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WP No.24152 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-11-2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.24152 of 2018

A.Mannar Mannan

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Petitioner

VS.

1.Tamil Nadu State Transport Corporation (Salem) Ltd.,
Represented by its Managing Director,
No.5, Ramakrishna Road,
Salem – 636 007.

2.The Administrator,
Tamil Nadu State Transport Corporation Employees-
Pension Fund Trust,
No.2, Pallavan Salai,
Chennai – 600 002.

..

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to refix pay in the original cadre of the post of Conductor and to calculate the pension and other benefits by taking the service from the date of joining viz.,



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23.12.1988 till the date of retirement 31.05.2017 and to settle petitioner arrears of pay pension, Commutation of Pension, Gratuity, Leave Salary and Employees Post Retirement Benefit Scheme (ERBS) amount and allowances and retirement benefits.

For Petitioner : Mr.P.Paramasivados

For Respondent-1 : Mr.R.Babu

For Respondent-2 : Mr.C.S.K.Sathish

ORDER

The Writ of Mandamus has been filed to direct the respondents to re-fix the pay in the original cadre of the post of Conductor and to calculate the pension and other benefits by taking the services from the date of joining viz., 23.12.1988 till the date of retirement viz., on 31.05.2017 and settle the arrears of pension, retirement benefits and other consequential monetary benefits.

2. The petitioner joined in the respondent-Transport Corporation as a Conductor on 23.12.1988. His services were regularised in proceedings dated 21.11.1989 and the petitioner was brought under regular time scale of



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pay.

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3. It is not in dispute that the petitioner was medically discharged from service on 24.01.1997. Thereafter, the petitioner was re-appointed as a fresh entrant in proceedings dated 23.03.1998 and served in the respondent-Transport Corporation and retired from service on 31.05.2017 on attaining the age of superannuation.

4. The learned counsel for the petitioner mainly contended that the entire period of services rendered by the petitioner right from his initial date of appointment on 23.12.1988 is to be reckoned for the purpose of calculating the qualifying services for terminal and pensionary benefits.

5. Contrarily, the respondents have calculated the qualifying services only from the date of re-appointment i.e., on 23.03.1998. Thus the petitioner submitted a representation in this regard, which was not considered by the respondents. Consequently, the petitioner has chosen to file the present writ petition.



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6. The learned counsel for the petitioner contended that Rule 19(c) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules stipulates that “In respect of medically discharged cases, in the case of employees, who are medically discharged and are not re-employed, they are eligible for benefits under Clause 19(a) above and if they are re-employed, they are eligible for continuity of membership and the benefits will be allowed only at the time of normal retirement by counting the past services also”.

7. In support of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, the learned counsel for the petitioner relied on the judgment of the Division Bench of Madurai Bench of this Court in the case of **The Management of Tamil Nadu State vs. S.Gopalakrishnan [decided on 10.10.2007 in WA(MD) No.366 of 2007]**, wherein the relief was granted to count the services of an employee from the date of initial appointment based on Rule 19(c) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules.



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8. However, the learned counsel appearing on behalf of the first respondent and the learned counsel appearing on behalf of the second respondent objected the said contentions raised on behalf of the petitioner by stating that the facts of the present case is no way comparable with the judgment of the Division Bench of this Court cited on behalf of the writ petitioner.

9. The facts are to be considered independently for the purpose of applying Rule 19(c) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules and thus the writ petition is to be rejected.

10. The fact before the Hon'ble Division Bench of this Court in the case of **S.Gopalakrishnan** (cited supra) was that he was found unfit to continue in the post of Conductor and discharged from service on 30.11.1995. He was given alternative employment as Helper on 18.09.1996 and ultimately retired from service on 30.06.2005 on attaining the age of superannuation. Therefore, the said Mr.S.Gopalakrishnan was not appointed as a fresh entrant



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on terms and conditions.

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11. When the petitioner in the present case was re-appointed as a fresh entrant and the terms and conditions of appointment imposed were agreed upon by the petitioner, now after retirement, he cannot turn around and claim the benefits of past services.

12. The claim of the writ petitioner is to be considered with reference to the order of re-appointment in the present case. Therefore, the judgment relied on by the petitioner is of no avail.

13. Let us now consider the order of re-appointment issued to the writ petitioner vide proceedings dated 23.03.1998, wherein in paragraphs 2 to 5 read as under:-

“2. Consequent on the consideration of his request for the alternative employment on humanitarian grounds and in accordance with the Government Orders first and second cited, Thiru A.MANNARMANNAN is re-appointed as a fresh entrant in the post of OFFICE ATTENDER under



Miscellaneous Group-I on Regular Basis without continuity of service in this Corporation subject to the conditions specified hereunder:-

(i) He shall draw a basic pay of Rs.1,690/- in the time scale of pay of Rs.1,690-20-2,170/-.

