

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.8911 of 2010

B.Natarajan

... Petitioner

-Vs-

The Management of
Metropolitan Transport Corporation
(Chennai) Limited, Pallavan Illam
Anna Salai, Chennai 600 002.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondent Management to fix the basic wage on par with the similarly placed workmen from the date of reinstatement on 30.08.2004 and also to pay the difference in wage from September 2004, till the date of correct fixation of basic pay and award costs.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents: Mr.K.Murthy, Standing Counsel

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the respondent Management to fix the basic wage on par with the similarly placed workmen from the date of reinstatement on 30.08.2004 and also to pay the difference in wage from September 2004, till the date of correct fixation of basic pay and award costs.

2. The petitioner was appointed as Conductor in the respondent Corporation on 01.03.1985 and he had been continuously working in that capacity. While so, a disciplinary proceeding was initiated against him, which ended in dismissal and accordingly he was dismissed from service on 09.01.2003.

3. However, when the respondent Corporation approached the competent authority for getting approval for such termination or dismissal, such authority, by an order dated 12.01.2004, rejected the approval petition filed by the respondent Corporation, by which the termination or dismissal order against the petitioner was deemed to have been set aside.

4. Resultantly, the respondent Corporation, in consonance with the said rejection order, has decided to take back the petitioner into service. Accordingly, he was reinstated into service on 14.04.2004 and from that date, he has been

continuously working till his superannuation and accordingly he retired from service on 15.07.2014.

5. In this context, it is the grievance of the petitioner that, by virtue of the rejection of the approval petition filed by the respondent transport corporation, there could be no dismissal order issued against the petitioner and therefore, when he was reinstated on 14.04.2004, the pay scale of the petitioner should have been fixed as if he had not been removed from service in the year 2003. Further, according to the petitioner, correct pay scale was not fixed and taking into account the reinstatement order only, the pay scale was fixed. Therefore, to fix the correct pay, the petitioner has been agitating the issue and in this regard, he has made a detailed representation to the respondent transport Corporation on 10.10.2009. Since the said representation was not considered and nothing was forthcoming from the respondent Corporation, the petitioner has approached this Court by filing this writ petition with the aforesaid prayer.

6. Heard Mr.S.T.Varadarajulu, learned counsel for the petitioner, who has reiterated the aforesaid facts and seeks the indulgence of this Court.

7. However, Mr.K.Murthy, learned Standing Counsel for the respondent transport Corporation, on instructions, would submit that, subsequently there had been an issue with regard to the alleged unauthorised absence against the petitioner and disciplinary action was taken and in this regard, as against the order passed by the competent authority, rejecting the approval petition of the respondent corporation, the respondent has filed a writ petition in W.P.No.35562 of 2016 and the same is still pending till date. Therefore, at this juncture, the plea raised by the petitioner for fixing the pay scale cannot be met and therefore, the writ petition is liable to be rejected, he contended.

8. I have considered the submissions made by the learned counsel for either side and have perused the materials placed on record.

9. Insofar as the aforesaid facts are concerned, there is no dispute, as the petitioner, though was removed from service on 09.01.2003, by a dismissal order, however subsequently, in view of the rejection of the approval petition filed by the respondent Corporation, having accepted the same, the respondent Corporation reinstated the petitioner on 14.04.2004 and he had been continuously working till his superannuation on 15.07.2014.

10. The petitioner had been continuously working after reinstatement and until his superannuation, the petitioner had worked and retired from work peacefully. Thus the respondent Corporation cannot say that some issues are still pending in a

writ proceedings before this Court and therefore correct pay, which ought to have been fixed for the petitioner, cannot be fixed.

11. Once the the approval petition was rejected by the competent authority and the dismissal order dated 09.01.2003 goes, pursuant to which, the petitioner was reinstated on 14.04.2004, this Court feels that, the petitioner would be entitled to get the fixation of scale of pay as if he had not been removed from service.

12. In that view of the matter, the representation made by the petitioner dated 10.10.2009 shall be considered objectively by the respondent and hence, this Court feels that a mandamus as sought for can be granted.

13. In the result, the following orders are passed in this writ petition. That the respondent Corporation is directed to consider the representation of the petitioner dated 10.10.2009, and accordingly fix the correct pay scale to the petitioner, as if the petitioner had not been removed from service by order dated 09.01.2003, in view of the rejection of the approval petition by the competent authority by order dated 12.01.2004, and after fixing the correct scale of pay, the arrears if any, payable to the petitioner, shall be calculated and be paid to the petitioner. The needful as indicated above shall be undertaken within a period of three weeks from the date of receipt of a copy of this order.

14. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

KST

To

The Management of
Metropolitan Transport Corporation
(Chennai) Limited, Pallavan Illam
Anna Salai, Chennai 600 002.

+1cc to Mr.K.Moorthy, Advocate, S.R.No.12855

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No. 13253

W.P.No.8911 of 2010

VG II(CO)

GN(30/06/2021)

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