adjudication. Therefore, the petitioner filed a Writ Petition seeking to refer the said dispute for adjudication. The said Writ Petition was allowed by this court. Thereafter, the Government of Tamil Nadu by G.O.(D).No.5, dated 29.06.1990 referred the dispute to the Principal Labour Court, Madras, for adjudication. The said dispute was taken as I.D.No.628/90.

2. The Principal Labour Court, by award dated 26.07.1993, directed the respondent corporation to reinstate the petitioner with continuity of service and other attendant benefits but without backwages holding that termination was not justified.

3. Accordingly the 1<sup>st</sup> respondent reinstated the petitioner with continuity of service in terms of the award by an order dated 28.03.1994. Pursuant to the said order, the petitioner joined duty on 29.03.1994. The petitioner's basic pay was fixed in appropriate scale of pay by counting the period of non-employment as service. The petitioner was given promotion as Checking Inspector.

4. On the petitioner attaining the age of superannuation, he retired from service with effect from 31.05.2001. According to the petitioner, he was granted gratuity and also his P.F.contribution and his entire service from 19.10.1981 to 28.03.1994 has been calculated. Further, Pension Scheme for the Tamil Nadu State Transport Employees was introduced on 01.09.1998 and Rules was formulated in the year 2000. It is the contention of the petitioner that 1<sup>st</sup> respondent has not made contribution towards P.F., for the period of non-employment that too after receiving his contribution of P.F.Amount. The said action is contrary to the award passed by the Labour Court which becomes final. The petitioner requested to settle entire P.F.amount. The petitioner also sent a letter dated 05.03.2003 to the 1<sup>st</sup> respondent and requested them to settle P.F.Dues and also for refixation of pension and commutation. The petitioner sent another letter dated 01.09.2003 to the 1<sup>st</sup> respondent and requested to count the period of non-employment from 19.10.1981 to 28.03.1994 for pension and refix pension and commutation with effect from 31.05.2001 with arrears and consequential benefits. The petitioner filed W.P.No.30928/2003 praying for a direction to the 1<sup>st</sup> respondent to pay pension for his entire service. The said writ petition was disposed of by this court on 20.02.2004 and as per the direction of this court, the petitioner made a representation dated 28.02.2004 to the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent passed the impugned order dated 24.03.2004 rejecting the petitioner's claim.

5. The 1<sup>st</sup> respondent refused to fix pension for the entire service of petitioner on the ground that employer contribution of P.F., was not received for the period of non-employment as no backwages was ordered by the Labour Court.

6. The contention of the learned counsel for the petitioner is that once the Labour court reinstated the petitioner into service without backwages and continuity of service, the service has to be counted for the purpose of pension and the 1<sup>st</sup> respondent has failed to do so. In this regard, the learned counsel for the petitioner cited the following decisions:-

(i) M.Pani Vs. The Management of State Transport Corporation (Madurai Division I) Ltd. And others [Madurai Bench of Madras High Court dated 01.08.2005 in W.P.No.2400 of 2005]

(ii) 1.The Management of Tamil Nadu State Express Transport Corporation (TamilNadu) Ltd., Rep. by its Managing Director, Pallavan Salai, Chennai-2 and another Vs. S.Gopalakrishnan [W.A. (MD).No.366 of 2007 dated 10.10.2007 ]

(iii) S.Gunasekaran Vs. The Management of Tamil Nadu, State Transport Corporation (Madurai) Ltd., Rep. by its General Manager, Bye-pass Road, Madurai 625 016 [W.P.(MD).No.3829 of 2008 dated 24/10/2009]

(iv) Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam, rep. by its President and 2. Amsavalli Vs. 1. The Government of Tamil Nadu, rep. by its Secretary, Transport Department and others [W.P.Nos.4117, 4571 and 456 of 2006...etc batch dated September 7, 2010.]

(v) K.Shahul Hameed Vs. 1.The Government of Tamil Nadu, rep. by its Deputy Secretary to Government, Transport Department, Secretariat, Chennai-600 009 and another [W.P.(MD).No.10046 to 10048 of 2006 dated 25/02./2011]

(vi) Mahabir Prasad Vs Delhi Transport Corporation [(2014) 212 DLT 503 (DB)]

(vii) N.Krishnaswamy Vs. 1. The Administrator, Tamil Nadu State Transport Corporation Employees Pension Fund Trust, Tiruvallurvar House, Pallavan Salai, Chennai-2. [W.P.No.14850 of 2012 dated September 9, 2014]

(viii) The Management of Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Kumbakonam Region, Rep. by its Managing Director, Kumbakonam Vs. 1.J.Veeramani and another. [W.A.(MD).Nos.1350 and 1646 of 2018 etc batch dated 20.09.2019]

(ix) The Tamil Nadu State Transport Corporation (Kumbakonam) Limited, rep. by its Managing Director, Kumbakonam and two others Vs. Mahalakshmi [W.A.(MD).No.254 of 2020 dated 18.02.2020]

(x) S.Periyasamy Vs. 1.The Management of Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Rep. by its Managing Director, Kumbakonam. [W.P.(MD).No.4968 of 2014 dated 13.02.2020]

