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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	09.08.2021
Pronounced On	16.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.32697 of 2019

(Through Video Conferencing)

R.Teekaram

... Petitioner

Vs.

1. M/s.Tamil Nadu State Transport Corporation
Employees Provident Fund Trust,
Rep. by its Administrator,
No.2, Pallavan Salai, Chennai - 600 002.

2. M/s.State Express Transport Corporation Ltd.,
Rep. by its Managing Director,
No.2, Pallavan Salai, Chennai - 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to recover the gratuity amount already paid to the petitioner in the cadre of tradesman and to credit the same in the gratuity account in the present cadre and to confer the consequential benefits in the light of the Rule 37(2) of the Common Service Rules and orders passed by the Division Bench of this Court in W.A.No.1014 of 2018 dated 29.07.2019.

For Petitioner : Mr.D.Soundar Raj

For Respondents : Mr.K.Kathiresan

O R D E R

This is the second round of litigation by the petitioner. The petitioner had earlier filed W.P.No.33127 of 2017 for the following prayer:-

"for issuance of a Writ of Mandamus, to



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direct the respondents to recover the gratuity amount already paid to the petitioner in the cadre of tradesman and to credit the same in the gratuity account in the present cadre and to confer the consequential benefits in the light of the orders passed by the Division Bench of this Court in W.A.No.1059 of 2001, dated 27.01.2004 and in terms of Rule 36(2) and (3) of the Common Service Rule by considering the representation of the petitioner including the one dated 20.11.2017."

2. The said W.P.No.33127 of 2017 was disposed by this Court by an order dated 19.12.2017 following decision of the Hon'ble Division Bench of the Madurai Bench of this Court in K.Rajendran and Others Vs. The Tamil Nadu State Transport Corporation (Madurai) Limited represented by its Managing Director, Madurai and Others, in W.A.(MD) Nos.383 to 457 of 2015 dated 12.6.2015.

3. The Court in W.P.No.33127 of 2017 directed the respondents to settle the entire terminal benefits due and payable to the petitioners through twelve equal monthly instalments carrying interest of 6% p.a and the instalments should commence from January, 2018, and each of the instalments should be paid on or before 7th of each month. In case of any delay in the payment of the instalments, the interest payable would become 18% p.a. for the delayed period apart from any other remedy which may be available to the petitioners for such non-payment of the instalments.

4. The prayer in the present writ petition reads also identically and is reproduced below:-

"for the issuance of a Writ of Mandamus, to direct the respondents to recover the gratuity amount already paid to the petitioner in the cadre of tradesman and to credit the same in the gratuity account in the present cadre and to confer the consequential benefits in the light of the Rule 37(2) of the Common Service Rule and orders passed by the Division Bench of Hon'ble High Court of Madras in W.A.No.1014 of 2018 dated 29.07.2019."

5. The learned counsel appearing for the petitioner submits that the respondents partly complied with the order of this Court dated 19.12.2017 in W.P.No.33127 of 2017 but has not reckoned services of the petitioner in his capacity as a Helper and an Assistant Tradesman and a Tradesman between 01.03.1982 to 24.06.1995.



6. He submits that the petitioner was appointed as a Helper and later was servicing as an Assistant Tradesman and a Tradesman between 01.03.1982 and 24.06.1995 which were pensionable services and therefore the respondents ought to have reckoned the same for the purpose of computing pension to the petitioner. The petitioner has retired from his service on 30.04.2013 and is thus receiving a lesser pension.

7. In this connection, the learned counsel for the petitioner has drawn attention to a recent decision of the Division Bench of this Court in W.A.No.1014 of 2018 filed by another colleague of the petitioner against an order dated 02.02.2018 passed in W.P.No.2273 of 2018.

8. The learned counsel for the petitioner submits that the Division Bench of this Court has held that the resignation by the appellant therein was only for the purpose of taking up new employment under the same corporation since the corporation was subsequently taken over by the State Express Transport Corporation, it was a case of a merger that the earlier service rendered by the appellant therein would be counted for the purpose of granting pension.

9. He submits that in the aforesaid case, the Court directed the appellant therein to refund the gratuity amount with interest at 6% per annum and also directed the respondents to receive the same with interest and thereafter count the earlier services rendered by the appellant therein in the post of Helper (Fitter) for the purpose of other benefits including pension. The learned counsel for the petitioner therefore submits that the issue is no longer res integra and the same order may be passed.

10. Defending the stand of the Department, the learned counsel for the respondents submits that the petitioner had filed W.P.No.33127 of 2017, wherein, an order came to be passed on 19.12.2017 and therefore the present writ petition filed for an identical relief was barred in view of res judicata. He further submits that the petitioner had also filed Contempt Petition in Cont.P.No.1473 of 2019 which was also dismissed after the order dated 19.12.2017 in W.P.No.33127 of 2017 was complied. He therefore prays for dismissal of the present Writ Petition.

11. By way of Rejoinder, the learned counsel for the petitioner submits that there was only a part compliance of the aforesaid order dated 19.12.2017 by granting terminal benefits without considering the services rendered by the petitioner as a Helper and other posts and therefore the petitioner's right to claim the correct pension cannot be denied.



12. I have heard the learned counsel for the petitioner and the learned counsel for the respondents. I have perused the records.

