



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.1195 of 2016

WEB COPY

K.Balasekaran

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.Tamil Nadu State Transport
Corporation (Madurai) Limited,
represented by its Managing Director,
Bye-Pass Road, Madurai-10.

3.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye-Pass Road, Madurai-10.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned award passed in I.D.No.11 of 2010, dated 16.08.2012 passed by the first respondent and consequential impugned order passed by the second respondent in Ref.No.Sattam/W.P.No.2996/14, Madurai Region-Law Department, dated 18.06.2015 and to quash the same and consequently, to direct the respondents to reinstate the petitioner in service with continuity of service and back wages from the date of dismissal to the date of his superannuation and further to direct the respondents to settle all the terminal benefits payable to him from 01.07.2015 including monthly pension, gratuity, provident fund, commuted value of pension, social security scheme amount, refund towards Institute of Road Transport and other attendant benefits by taking into account the period of the petitioner's service from 16.08.1986 to 30.06.2015, as "duty".

For Petitioner : Mr.A.Rahul

For R2 and R3 : Mr.J.Senthil Kumariah

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned award passed by the first respondent, dated 16.08.2012 and the consequential order passed by the second respondent, dated 18.06.2015 and to direct the



respondents to reinstate the petitioner into service with continuity of service and all other monetary and terminal benefits.

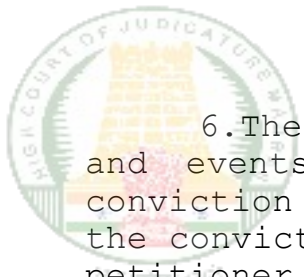
2. Heard Mr.A.Rahul, learned Counsel for the petitioner and Mr.J.Senthil Kumariah, learned Counsel for the respondents 2 and 3.

WEB COPY

3. The petitioner was employed as Driver in the second respondent Corporation with effect from 16.08.1986. When the petitioner was working as Senior Driver, he was convicted for the offence punishable under Section 302 r/w Section 34 IPC in S.C.No.314 of 2002 on the file of the Additional District and Sessions Court, Madurai. Though the petitioner filed an appeal in Crl.A.(MD)No.800 of 2004 before this Court and the appeal was pending, a show cause notice was issued by the second respondent to the petitioner calling explanation from him, as to why the petitioner should not be dismissed from service based on the order of conviction.

4. Though the petitioner filed a Writ Petition in W.P.(MD) No.1063 of 2004 challenging the show cause notice, the same was dismissed by this Court, by order, dated 19.01.2005. It is admitted that the appeal filed by the petitioner in W.A.(MD)No.41 of 2005 was also dismissed by this Court, on 16.02.2005. Thereafter, the petitioner was dismissed from service based on the order of conviction, on 05.04.2005. The order of dismissal was challenged by the petitioner in I.D.No.11 of 2010 before the Labour Court, Madurai, namely, the first respondent herein, and the first respondent dismissed the petition filed by the petitioner, by award, dated 16.08.2012.

5. In the meanwhile, this Court allowed the criminal appeal filed by the petitioner in Crl.A.(MD)No.800 of 2004 and the petitioner was acquitted from the criminal charges, by judgment, dated 30.01.2013. Based on the judgment of this Court acquitting the petitioner from the criminal charges, the petitioner submitted a representation, dated 20.03.2013, before the second respondent. The petitioner also filed another Writ Petition in W.P.(MD)No.2996 of 2014 challenging the award passed in I.D.No.11 of 2010, dated 16.08.2012. The said Writ Petition was disposed of with the direction to the General Manager of Transport Corporation to dispose of the representation of the petitioner, dated 20.03.2013. The petitioner submitted another representation on 13.03.2015, to the respondents, to consider his representation in the light of the direction of this Court in W.P.(MD)No.2996 of 2014. However, the second respondent rejected the petitioner's representation, by the impugned order, dated 18.06.2015. Challenging the award of the Labour Court, Madurai, in I.D.No.11 of 2010, dated 16.08.2012 and the order passed by the second respondent, dated 18.06.2015, the above Writ Petition is filed.