7. Admittedly, the petitioner was working as conductor and he was absorbed with continuity of service in the Pallvan Transport Corporation. For certain alleged misconduct, the petitioner was dismissed from service by an order dated 19.10.1981. Thereafter, Industrial Dispute has been raised and the Labour Court set aside the order of removal from service and reinstated the petitioner into service without backwages. After the petitioner filed W.P.No.30928 of 2003 praying for direction to the 1<sup>st</sup> respondent to pay pension for his entire service and on the directions issued by this court by order dated 20.02.2004, the impugned order has been passed. It is the admitted fact that since the petitioner has been reinstated without backwages, during his period of non-employment, no Provident Fund amount has been deducted as such there was no deduction even from the side of Management for the said period and therefore, 23 years of service has been calculated for the purpose of pension.

8. Even though the order impugned herein is of the year 24.03.2004 and the writ petition is of the year 2004, subsequently similar issue has been answered by a Honourable Division Bench in the Madurai Bench of Madras High Court. One such decision is in the case of The Management of Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Kumbakonam Region, Rep. by its Managing Director, Kumbakonam Vs. 1. J.Veeramani and another. [W.A.(MD).Nos.1350 and 1646 of 2018 etc batch dated 20.09.2019]. In the said decision, it is held as follows:-

"The Labour Court after considering the facts of the case, has modified the punishment, however, the mistake committed by the Labour Court was that it came to the conclusion that the workman had retired by then, which is factual incorrect. However, that aspect of the matter may not have a great impact on the final award passed by the Labour Court.

9. In our considered view, the appropriate punishment which is required to be issued in lieu of dismissal from service was examined by the Labour Court and we found that there is no perversity in exercise of discretion and therefore, the conversion of punishment of dismissal from service into stoppage of increment for three years with cumulative effect, cannot be stated as erroneous. The Management is aggrieved by the direction issued by the Labour Court to grant continuity of service

with full backwages and consequential pension. It is the submission of the learned counsel for the appellant that hardly within 15 days from the date on which the respondent workman had become a permanent employee, he was charge sheeted for misappropriation, ultimately dismissed from service on 05.08.1988 and from then, he has been out of service and virtually the workman would get a substantial amount of money which he does not deserve to obtain. From the dates and events, we find that there is no delay on the part of the workman to initiate the proceedings before the Labour Court, the delay in disposal of the matter by the Court cannot be fastened on the workman. Therefore, we find that there are no extraordinary circumstances by which we should take a different view in the matter, but nevertheless, we find that the workman has worked only for a short period of time and the charge of misappropriation has been proved and the Court interfered only with regard to the penalty and remanded the matter to the Labour Court. Therefore, we express an opinion that the award of backwages in its entirety would not be appropriate in the case on hand. We also took note of the decision of the Hon'ble Supreme Court in the case of J.K.SYNTHETICS LTD., V. K.P.AGRWALL AND ANOTHER, reported in 2007(2)SSC 433 relied on by Mr.D.Sivaraman, learned counsel for the Corporation, with regard to the scope of exercise of discretion under Section 11(a) of the Industrial Disputes Act. Facing to this situation, Mr.S.Arunachalam, learned counsel on instructions submitted that 50% of the backwages may be denied and the remaining 50% may be paid and continuity of service may be granted so that the petitioner will be entitled to receive pension for which the Management has to remit their proportionate contribution to the fund and appropriate direction may be issued. "

9. It is to be seen that as per the direction given by this court in W.P.No.30928 of 2003 filed by the petitioner, the impugned order has been passed. As per the award of the Labour Court, even though backwages not granted, continuity of service has been granted. For continued length of service, the petitioner is entitled for receiving pension. This court time and again held in various decisions that during the period of non employment, employer has to pay the contribution for the purpose of pension. It has been held in various decisions that "once there is an award of reinstatement with continuity of

service, the entire period of service will have to be taken into account for all purposes except for paying backwages. It is duty cast upon the employer to remit amount in the PF account so as to enable the petitioner therein to get pension”.

10. In the light of the above, the impugned order dated 24.03.2004 is set aside. The Writ Petition is allowed in the following terms.

(1) The employer is directed to grant the benefit of continuity of service to the workman and consequently, compute the length of service, make the necessary contribution to enable the workman to receive pension, and such contribution for the period of non employment shall be calculated as per Rules.

(2) The above exercise shall be carried out by the Respondent/Corporation within a period of two weeks from the date of receipt of a copy of this order.No costs.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

nvsri

To

1.The Managing Director,

Management of Tamil Nadu

State Transport Corporation (Villuputam Division-II) Ltd.,

Rangapuram, Vellore-9

2. The Administration Officer, Tamil Nadu State Transport Corporation

Employees Pension Trust,

Pallavan Salai, Chennai-2

+1 CC to Mr.V.Ajoy Khose, Advocate sr 17063.

+1 CC to Mr.C.S.K.Sathish, Advocate sr 17108

W.P.No.12356 of 2004

SV(CO)

SP(18/03/2021)