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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

WP.No.34101/2018

B.S.Rajendran

..Petitioner

Versus

1. The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Division,
Vazhuthareddy, Villupuram 605 602.

2. The Branch Manager
Tamil Nadu State Transport Corporation
Villupuram Division, Panruti Depot
Panruti, Cuddalore District.

..Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to direct the respondents to notionally calculate the petitioner's service from the date of his appointment with continuity of service as per the order of the Labour Court dated 07.06.2011 in ID.No.73/2003 on the file of the Labour Court, Cuddalore and grant eligible pension.

For Petitioner : Mr.K.Magesh

For Respondents : Mr.G.Saravanakumar
Standing counsel

ORDER

(1)The prayer sought for herein in this writ petition is to direct the respondents to notionally calculate the petitioner's service from the date of his appointment with continuity of service as per the order of the Labour Court dated 07.06.2011 in ID.No.73/2003 on the file of the Labour Court, Cuddalore and grant eligible pension.

(2)The petitioner was appointed as Conductor at the respondents/Transport Corporation on 15.04.1988. Subsequently, his service was regularised by order dated 01.03.1999 with effect from 15.04.1988.



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(3) When the petitioner was working as such, pursuant to a disciplinary proceedings initiated against the petitioner, he was removed from service on 20.03.2002. Challenging the said removal, the petitioner raised an Industrial Dispute in ID.No.73/2003 on the file of the Labour Court, Cuddalore. The said Labour Court, after considering the said Industrial Dispute, passed an Award on 07.06.2011 where they have passed an order allowing the Industrial Dispute in part, under which the petitioner was entitled for reinstatement with continuity of service only and the petitioner is not entitled for backwages and other attendant benefits.

(4) Pursuant to the said Award passed by the Labour Court, the petitioner was reinstated on 07.03.2012. Thereafter, he retired on superannuation on 30.06.2017.

(5) After his superannuation, the pensionary and other benefits should have, according to the petitioner, been calculated by the respondents Department by taking entire service of the petitioner in view of the Award passed by the Labour Court that the petitioner is entitled for reinstatement with continuity of service. In stead, the respondents have calculated the service rendered by the petitioner before his dismissal from service and after his reinstatement before superannuation. Thereby, the non-working period with effect from 20.03.2002 till 07.03.2012 was not taken into account for the purpose of calculating his pensionary benefits. Therefore, seeking the said relief, the present writ petition has been filed.

(6) Heard Mr.K.Magesh, learned counsel for the petitioner who having reiterated the aforestated, would seek the indulgence of this Court to issue a suitable direction to the respondents.

(7) Heard Mr.G.Saravanakumar, learned Standing counsel for the respondents/Transport Corporation who relied upon the order passed in ID.No.73/2003 by the Labour Court, Cuddalore, in the Award dated 07.06.2011 and would submit that since the petitioner is not entitled for back wages or any other attendant benefits, he would not be entitled to seek any higher pension by taking into account of his entire service where he was not in service for more than 9 years. Therefore, what the respondents calculated and being paid to the petitioner as pension or retirement benefits is in consonance with the Labour Court Award. Therefore, the pleas raised by the petitioner and the prayers sought for is untenable, he contended.

(8) I have considered the said rival submissions made by the learned counsel for the parties and also perused the materials placed before this Court.



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(9) The Labour Court, by Award dated 07.06.2011 has passed the following Award:-

'10. In the result, this Industrial Dispute is allowed in part, the petitioner is entitled for reinstatement with continuity of service only and the petitioner is not entitled for back wages and other attendant benefits. No costs. An Award is passed accordingly.'

(10) Therefore, it has become clear that the petitioner is entitled for reinstatement with continuity of service only.

(11) That means, the petitioner may not be entitled for any backwages or any attendant benefits for the said non-working period. However, the said period shall be treated as continuity of service for all service benefits for getting pension and other retirement benefits by taking into account the said service also for the purpose of fixation of last drawn salary for the benefit of calculating pension.

(12) In that view of the matter, this Court is inclined to dispose of the writ petition with the following order that there shall be a direction to the respondents to consider the entire service of the petitioner from 15.04.1988 till 30.06.2017, the date on which he superannuated including the non-working period from 20.03.2002 to 07.03.2012 for the purpose of pensionary benefits. Accordingly, the pension shall be revised and the revised pension after being calculated shall be paid to the petitioner with arrears and the revised pension shall be continued to be paid to the petitioner. The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

(13) With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Managing Director,
Tamil Nadu State Transport Corporation
Villupuram Division,
Vazhuthareddy, Villupuram 605 602.



2. The Branch Manager
Tamil Nadu State Transport Corporation
Villupuram Division, Panruti Depot
Panruti, Cuddalore District.

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+1cc to Mr.G.Saravanakumar, Advocate SR. No. 37074
+1cc to Mr.K.Magesh, Advocate SR. No. 36975

WP.No.34101/2018

GP (CO)
PR (28/06/2022)