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W.P.No.14115 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH

W.P.No.14115 of 2017

V.Sampath

...

Petitioner

vs.

1.The Management of
Metropolitan Transport Corporation (Chennai) Ltd.,
Rep. By its Senior Deputy Manager (HRD),
Pallavan Illam, Anna Salai,
Chennai-600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund,
Pallavan Salai,
Chennai-600 002.

...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Letter No.2569/LS(CM-V) MTC/2017 dated 03.05.2017 of the 1st respondent, quash the same and consequently direct the 1st respondent to add the non-employment period i.e., from 13.07.1996 to 19.07.2012 for calculating pension and adjust the employer's contribution of PF amount payable to the Trust from the pension arrears of the petitioner and consequently to revise the pension to the petitioner.

For Petitioner

: M/s.S.T.Varadarajulu



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For Respondents

: Mr.C.Balaji for R1
Mr.C.S.K.Sathish for R2

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ORDER

The petitioner herein had joined the services of the respondent in the year 1981 as driver. Based on certain proven charges, he was dismissed from service on 13.07.1996. Challenging the order of dismissal from service, the petitioner has raised an industrial dispute in I.D.No.604 of 1997 on the file of the Labour Court, Chennai and by order dated 13.10.2004, the respondent Corporation was directed to reinstate the petitioner together with continuity of service and 50% backwages. The award of the Labour Court came to be challenged by the first respondent / Management in W.P.No.29521 of 2005 and it was dismissed on 10.09.2007. The order of the learned Single Judge was taken up on intra court appeal and pending the appeal, the dispute among the parties were referred to Lok Adalat, in which both the parties have agreed to resolve the dispute amicably among themselves in the following manner, vide order dated 28.03.2012:

“2.... (i) Both sides agreed that no amount of backwages need be paid to the 2nd respondent and the 2nd respondent shall be reinstated in service with continuity of service for the entire period of his absence and the reinstatement shall be made



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within a period of three weeks from the date of this award.

Awarded accordingly.

(ii) In view of the above settlement, the writ appeal in SR. stage stands disposed of as settled between the parties.”

2. In terms of the award passed by the Lok Adalat, the petitioner was reinstated into service on 19.07.2012 and subsequently, he retired on 31.07.2012. In the pension order passed by the Tamil Nadu State Transport Corporation Employees Pension Fund Trust / second respondent, the pensionable service of the petitioner was determined as 10 years. Apparently, the service of the petitioner from the date of dismissal from service on 13.07.1996 till 31.07.2012 would be approximately 16 years. However, for the reasons best known to the respondents, they had reduced the pensionable service to 10 years. When the petitioner had sought for inclusion of his non-employment period for the purpose of calculating pension, the second respondent, vide letter dated 22.03.2017, has placed reliance upon Rule 10(e) of the Tamil Nadu Transport Corporation Pension Trust Rules and opined that non-contributory service shall not be counted for arriving at pensionable service and by placing reliance upon the said letter dated 22.03.2017, the first respondent has passed the impugned order dated 03.05.2017, calculating the



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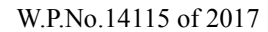
petitioner's pensionable service as 10 years alone.

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3. It is needless to point out that whenever an order of punishment of dismissal from service is set aside, the concerned employee is deemed to be in service from the date on which the dismissal order came to be passed, more particularly when the award sets aside the order of termination / dismissal and further orders for continuity of service. In other words, once an award for reinstatement with continuity of service is passed, the employee is deemed to be in service without any interruption and the entire period commencing from the date of the award till his superannuation had to be considered as pensionable service.

4. The learned counsel for the second respondent fairly ratified the proposition and had also placed a copy of the decision of the Hon'ble Division Bench of this Court in this regard in *The Management of Tamil Nadu State Transport Corporation Ltd., Coimbatore v. The Special Deputy Commissioner of Labour, Chennai and others [W.A.No.2302 of 2021 dated 03.02.2022]* in which this proposition has been reiterated in the following manner:

“8.On conjoint consideration of the above leads to the conclusion that, on the face of the approval petition of the



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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.”

5. The aforesaid extract is self explanatory. As such, the proceedings of the respondent herein excluding the pensionable service for the purpose of non-contribution cannot be sustained.

6. The learned counsel for the second respondent submitted that since the petitioner herein had not contributed towards the Employees Provident Fund, they are not in a position to disburse the retirement benefits for that period.

7. *Per contra*, learned counsel for the petitioner submitted that he has



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no objection if such contribution during the period of non-employment is deducted out of his retirement funds and further stated that he would not claim any interest for the belated payment of balance of retirement benefits.

8. In accordance with the submissions made, the impugned order on the file of the first respondent in Letter No.2569/LS(CM-V) MTC / 2017 dated 03.05.2017 is set aside. Consequently, there shall be a direction to the first respondent to pass appropriate orders by including the petitioner's entire pensionable service from 13.07.1996 till 31.07.2012 and thereby revise the petitioner's pension, after deducting the petitioner's contribution towards EPF. Such order shall be passed within a period of four weeks from the date of receipt of a copy of this order and the same shall be forwarded to the second respondent herein. On receipt of such an order from the first respondent, the second respondent shall disburse the revised pensionary benefits within a period of four weeks therefrom.

9. The Writ Petition stands allowed. No costs.

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Index : Yes / No
Internet : Yes / No



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M.S.RAMESH. J

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To

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The Management of
Metropolitan Transport Corporation (Chennai) Ltd.,
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Pallavan Illam, Anna Salai, Chennai-600 002.

2.The Administrator,
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