



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2022

CORAM:

**THE HONOURABLE MR.JUSTICE PARESH UPADHYAY
AND**

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.(MD) No.73 of 2022

and

C.M.P.(MD) No.889 of 2022

1. Tamil Nadu State Transport
Corporation (Madurai) Limited,
represented by its Managing Director,
Bye-Pass Road, Madurai - 10.

2. The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
represented by its Managing Director,
Bye-Pass Road,
Madurai - 10.

... Appellants 1&2/Respondents 2 and 3

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

... 1st Respondent/1st Respondent

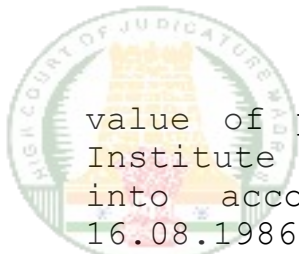
2. K.Balasekaran

... 2nd Respondent/Petitioner

Writ Appeal filed under Clause 15 of Letters Patent, against
the order dated 06.09.2021, made in W.P.(MD) No.1195 of 2016.

Prayer in WP(MD). 1195/ 2016 :

Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned award passed in I.D.No.11 of 2010, dated 16.08.2012 passed by the first respondent and consequential impugned order passed by the second respondent in Ref.No.Sattam/W.P.No.2996/14, Madurai Region-Law Department, dated 18.06.2015 and to quash the same and consequently, to direct the respondents to reinstate the petitioner in service with continuity of service and back wages from the date of dismissal to the date of his superannuation and further to direct the respondents to settle all the terminal benefits payable to him from 01.07.2015 including monthly pension, gratuity, provident fund, commuted



value of pension, social security scheme amount, refund towards Institute of Road Transport and other attendant benefits by taking into account the period of the petitioner's service from 16.08.1986 to 30.06.2015, as "duty" and pass such further or other orders.

For Appellants : Mr.J.Senthil Kumaraiah
Standing Counsel
For Respondent No.2 : Mr.A.Rahul

J U D G E M E N T

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 06.09.2021 recorded on W.P(MD) No. 1195 of 2016. This appeal is by the Management - who were respondents in the writ petition. The original writ petitioner - the workman is the second respondent in this appeal.

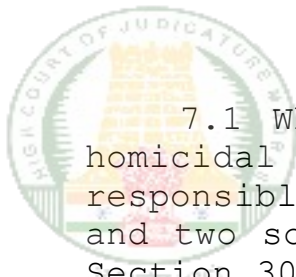
2. Heard Mr.J.Senthil Kumaraiah, learned advocate for the appellants / Corporation and Mr.A.Rahul, learned advocate for the second respondent / workman.

3. Learned advocate for the appellant has made serious grievance that, by the impugned order, the Management is required to make payment of pension and other retrial dues to the workman even for the period, during which - not only the workman was not in service, but his dismissal could also not to be said to be illegal in any manner. It is submitted that this appeal be entertained.

4. On the other hand, learned advocate for the respondent workman has submitted that, dismissal of the workman was based on the conviction which is set aside by the Competent Court and therefore the dismissal itself is rendered without any basis. It is submitted that, the workman should not be put to any disadvantageous position for no wrong committed by him so far his service is concerned. It is submitted that this appeal be dismissed.

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

6. The workman had initially joined the service of the appellant / Management (ST Corporation) as a driver on 16.08.1986. He was treated to be in regular employment with effect from 16.08.1987. The workman has crossed the age of superannuation on 30.06.2015.



7.1 While the workman was in employment, his neighbour died homicidal death. It was alleged that the family of the workman was responsible for the said death. The workman along with his wife and two sons were named as accused in an offence punishable under Section 302 of Indian Penal Code.

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7.2 The Sessions Court Madurai (vide Sessions Case No.314 of 2002) convicted the workman and his wife vide judgment and order dated 09.06.2004 and were sentenced to undergo Rigorous Imprisonment for life. Both the sons being juvenile, were granted benefit under law.

7.3 It is not in dispute that (i) the conviction was challenged by the workman and his wife by filing Criminal Appeal (MD) No.800 of 2004 (ii) the sentence was suspended during pendency of the appeal and (iii) ultimately the conviction was set aside on 30.01.2013 by this Court.

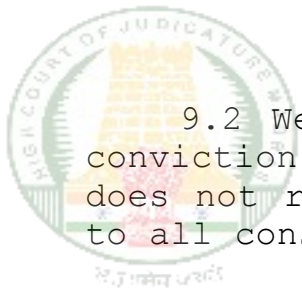
8.1 Based on the conviction dated 09.06.2004, the Management had dismissed the workman from service on 05.04.2005.

