



W.P.No.1558 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.1558 of 2019

R.Selvaraju

... Petitioner

Vs

1.The Additional Chief Secretary to Government,
Transport Department,
Secretariat,
Chennai – 600 009.

2.M/s.Tamil Nadu State Transport Corporation
Kumbakonam Ltd.,
Rep. By its Managing Director,
Railway Station New Road,
Kumbakonam – 612 001.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 2nd respondent to sanction full pension and terminal benefits for the entire period of service of the petitioner i.e. from 15.06.1987 to 30.09.2017 by considering the representation of the petitioner including the one dated 31.12.2018.

For Petitioner : Mr.D.Soundar Raj

For Respondents : Mr.U.M.Ravichandran (for R1)
Special Government Pleader
: Ms.S.Sathya Gandhi
Standing Counsel (for R2)



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ORDER

The prayer sought for herein is for a writ of mandamus directing the 2nd respondent to sanction full pension and terminal benefits for the entire period of service of the petitioner i.e. from 15.06.1987 to 30.09.2017 by considering the representation of the petitioner including the one dated 31.12.2018.

2. The petitioner was appointed on regular basis as Conductor at the respondent Transport Corporation with effect from 15.06.1987. He was working in that capacity till 26.11.1999, on that date while he was on duty between Pattukottai and Thirupathur the bus driven by the petitioner met with an accident, with a result the petitioner suffered head injury, fracture in the shoulder bone and face and admitted in the Tanjore Medical College Hospital where he had taken a long treatment and after such treatment he was discharged from hospital on 19.08.2000. On that date he was reinstated into service under a settlement under Section 18(1) of the Industrial Disputes Act, 1947, therefore based on such re-appointment the petitioner had been working till his superannuation and retired from service on 30.09.2017.



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3. After retirement, the retirement cum terminal benefits of the petitioner having been calculated only for the period from 19.08.2000 to 30.09.2017 paid to him but the petitioner rendered the service from 15.06.1987 till 18.08.2000 has not been considered. Therefore, in order to consider the said service for the retirement cum pensionary benefits, the petitioner though had given a representation on 31.12.2018 but which was since not considered the petitioner has approached this Court by filing the present writ petition with the aforesaid prayer.

4. Heard Mr.D.Soundar Raj, learned counsel appearing for the petitioner who would submit that since the petitioner met with an accident because of which he had taken a long treatment as inpatient in the hospital and thereafter he shifted for duty as Helper where he already worked, therefore under the provisions of the Disabilities Act, alternative job should have been given to the petitioner. In fact, when alternative employment is given, the salary and other perquisites and benefits enjoyed by the employee should be protected under the provisions of the said Act.



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5. When that being so, even settlement under Section 18(1) of the Industrial Disputes Act, 1947 cannot override a statutory right conferred under the Disabilities Act, therefore, the learned counsel seeks indulgence of this Court to give a direction by way of mandamus to calculate the service rendered by the petitioner from 1987 to 2000 and accordingly his service benefits shall be calculated including the difference and be paid to the petitioner within a time frame that may be stipulated, he contended.

6. Heard Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the 1st respondent and Ms.S.Sathya Gandhi, learned Standing Counsel appearing for the 2nd respondent. Both the learned counsel would contend that, at the time of re-appointment on 19.08.2000 pursuant to the settlement under Section 18(1) of the Industrial Disputes Act, 1947, the claim of making the past service from 1987 to 1999 or 2000 shall not be claimed by the petitioner. Only with that understanding which is form part of the settlement under Section 18(1) of the Industrial Disputes Act, 1947, since the petitioner was reappointed and the 18(1) settlement once reached between the parties, he would not be entitled to calculate the service rendered by him between 1987 and 2000, therefore what has been agreed in the 18(1) settlement alone would prevail, hence



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the present plea raised by the petitioner cannot be countenanced, as such the learned counsel appearing for the respondents seeks dismissal of this writ petition.

7. I have considered the said submissions made by both sides and have perused the materials placed before this Court.

8. As has been rightly pointed out by the learned counsel appearing for the petitioner once the petitioner or any employee like the petitioner has become medically invalidated for the job where he had been hitherto pressed into service the alternative job must be provided under the provisions of the Disabilities Act. While providing the alternative job the pay and other perquisites shall be protected. In that context, whatever be the terms of 18(1) settlement under the I.D. Act, 1947 that cannot override the right of the employee, therefore his past service from 15.06.1987 till 2000, the date on which he was re-appointed in alternative job, shall be calculated only for the purpose of continuity of service for calculating the retirement and pensionary benefits payable to the petitioner.



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9. In that view of the matter, this Court is inclined to dispose of this

writ petition with the following orders:

That there shall be a direction to the 2nd respondent to consider the request of the petitioner dated 31.12.2018 and accordingly take a decision as indicated in the above discussion and confer the benefit to the petitioner by calculating his services totally from 15.06.1987 till his superannuation i.e. 30.09.2017 and the needful as indicated above shall be undertaken by the 2nd respondent within a period of eight weeks from the date of receipt of a copy of this order.

10. With this direction, this Writ Petition is disposed of. No costs.

30.08.2022

Index : Yes / No

Speaking Order : Yes / No

Sgl



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To

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- 2.The Managing Director,
M/s.Tamil Nadu State Transport Corporation
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R. SURESH KUMAR, J.

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