IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

W.A.No.2302 of 2021

The Management of
Tamil Nadu State Transport Corporation Ltd.,
37, Mettupalayam Road,
Coimbatore-43.
Represented by the Managing Director. .. Appellant

Vs

1. The Special Deputy Commissioner of Labour,
   DMS Compound,
   Chennai-600 006.

2. S.Visvanathan

3. Tamil Nadu State Transport Corporation
   Employees Pension Fund Trust
   (impleaded vide order 01.02.2022)
   in WA 2302 of 2021

.. Respondents

Appeal preferred under Clause 15 of Letters Patent against the order passed in W.P.No.42554 of 2016 dated 15.03.2021.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1st respondent made in AP No.112 of 2013 dated 09.05.2014, quash the same.

For Appellant : Mr.A.Sundaravadhanan

For Respondents: Mr.V.Ajay Khose for R2(workman)

Mr.C.S.K.Sathish for R3
(Pension Fund Trust)

Mr.T.N.C.Kaushik
Additional Government Pleader for R1

JUDGMENT
(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 15 March 2021 recorded on W.P.No. 42554 of 2016.

2. Learned advocate for the appellant / Management has submitted that though the impugned order passed by the writ Court, in substance may appear to be an invited order, the consequence thereof is that, the period during which the workman was out of employment would be required to be counted as pensionsable service, which would stand in conflict with the Rules in that regard and to that extent, the impugned order needs to be modified. It is submitted that this appeal be entertained to that extent.

3. Learned advocate for the workman has submitted that, not only no interference is required in the impugned order, confusion sought to be created by the Management with regard to payment of pension, be cleared by holding that, since the action of the employer of not allowing the respondent / workman to be on job is held to be illegal, the employer can not be permitted to take advantage of some concession given by the workman before learned Single Judge to the limited extent of waiving his right to get the arrears towards back wages. It is submitted that the workman is entitled to all consequential benefits, including counting the period for which he remained out of employment as pensionable service, so also for the purpose of increment, wage revision, etc. He has relied on the following authorities (i) T.N.State Transport Corporation v Neethivilangan reported in (2001) 9 SCC 99, (ii) Jaipur Zila Shankari Bhoomi Vikas Bank v Ram Gopal Sharma and others reported in (2002) 2 SCC 244, (iii) Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya and others reported in (2013) 10 SCC 324, (iv) Mahabir Prasad v Delhi Transport Corporation reported in 2014 SCC OnLine Del 3757, (v) Jasmer Singh v State of Haryana and another reported in (2015) 4 SCC 458, (vi) Fisheries Department v Charan Singh reported in (2015) 8 SCC 150 and (vii) Raj Kumar v Director of Education reported in (2016) 6 SCC 541.

4.1 We have also heard Mr.C.S.K.Sathish, learned advocate for the Tamil Nadu State Transport Corporation Management Pension Fund Trust. In this regard reference is made to the orders dated 15 November 2021, 01 December 2021, 01 February 2022 and 02 February 2022. Reference is also made to the stand of the Management as reflected in those orders. Since the argument on behalf of the appellant / Management was principally with regard to the calculation of years of pensionable service and the same was required to be considered vis-a-vis the Rules and Policy of Pension Trust, we had requested learned advocate for the Tamil Nadu State Transport Corporation Management Pension Fund Trust to assist the Court. For that purpose the said Trust was joined as party respondent. We note with appreciation that, the Trust has assisted the Court by putting to the notice of the Court, the relevant Rules with specific reference to Rule 10 e, which reads as under:-

> "e) If for a member there is a non-contributory service, the STUs shall keep a record of such non-contributory service and shall advise the member of the non-contributory service from time to time that such non-contributory service shall not be counted for arriving the pensionable service."

4.2 Learned advocate for the Pension Trust has also referred to the following authorities:- (i) Jaipur Zila Shankari Boomi Vikas Bank Ltd v Ram Gopal Sharma and others reported in (2002) 2 SCC 244, (ii) Deepali Gundu Surwase v Kranti Junio Adhyapak Mahavidyalaya and others reported in (2013) 10 SCC 324, (iii) M.Mahendran v Secretary to Government Transport Department and others reported in 2019 SCC OnLine Mad 27985, (iv) The Management, Tamil Nadu State Transport Corporation and others v M.Mahendran made in W.A.(MD).No.1157 of 2021, (v) A.P.State Road Transport Corporation and others v Abdul Kareem reported in (2005) 6 SCC 36, (vi) The Management Metropolitan Transport Corporation v G.Muthukrishnan (W.A.No.219 of 2019 dated 20.07.2021) and (vii) P.Marimuthu v The Management Tamilnadu State Transport Corporation (Salem) Ltd and others (W.A.No.1682 of 2019 dated 24.06.2019).

4.3 Learned advocate for the Pension Trust has submitted that, taking into consideration the relevant provision and also the financial constraints of the Trust, appropriate order be passed by the Court.

5. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

5.1 The respondent / workman was in the employment (as Conductor) of the appellant Corporation since 09.05.1988. He was treated to be in regular employment with effect from 01.11.1988. His date of retirement is 30.04.2019. (These dates are reflected in the pension working sheet submitted by the Management to the Court).