8.2 Certain proceedings had taken place before Labour Court and this Court questioning the sustainability of the said dismissal, which was not accepted at the instance of the workman. The dismissal thus stood, during the pendency of the conviction.

8.3 Once the conviction was set aside by the High Court on 13.01.2013, the very basis for dismissal of the workman did not remain in force. As the consequences thereof, the workman ought to have been reinstated in service since he had not attained the age of superannuation by that time. The inaction of the Management regarding reinstatement the workman in service, after his acquittal, is not the subject-matter before us now and therefore the same is not deliberated further.

8.4 The workman crossed the age of superannuation on 30.06.2015. Management did not pay anything towards his terminal dues, like gratuity, pension etc. Therefore the workman approached this Court.

9.1 The said petition is allowed by holding that the workman is entitled to his retirement dues including for the period he was not in employment (in the circumstances noted above), however learned Single Judge also held that the workman shall not be entitled to claim arrears towards back wages for the period during which he was not in employment. The denial of back wages is not the subject-matter of this appeal. This appeal is by the Management contending that the workman can not be paid his pension and other retirement benefits for the period during which he was not in employment.

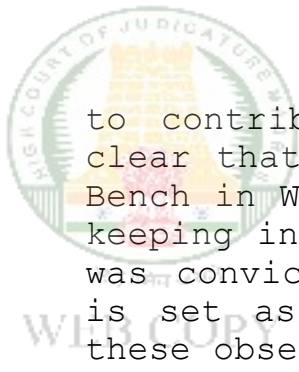


9.2 We find that, since termination was solely based on the conviction and once the said basis goes off, the dismissal order does not remain in force. The workman therefore would be entitled to all consequential benefits.

9.3 Learned Single Judge has attempted to balance the equities, denying back wages to the workman, not only for the period during which the stigma of conviction was in force but also beyond that till his date of retirement. Though the denial of back wages is not the subject-matter of this appeal, we make it clear that we are not inclined to interfere in the exercise of power by learned Single Judge which is against the workman, since it is to balance equities between the parties. So far the payment of consequential retirement benefits is concerned, we find that the workman is entitled to all retirement benefits and we do not find any error in the order passed by learned Single Judge. This appeal therefore needs to be dismissed.

10. It is noted that it is not even the case of the appellant that the workman was not entitled to anything, under any other head after his retirement. Still nothing is paid to him. Though more than six years have passed, at least that amount, which according to the Management was payable to the workman ought to have been paid. The same is also not paid. Under these circumstances, while dismissing this appeal, we direct that the amount payable to the workman shall be paid by the Management expeditiously. The amount which according to Management was payable, even without this litigation, be paid immediately. The amount, which is payable pursuant to the order of learned Single Judge which we are confirming by this order, also needs to be paid, soon thereafter. It is made clear that, confirmation of the order of learned Single Judge in no uncertain terms means that the entire period of service of the workman from 16.08.1987 to 30.06.2015 shall be treated as pensionable service.

11. So far calculation of pension / pensionable service etc., is concerned, both the learned counsel have relied on decision of the Division Bench of this Court [Principal Bench] dated 03.02.2022 recorded on W.A.No.2302 of 2021. While calculating pensionable service of the workman, the said decision shall also be kept in view by the appellant / Management. It is noted that the proposition of law enunciated therein was laid down after hearing Tamil Nadu State Transport Corporation Employees Pension Fund Trust and therefore the same shall also be kept in view by the Management. On one hand there is no fault on the part of the workman, however we also note that in the peculiar facts of this case, the Management also can not be blamed for its action at the relevant time. Therefore, so far the contribution of pension fund is concerned, the amount which the workman was otherwise required



to contribute, shall be deducted from his arrears. We make it clear that while giving this direction, the order of the Division Bench in W.A.No.2302 of 2021 is not diluted in any manner, however keeping in view the peculiar facts of this case, where the workman was convicted by the Competent Court under Section 302 IPC which is set aside by the Competent Court subsequently, we have made these observations.

12. This appeal is dismissed with the above observations / directions. Consequently, connected miscellaneous petition is closed.

13. List on 08.03.2022 for reporting compliance.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of this order (**PDF format**) may be utilized for official purposes, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Bye-Pass Road, Madurai - 10.
2. The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Bye-Pass Road, Madurai - 10.
3. The Presiding Officer,
Labour Court, Madurai.

COPY TO : The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.RAHUL, Advocate (SR-4952[F] dated 09/02/2022)

W.A. (MD) No.73 of 2022
08.02.2022

USK/24.02.2022/5P/6C

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