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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 30261 of 2011

A.Arjunan

... Petitioner

-vs-

1.The Administrator,
Tamil Nadu State Transport Corporation,
Employees' Pension Fund Trust,
Pallavan Salai, Chennai - 600 002.

2.The Managing Director,
State Express Transport Corporation
(Tamil Nadu) LTD.,
(Erstwhile Thiruvalluvar)
Transport Corporation Ltd.,)
Pallavan Salai, Chennai - 600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the second respondent management to grant pension under 1998 pension scheme and difference amount in Provident Fund and Gratuity for the entire service from 10.04.1985 to 28.02.2009.

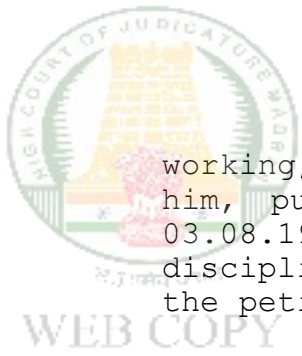
For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Mr.K.Kathiresan
Standing counsel for R2

ORDER

The prayer sought for herein is for a Writ of Mandamus directing the second respondent management to grant pension under 1998 pension scheme and difference amount in Provident Fund and Gratuity for the entire service from 10.04.1985 to 28.02.2009.

2. The petitioner joined as Conductor at the second respondent Transport Corporation on 10.04.1985. While he was



working, there was a disciplinary proceedings initiated against him, pursuant to which, he was placed under suspension from 03.08.1990 and thereafter, after the conclusion of the disciplinary proceedings, the respondent Corporation dismissed the petitioner from service with effect from 29.11.1991.

3. Challenging the dismissal order, the petitioner approached the Labour Court, where, the Labour Court accepting the case of the petitioner allowed the I.D. on 07.07.1994 with the order that the petitioner shall be reinstated with continuity of service. However, for the period between 29.11.1991 to 06.07.1994, the petitioner shall not be entitled for getting the backwages.

4. Felt aggrieved over the said order passed by the Labour Court, the said Corporation filed an Appeal by way of Writ Petition before this Court and it was dismissed by this Court, by order dated 26.06.2002, thereby, the award passed by the Labour Court has become final and accepting the same, the petitioner has been reinstated into service by the respondent Corporation on 20.11.2002.

5. Thereafter, the petitioner was working till he attained superannuation and he retired from service on 28.02.2009.

6. After his retirement, according to the petitioner, the gratuity and other retirement benefits including the pension was calculated and was disbursed to the petitioner but, only by taking into account the lesser service, that is the service exactly rendered by the petitioner. In other words, the period, where the petitioner has been out of service due to the disciplinary proceedings and also the pendency of the litigations were not taken into account for the purpose of either calculating the gratuity or pensionable benefits. Therefore, in order to get the gratuity and pensionable benefits by taking into account the total service period, the petitioner has given a representation to the respondents on 07.03.2011, however, the same has not been considered, therefore, he approached this Court by filing the present Writ Petition with the aforesaid prayer.

7. Heard Mr.S.T.Varadarajulu, learned counsel appearing for the petitioner who would reiterate the aforesaid facts and submit that, the petitioner since is entitled to get the benefits like gratuity for the whole service period and also correspondingly, he would be entitled to get the revised pension in view of the continuity of service that has been ordered by the Labour Court, which has been confirmed by the orders of this Court, the same shall be calculated and be paid to the petitioner. Therefore, the request made by the petitioner in



this regard dated 07.03.2011 should have been considered by them, which has however not been considered. Therefore, the learned counsel seeks indulgence of this Court to give suitable direction to the respondents in this regard.

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8. I have heard Mr.K.Kathiresan, learned Standing counsel appearing for the second respondent who would submit that, the petitioner admittedly was out of service from 29.11.1991 till 06.07.1994, for which period, he was not entitled to get the backwages as directed by the Labour Court and during the relevant period, the petitioner also has not contributed anything towards Contributory Pension Scheme. Correspondingly, since there has been no contribution on the employer side also, therefore, there is absolutely no contribution under the Contributory Pension Scheme in the name of the petitioner during the said period for several years. Therefore, correspondingly, the petitioner would not be entitled to get the full pension in view of the absence of the contribution on the part of the petitioner during the said period he was out of service.