5.2 He was terminated on 25.03.2013.

5.3 Approval Petition was filed by the Management before the Special Deputy Commissioner of Labour, Chennai which was considered by the said authority in Approval Petition No.112 of 2013. The said petition was rejected vide order dated 09.05.2014 inter-alia holding that the domestic inquiry was illegal and further that, it was without any legally acceptable evidence.

5.4 The said order dated 09.05.2014 was challenged by the Management before this Court by filing W.P.No.42554 of 2016. Before the petition was filed, the workman was already reinstated in service by the Management with effect from 19.07.2015. This is accepted to be without prejudice to the rights and contentions of the Management in the writ petition. The net result is that, the workman was out of employment for the period from 25.03.2013 to 16.07.2015 and his reinstatement is subject to outcome of the petition.

5.5 During pendency of the petition, the workman attained the age of superannuation and retired on 30.04.2019.

5.6 When the petition was taken up for final hearing on 15.03.2021, it was disposed of without any interference in the impugned order (rejecting approval application). Since the workman would be entitled to all consequential benefits, considering the concession given on behalf of the workman, learned Single Judge ordered that the workman shall not be entitled to back wages for the period from 25.03.2013 to 19.07.2015 and further providing that the said period shall be counted as duty period for all purposes, including for the purpose of calculation of pension. The payment was ordered to be made within a period of six weeks.

6. The above order of learned Single Judge is challenged in this appeal. This challenge is more on the ground of facing some difficulty in the calculation of years of pensionable service, as noted in para : 2 above. So far the principal controversy with regard to non approval of termination of the workman is concerned, the competent authority has for valid reasons disapproved it and learned Single Judge has also not interfered with it. We also do not find any error therein. The said part therefore needs to be and is confirmed.

7. So far consequences thereof are concerned and as noted above that is the controversy in this appeal, this Court finds that, since the action of the Management of terminating the service of the workman is held to be illegal and it has attained finality, the same needs to be understood as the declaration by the competent authority about the termination in question being illegal for all purposes, with all consequences flowing therefrom. The order of learned Single Judge dated 15.03.2021

was to be complied with within a period of six weeks. No payment was made to the workman. The challenge in this appeal is principally on the ground, as noted in order dated 15.11.2021 and 01.12.2021 in substance is to the effect that, the consequence of the impugned order is that, the period during which the workman was out of employment would be required to be counted as pensionsable service, which would stand in conflict with the Rules in that regard and to that extent, the impugned order needs to be modified.

8. On conjoint consideration of the above leads to the conclusion that, on the face of the approval petition of the appellant / Management qua the termination of service of the respondent / workman having been rejected by the competent authority by a speaking order and further the said order having been confirmed by this Court in writ petition and this writ appeal, the next question is, what would be the consequence thereof. Since learned Single Judge attempted to balance the equities between the parties and for that purpose concession was given on behalf of the workman that he forgoes the actual payment of arrears towards back wages for the said period, we find that, the said concession can not be stretched to the extent that the said period is to be counted as non pensionable service. The Management can not be heard contending that, in absence of any actual payment of arrears, there will not be any payment to Pension Trust Fund and that is how that period has to be excluded as non-pensionable service. We are of the view that the concession on behalf of the workman can not be understood to that extent. As noted in order dated 01 December 2021, at one stage, we had also thought of relieving the workman from that concession, however it would result in additional liability on the public exchequer, therefore we have thought it proper not to do so. This is because, even if it would not have been on the basis of concession, but on the basis of adjudication by the competent court, it can not be said that the period during which the workman was not in actual employment will automatically be excluded from consideration as non-pensionable service. Once the action of the Management is held to be illegal, the said action is illegal for all purposes and for all consequences. In a given case, either Labour Court or the Writ Court, in the facts of the case may exercise discretion, on permissible parameters, of granting / not granting back wages but exercise of that power under no circumstances can be read as exclusion of that service as non-pensionable service as sought to be canvassed on behalf of the appellant / Management. We make it clear that even in those cases, where back wages is not granted for valid reason, the very fact that the termination was held to be illegal, the period during which the workman had remained out of employment for no fault attributable to him, has to be counted as pensionable service unless it is so specifically ordered /

provided by the Court. Even with the aid of stipulation 10 e as quoted above, permitting the Management or the Pension Trust to exclude the said period as non pensionable service would result in acceptance of the said termination to be valid for limited purpose which is already held to be illegal. No one can be permitted to take advantage of / benefited from his own wrong. The workman can not be asked to suffer, for not being in the employment for the fault of his employer. Keeping this in view, we find that, harmonious reading of all the decisions relied by learned advocate for the Pension Trust would lead to this conclusion only. So far financial constraints are concerned, it is a matter to be reconciled by the Pension Trust and the Management of the respective Transport Corporations. Such administrative difficulties can not be permitted to be stretched to the extent of reduction of pension for no fault on the part of the workman.

9. This appeal is dismissed in above terms. No costs. Consequently, connected C.M.P.No.14624 of 2021 would not survive.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssm/6

To

1. The Special Deputy Commissioner of Labour,
   DMS Compound,
   Chennai-600 006.

2. Tamil Nadu State Transport Corporation
   Employees Pension Fund Trust.

+2cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.7045
+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.7106
+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No.6922
+1cc to the Government Pleader, S.R.No.7412

W.A.No.2302 of 2021

PL(CO)
CT 04/04/2022