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13. The fact that whether the petitioner was appointed in the year 1979 as a Trainee and Helper with the erstwhile Madurai Pandian Engineering Corporation Limited, Pasumalai and thereafter with the Thiruvallur Transport Corporation in 1990 cannot be decided at the distance point of time.

14. It is however noticed that the petitioner has not filed any records to substantiate that the petitioner was servicing as a "Trainee" in Madurai Pandian Engineering Corporation Limited, Pasumalai from 01.09.1979 and was thereafter absorbed as a "Helper" in the year 1981 on 01.03.1981 and his service was later confirmed in the year 1982 on 01.03.1982.

15. The petitioner has also not filed any evidences to substantiate that in 1990, the petitioner was absorbed with the erstwhile Thiruvallur Transport Corporation (TTC) as an "Assistant Tradesman" and was promoted as "Tradesman".

16. The respondents have however in their counter not denied that the petitioner after servicing in these capacity had resigned and took up the post of a Junior Engineer with the respondents corporation on 18.01.1995.

17. It has to be assumed the earlier services of the petitioner in various posts to be true in the light of the earlier order in W.P.No.33127 of 2017, wherein, the relief sought for by the petitioner was granted following the decision of the Division Bench of this Court in K.Rajendran and Others Vs. The Tamil Nadu State Transport Corporation (Madurai) Limited represented by its Managing Director, Madurai and Others, in W.A.(MD) Nos.383 to 457 of 2015 dated 12.6.2015. According to the petitioner, there has been a partial compliance of the order of this Court in W.P.No.33127 of 2017 dated 19.12.2017.

18. The service of the petitioner from 1995 to 2013 alone has been reckoned for the purpose of pension in view of Rule 37 (2) of the Common Service Rules, by reckoning the service of the petitioner from 1995 when he was appointed to the post of Junior Engineer with the respondents Corporation.

19. The plea of the petitioner res-judicata cannot be entertained as the respondents have shown lethargy and reluctance in implementing the earlier order dated 19.12.2017 passed by this Court in W.P.No.33127 of 2017. After an order is passed by this Court, it ought to have been complied without



reservation and/or equivocation by the respondents. In fact, such partial reluctance would attract Contempt of Court.

20. Since the issue attained finality in the aforesaid order of this Court in W.P.No.33127 of 2017 on 19.12.2017, the respondents are duly bound to recover the gratuity amount already paid to the petitioner in the earlier cadres of tradesman and other pensionable posts and credit the same in the gratuity account in the last cadre and confer the consequential benefits to the petitioner.

21. Govt.Lr.No.731/D/2006-4, Transport, dated 04.05.2006 was implemented vide letter dated 29.05.2006 of the first respondent, TNSTC Employees Pension Fund Trust. Relevant portion of the letter dated 29.05.2006 of the first respondent, TNSTC Employees Pension Fund Trust is reproduced below:-

In the reference cited, the Government have informed that the designation of past and mod of appointment are not the factors for determining the qualifying service for pension and clarified that all services rendered by an employee, from the date of regular appointment in the pensionable posts with enrolment and continuity of membership in Provident Fund shall count for pension and ordered to regulate the pension in the cases of re-designation from one category to another or appointment from one category to another or one group as per the above guidelines.

The orders of the Government to count the service rendered by an employee in all pensionable posts for calculating pension may be given effect to in all the cases of re-signation and re-appointment as fresh entrant after rendering resignation or not subject to the following conditions:

(a) continuity of PF membership i.e. Contribution has been recovered for all the pensionable service taken for pension calculation.

(b) There is no break in service.

A copy of the Government letter is enclosed. We request that the orders of the Government be implemented in all such cases.



22. By another letter dated 07.02.2008 of the first respondent, letter dated 29.05.2006 of the first respondent, TNSC Employees Pension Fund Trust has been clarified as under:-

With reference to your letter cited, we wish to inform that with regard to the cases of resignation for taking up the Higher posts, a decision has been taken and the same has been communicated to TNSC (CBE) Ltd., Coimbatore vide letter no.217/P2/TNSC EPFT/2007-6350 dated:05.01.2008.

For the instant case of Thiru C.Vetrimurasu referred in your letter, action may be taken following the same guidelines given in TNSC Employees Pension Fund Trust letter dated:05.01.2008 referred above.

However, the period of Company Trainees period in the case of Thiru C.Vetrimurasu, no PF recovery has been made. Therefore, while computing his pensionable service this company trainee period for which no contribution has been received may be excluded and it need not be taken up for calculating his pensionable service.

Necessary action may be taken based on the above guidelines.

23. Therefore, while computing pensionable service of the petitioner, the period for which no contribution was received from the petitioner alone may be excluded and not taken up for calculating the pension. This exercise may be carried out by the respondents within a period of six weeks from the date of receipt of a copy of this order and an appropriate may be passed by the respondents.

25. This Writ Petition stands disposed with the above observations. No cost.

Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

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To

1. The Administrator,
M/s.Tamil Nadu State Transport Corporation
Employees Provident Fund Trust,
No.2, Pallavan Salai, Chennai - 600 002.
2. The Managing Director,
M/s.State Express Transport Corporation Ltd.
No.2, Pallavan Salai, Chennai - 600 002.

+1cc to Mr.K.Kathiresan, Advocate, S.R.No.41048

W.P.No.32697 of 2019

AJS (CO)
SU(07/09/2021)