



W.P.(MD)No.5680 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.(MD)No.5680 of 2020
and
W.M.P.(MD)Nos.4954 and 4955 of 2020**

Saratha

... Petitioner

Vs.

1. The Secretary to the Government,
Transport Department,
Government of Tamil Nadu,
Fort. St. George, Chennai – 9.
2. The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Limit, Tirunelveli.
3. The General Manager,
Tamil Nadu State Transport Corporation, (Tili Limited),
Tirunelveli Division, Tirunelveli.
4. The Administrative Officer,
Pension – Trust,
State Express Transport Corporation Compound,
Palaru Salai, Madras.

... Respondents



W.P.(MD)No.5680 of 2020

WEB COPY

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the impugned order passed by the 4th respondent under Ka.No.0606/Va.Vai.Ni. 2/Tha.A.Po.Ka/Tili/16, dated 24.01.2020 and to quash the same as illegal and direct the respondents to compute and disburse all the retirement benefits by including the period of dismissal from 16.12.1992 to 18.06.2001 as continuity in service and also disburse pension arrears from 16.12.1992 to December 2016 to the petitioner.

For Petitioner	:	Mr. K.R.Laxman
For R1	:	Mr. K.Christy Theboral Additional Government Pleader
For R2 & R3	:	Mr. R.Rajamohan
For R4	:	Mr.S.C.Herold Singh

ORDER

This Writ Petition has been filed challenging the impugned order passed by the 4th respondent dated 24.01.2020 and to quash the same and consequently direct the respondents to compute and disburse all the retirement benefits by including the period of dismissal from 16.12.1992 to



W.P.(MD)No.5680 of 2020

WEB COPY

18.06.2001 as continuity in service and also disburse pension arrears from 16.12.1992 to December 2016 to the petitioner.

2. The case of the petitioner is that her husband was worked as a Driver in the respondent Corporation. On 05.07.1992, while he was driving the Bus Number TCB 8518, an Ambassador Car came in an opposite direction and dashed against the petitioner's bus. In the accident, one person died and seven others were injured. Though the accident was occurred due to the negligent driving of the Ambassador Car driver, disciplinary proceeding was initiated against the petitioner's husband. Without conducting the disciplinary proceedings properly the petitioner's husband was terminated from service vide order dated 16.12.1992. Challenging the same, he has raised an industrial dispute before the Labour Court, Tirunelveli in I.D.No.84 of 1995. The Labour Court after elaborate trial passed an order of reinstatement with 25% back wages. Challenging the said order of reinstatement, the respondent Corporation has preferred a writ petition in W.P.No.2409 of 2002 before this Court and this Court, by order dated 24.09.2010, set aside the award of 25% back wages and confirmed the



W.P.(MD)No.5680 of 2020

WEB COPY

continuity of service and other benefits. Thereafter, he was reinstated into service on 18.06.2001 and retired from service on 22.02.2011. After his retirement, he came to know that the retirement benefits including pension was not covered to the period in which he remain as a dismissed employee from 16.12.1992 to 22.02.2011. Hence, the petitioner's husband has made a representation to the respondent Management. He died on 22.04.2018. Thereafter, the petitioner has made several representations claiming retirement benefits of her husband by computing the period of dismissal as continuity in service. However, without giving any opportunity, the fourth respondent has passed the impugned order. Challenging the same, the present writ petition has been filed.

3. The learned Standing counsel appearing for the respondents 2 and 3 would submit that though the Labour Court has passed an award with continuity of service along with 25% back wages, however, 25% of back wages was set aside by this Court in W.P.No.2409 of 2002 and there is no whisper with regard to the continuity of service. Further, during the non-employment, there is no pension was granted by the Pension Trust, the



W.P.(MD)No.5680 of 2020

fourth respondent herein. Unless there is a contribution by the employee viz., the petitioner's husband, he is not entitled for retirement benefits for non-employment. Hence, he prayed for dismissal of this writ petition.

4. In response, the learned counsel appearing for the petitioner would submit that though the Pension Trust can deny the employee contribution, however, they cannot deny the employer contribution. The Labour Court has categorically passed an award in favour of the petitioner's husband with continuity of service along with 25% back wages. This Court has set aside only 25% back wages and confirmed the order of the Labour Court. Hence, the petitioner's husband is entitled for employer contribution. Therefore, he prayed for allowing this writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

6. The facts in the present case are not in dispute. The petitioner's husband entered into service in the respondent Corporation in the year 1980



W.P.(MD)No.5680 of 2020

WEB COPY

and he was removed from service on 16.12.1992. Thereafter, he raised an industrial dispute before the Labour Court, Tirunelveli in I.D.No.84 of 1995. The Labour Court, Tirunelveli has passed an award in favour of the petitioner's husband with continuity of service along with 25% back wages. This Court, by order dated 24.09.2010 in W.P.No.2409 of 2002, set aside the award of 25% back wages and confirmed the continuity of service. However, the fourth respondent has rejected the petitioner's claim on the ground that there is no contribution for payment of pension. The fact remains that though in the absence of employee contribution, there must be an employer contribution and the employer contribution cannot be denied and the Labour Court has passed an award in favour of the petitioner with continuity of service and hence, the petitioner is entitled for receiving employer contribution for the purpose of pension.

7. In view of the above, the impugned order passed by the fourth respondent dated 24.01.2020 is set aside and the respondents are directed to implement the award passed by the Labour Court, Tirunelveli in I.D.No.84 of 1995, dated 18.06.2001 and to calculate the employer contribution for the



W.P.(MD)No.5680 of 2020

purpose of pension from 16.12.1992 to 18.06.2001 and pass appropriate orders without 25% back wages.

8. In the result, the impugned order is set aside and this Writ Petition is allowed with the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

14.12.2022

Index : Yes / No

Speaking Order : Yes / No

AKV

To

1. The Secretary to the Government,
Transport Department,
Government of Tamil Nadu,



W.P.(MD)No.5680 of 2020

Fort. St. George, Chennai – 9.

WEB COPY

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Limit, Tirunelveli.
3. The General Manager,
Tamil Nadu State Transport Corporation, (Tili Limited),
Tirunelveli Division, Tirunelveli.
4. The Administrative Officer,
Pension – Trust,
State Express Transport Corporation Compound,
Palaru Salai, Madras.



WEB COPY



W.P.(MD)No.5680 of 2020

M.DHANDAPANI,J.

AKV

W.P.(MD)No.5680 of 2020

14.12.2022