6.The learned Counsel for the petitioner narrating the dates and events submitted that the order of dismissal based on conviction for the offence under Section 302 IPC cannot stand, once the conviction is set aside by this Court in the appeal filed by the petitioner in CrI.A.(MD)No.800 of 2004, by judgment, dated 30.01.2013. The learned Counsel for the petitioner also submitted that the petitioner was honourably acquitted from the charges and that therefore, the order of dismissal based on conviction is liable to be set aside.

7.The learned Counsel for the respondents 2 and 3 submitted that the petitioner was dismissed by an order, dated 05.04.2005 and that the petitioner filed a Writ Petition originally in 2004 and in 2014. In view of the long delay, it is contended by the respondents 2 and 3 that the Writ Petition is liable to be dismissed on the ground of delay and laches. The learned Counsel further submitted that Tamil Nadu State Transport Corporation Employees' Pension Fund Trust was created and that as per the pension rules, the Administrator of Tamil Nadu State Transport Corporation Employees Pension Fund Trust, is the competent authority to sanction pension or to take a decision with regard to entitlement of the petitioner to get pension, as per the Rules. It is further contended that without impleading the Administrator in the present case, the petitioner cannot maintain a Writ Petition, where there is a prayer for disbursement of pension.

8.This Court is unable to agree with the contentions of the learned Counsel for the respondents 2 and 3. The petitioner was dismissed from service based on the judgment in S.C.No.314 of 2002 convicting the petitioner for the offence under Section 302 IPC. The petitioner preferred an appeal before this Court and the petitioner was acquitted from the charges by this Court in CrI.A.(MD)No.800 of 2004, by judgment, dated 30.01.2013. The petitioner promptly submitted a representation on 20.03.2013, pursuant to the acquittal praying for reinstatement. Though the earlier Writ Petition challenging the award of Labour Court was disposed of with a direction to the petitioner to submit a fresh representation before the third respondent herein, the petitioner's representation cannot be ignored, especially having regard to the order passed by this Court in W.P.(MD)No.2996 of 2014, dated 17.02.2015.

9.The impugned order passed by the second respondent indicates that the representation of the petitioner was rejected only because the petition filed by the petitioner in I.D.No.11 of 2010 was dismissed. Having regard to the sequence of events, the petitioner is right in challenging the award of Labour Court as well as the impugned order passed by the second respondent. Since the Criminal Appeal filed by the petitioner was allowed only on 30.01.2013, the petitioner is entitled to pursue his remedy only after the order of conviction was set aside by this Court. When the petitioner was not



terminated based on any misconduct, while he was in service, or any other report holding the petitioner guilty of any misconduct or offence, the respondent 2 and 3 have no defence to sustain the order of dismissal. The contention raised by the respondents 2 and 3 that the Writ Petition is liable to be dismissed for not impleading the Administrator is devoid of any merits. The petitioner's entitlement to receive pension benefits is not an issue.

10.Hence, this Court is inclined to allow this Writ Petition. However, the petitioner was not in service from the date of dismissal, ie., on 05.04.2005. It is admitted that the petitioner attained the age of superannuation on 30.06.2015. Since the respondents are not at fault and the order of dismissal for the reasons stated therein is also valid, this Court is of the view that the petitioner is not entitled to claim back wages from the date of dismissal till he attained the age of superannuation. However, the petitioner is entitled to calculate the period for other benefits, like, monthly pension, gratuity, provident fund, commuted value of pension, social security scheme amount, refund towards Institute of Road Transport, etc.

11.Therefore, the Writ Petition is allowed and the impugned order passed by the first respondent in I.D.No.11 of 2010, dated 16.08.2012 and the order of the second respondent, dated 18.06.2015, are quashed. The petitioner is not entitled to back wages. However, the petitioner is entitled to calculate the period between the date of dismissal and the date of superannuation, ie., 05.04.2005 and 30.06.2015, for the purpose of calculating the terminal benefits payable to the petitioner, like, monthly pension, gratuity, provident fund, commuted value of pension, social security scheme amount, refund towards Institute of Road Transport. The respondents 2 and 3 are directed to settle the terminal benefits to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

1.The Presiding Officer,
Labour Court,
Madurai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye-Pass Road, Madurai-10.

3.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye-Pass Road, Madurai-10.

+1 CC to M/s.A.RAHUL, Advocate (SR-28292[F] dated 06/09/2021)

W.P. (MD)No.1195 of 2016

06.09.2021

RD(17.09.2021) 5P 5C