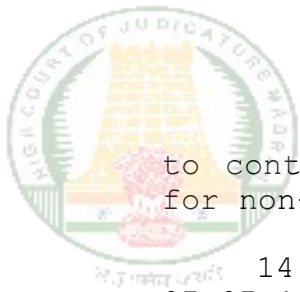
9. The learned Standing counsel appearing for the second respondent would also submit that, except the said period, where the petitioner was out of service, the period the petitioner worked even prior to the disciplinary proceedings taken against him and subsequently after reinstatement, was taken into account and accordingly, his gratuity as well as pensionable benefits having been calculated were disbursed to the petitioner. Therefore, the prayer sought for by the petitioner has already been met. Hence, he seeks dismissal of the Writ Petition.

10. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. Admittedly, the petitioner was out of service between 29.11.1991 to 06.07.1994, during which period he was terminated from service and pursuant to which, he approached the Labour Court and got an award in his favour on 07.07.1994 and therefore, from that day, he would be entitled to get reinstatement.

12. However, subsequently, by virtue of the litigation that was pending, i.e., the appeal by way of Writ Petition filed by the Management where, orders were passed only on 26.06.2002, the respondent Department did not take him back by way of reinstatement and he was reinstated only on 20.11.2002.

13. Therefore, between the period 29.11.1991 and 19.11.2002 since the petitioner was out of service for the aforesaid reason, during that period the petitioner was not in a position



to contribute towards Contributory Pension Scheme. This reasons for non-contribution cannot be attributed on the petitioner side.

14. The reason being that, in the Labour Court award dated 07.07.1994, only the backwages for the period, where the petitioner was out of service was denied, for all other purposes, continuity of service was ordered. Therefore, during that period of time between 29.11.1991 to 06.07.1994, whatever be the accumulated contribution on the employee side, i.e., petitioner, the same shall be calculated and that can be deducted from the petitioner's pension for the entire period calculated as if the petitioner has made contribution in the Contributory Pension Scheme.

15. Like that, in respect of the period upto 20.11.2002, i.e., from the date of Labour Court award dated 07.07.1994, till the reinstatement date, i.e., 20.11.2002, it is not on the fault of the petitioner for being out of service because of the Appeal filed by the Transport Corporation pending during that time. For the said period, the petitioner is eligible to get pension and also entitled for backwages.

16. However, without calculating all these periods for the purpose of backwages, contributory pension as well as gratuity, only the lesser period of service rendered by the petitioner i.e., between 10.04.1985 and 29.11.1991 and again from 20.11.2002 till 28.02.2009 alone were taken into account and the remaining service period has not been taken even for the purpose of continuity of service and also backwages from at least 07.07.1994 till 20.11.2002. Such a wrong calculation made by the respondent Transport Corporation cannot be accepted by this Court. In view of the aforesaid facts, the petitioner would be eligible and entitled to get the benefits as discussed above.

17. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following order:

"(i) That the respondents are hereby directed to consider the request of the petitioner dated 07.03.2011 and accordingly, calculate the service period of the petitioner between 29.11.1991 till 19.11.2002 and the said period shall be taken into account for the purpose of contributory pension, for which, whatever the employees contribution is due, the same shall be calculated and the said amount can be adjusted towards the revised pension arrears to be payable to the petitioner.

(ii) In this regard, it is further made clear that, between the period from 07.07.1994 till 20.11.2002,



the petitioner would be entitled to get backwages as during the said period the petitioner was out of service because of the litigation initiated by the respondents alone.

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(iii) In this regard, it is brought to the notice of this Court by the counsel for petitioner fairly that, during the said period between 07.07.1994 and 20.11.2002, though the petitioner was out of service, for the said period the GPF contribution has been made or paid by the petitioner and the same has been accepted and during the said period, the entire GPF has been calculated and settled by the respondents Transport Corporation.

(iv) The remaining amount towards GPF between the period 29.11.1991 and 06.07.1994 and also the entire gratuity for the whole service period shall be calculated and be paid.

(v) With these aspects, the necessary orders shall be passed by considering the representation of the petitioner as has been stated above and the needful as indicated above shall be undertaken and the orders shall be passed within a period of eight weeks from the date of receipt of a copy of this order.

(vi) It is needless to mention that, once orders are passed for calculating the arrears of pension as well as gratuity, the said amount to be computed shall be disbursed to the petitioner thereafter within a period of eight weeks."

18. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

vji



To

1.The Administrator,
Tamil Nadu State Transport Corporation,
Employees' Pension Fund Trust,
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2.The Managing Director,
State Express Transport Corporation
(Tamil Nadu) LTD.,
(Erstwhile Thiruvalluvar)
Transport Corporation Ltd.,)
Pallavan Salai, Chennai - 600 002.

+1CC to Mr.S.T.Varadarajulu, Advocate (SR NO.16153)

+1CC to Mr.K.Kathiresan, Advocate (SR No.15906)

W.P. No. 30261 of 2011

UM (CO)
PR (19/07/2021)