(ii) He is placed on probation in the category of OFFICE ATTENDER for a period of one year within a continuous period of two years of service.

(iii) He is liable to be discharged from the service of this Corporation for a reasonable cause without any notice even during the period of probation and he shall not be paid any compensation thereof.

(iv) His services are liable to be terminable with one month prior notice or salary for one month in lieu thereof even after confirmation of his services.

(v) He shall give a prior notice of 14 (Fourteen) days or remit salary for 14 (Fourteen) days in lieu thereof in the event of his leaving the job.

(vi) His past services shall not be counted for any purpose and he shall not claim any benefit over his past services rendered in this Corporation.

(vii) He is liable to be transferred to work anywhere in the area of operation of this Corporation.

(viii) He shall abide by the Rules and Regulations and to



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the terms and conditions of services that may be laid down by this Corporation from time to time.

3. He should remit the following amount in one lumpsum at the time of joining:- Rs. Ps.

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|---|----------|-----------------|
| <i>i. Towards refundable contribution to Medical College, Perundurai.</i> | <i>-</i> | <i>1,760.00</i> |
| <i>ii. Towards refundable Contribution to Institute of Road and Transport Technology, Erode.</i> | <i>-</i> | <i>600.00</i> |
| <i>iii. Towards refundable Contribution to IRT Polytechnics, Bargur, Tiruneveli and Chrompet.</i> | <i>-</i> | <i>1,500.00</i> |
| <i>iv. Towards additional contribution to IRT – Erode.</i> | <i>-</i> | <i>140.00</i> |

<i>TOTAL</i>	<i>4,000.00</i>
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(Rupees Four Thousand only)

4. He should produce the following at the time of admission in this Corporation without fail:-

- All the original certificates relating to his Educational Qualifications/Community etc., with photostat copies of each.*
- A physical fitness certificate from a Government Civil*



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Assistant Surgeon.

iii. Six copies of his recently taken passport size photographs.

5. He is directed to report before the General Manager, T.N.S.T.C. (Salem Division-II) Ltd., Bharathipuram, Dharmapuri-5 on 31.03.1998 at 09.30 hours without fail.”

14. Perusal of the above conditions stipulated in the order of re-appointment unambiguously stipulates that the petitioner was re-appointed as a fresh entrant in the post of Office Attender under Miscellaneous Group-I on regular basis without continuity of service in the respondent-Transport Corporation and the further condition stipulated in Clause (vi) denotes that “his past services shall not be counted for any purpose and he shall not claim any benefit over his past services rendered in this Corporation”.

15. When such a condition in unambiguous terms was imposed on the writ petitioner in the order of re-appointment and the petitioner accepted the terms and conditions and joined as a new entrant in the Transport Corporation Service. After retirement, he turned around and set out a claim by stating that he is entitled for the past services rendered in the



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Corporation prior to his re-appointment.

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16. In the present case, the petitioner was discharged medically from services admittedly on 24.01.1997 and on the date of his discharge, the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules was not in force and therefore, he was not a member of the Pension Rules as on the date of his retirement. As per Rule 1(b) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules “The fund shall be deemed to have been come into operation as on and from the 1st day of September, 1998 notwithstanding the date of of the Trust Deed”. Therefore, the petitioner as on the date of his discharge i.e., on 24.01.1997 as he was not a member, since the Rule was not in force.

17. Perusal of the re-appointment on 23.03.1998, further reveals in Clause (iv) that “his services are liable to be terminable with prior notice or salary for one month in lieu thereof even after confirmation of his services”. Thus the appointment of the writ petitioner was on terms and conditions. When the petitioner had entered as a fresh appointee, pursuant to the order



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dated 23.03.1998 and accepted the terms and conditions, served and retired from service, now he cannot claim counting of the past services rendered by him prior to his re-appointment as fresh entrant.

18. Perusal of the order unambiguously stipulates that the petitioner shall become a member only after his re-appointment vide proceedings dated 23.03.1998. The petitioner had accepted the condition to forego his past services rendered prior to his discharge from the post of Conductor on medical grounds. An employee, who admitted the terms and conditions of appointment completed his services cannot turn around and thereafter claim the benefits, which were already foregone by him. The petitioner cannot approbate and reprobate in respect of the conditions of service agreed between the employer and the employee as it is a contract between the parties.

19. In the present case, the petitioner claims counting of his past services based on Rule 19(c) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules and the terms and conditions of re-



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appointment reveals that the petitioner has already foregone the past services rendered by him and therefore, the petitioner is not entitled for the relief, as such, sought for in the present writ petition.

20. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

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Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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To

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