



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.04.2022

PRONOUNCED ON : 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.14145 of 2014

WEB COPY

P.Ravi

... Petitioner

-Vs-

1.Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Represented by its,
Managing Director,
Bye Pass Road,
New Railway Station Road,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Trichy Region,
Trichy.

3.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Thuvarankurichi Branch,
Trichy.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in Ref.Tha.A.Po.Ka/Trichy PI3/296/2013 dated 24.05.2013 quash the same in so far as appointing the petitioner as Driver with effect from 20.12.2001 on daily wage basis and consequently direct the respondents to appoint the petitioner in the post of Driver with effect from 09.08.2001 and to regularize the petitioner's service in the post of Driver with effect from the date on which the petitioner completed 240 days of service by computing the petitioner's service period from 09.08.2001 and further directing the respondents to pay the difference in wages payable to the petitioner.

For Petitioner : Mr.A.Rahul
For Respondents : Mr.D.Sivaraman
Standing Counsel



ORDER

This Writ Petition is filed to quash the impugned order passed by the second respondent in Ref.Th.A.Po.Ka/Trichy PI3/296/2013 dated 24.05.2013 insofar as appointing the petitioner as Driver with effect from 20.12.2001 on daily wage basis, consequently direct the respondents to appoint the petitioner in the post of Driver with effect from 09.08.2001, to regularize the petitioner's service in the post of Driver with effect from the date on which the petitioner completed 240 days of service by computing the petitioner's service period from 09.08.2001 and further direct the respondents to pay the difference in wages payable to the petitioner.

2.The brief facts of the case are that the petitioner was appointed as Driver with effect from 29.07.1997 in the second respondent Corporation. By order dated 27.10.1999 passed by the second respondent, the petitioner was dismissed from the service on the ground that the petitioner's rash and negligent driving resulted in the death of a passenger. The petitioner raised an Industrial Dispute on the file of the Labour Court, Trichy in I.D.No.87 of 2000. By an award dated 09.08.2001, the Labour Court, Trichy, directed the respondents to reinstate the petitioner without back wages and without continuity of service.

3. As against the award dated 09.08.2001 passed in I.D.No.87 of 2000, the first respondent Management filed a writ petition in W.P.No.35890 of 2002 before the Principal Seat of this Court seeking to quash the award of the Labour Court. The said writ petition was entertained and an interim order of stay was passed on 18.09.2002 in W.M.P.No.53740 of 2002 in W.P. No. 35890 of 2002 subject to the condition that the first respondent Management should deposit arrears of wages payable to the petitioner with effect from 09.08.2001 and the same has to be paid to the credit of I.D.No.87 of 2000 on the file of the Labour Court, Trichy.

4.The petitioner was permitted to withdraw 50% of the amount deposited and balance amount has to be paid in the Bank of Baroda, Trichy Branch and the petitioner was also permitted to withdraw the interest once in six months. The Honourable Principal Seat of this Court has also directed the respondents to comply with Section 17(B) of the Industrial Disputes Act, 1947, by paying last drawn wages on or before 5th day of every succeeding month. The first respondent, in order to avoid payment under Section 17(B) of the I.D Act, 1947, has reinstated the petitioner in service with effect from 11.11.2002. Thereafter, the said writ petition was taken up for final hearing on 10.09.2012, and the Honourable Principal Seat of this Court has dismissed the petition in W.P.No.35890 of 2012 dated 10.09.2012 and the award in I.D.No.87 of 2000 dated 09.08.2001 was



confirmed.

5. Since the first respondent Management did not come forward to implement the award, the petitioner has sent a representation dated 23.02.2013 to the first respondent seeking to regularize the petitioner's service in terms of the award passed by the Labour Court, Trichy, as confirmed by the Principal Seat of this Court. Thereafter, the second respondent has passed the impugned order dated 24.05.2013 appointing the petitioner as driver with effect from 20.12.2001 as fresh entrant on daily wage basis. Thereafter, the petitioner was posted to the office of the third respondent. In pursuant to the impugned order dated 24.05.2013, the second respondent regularized his service in the post of Driver with effect from 01.01.2004.

6. The petitioner is aggrieved by the action of the respondents, wherein, the respondents had appointed the petitioner in the post of Driver with effect from 20.12.2001 and regularized his service with effect from 01.01.2004. As per the order passed by the Labour Court, Trichy, the respondents ought to have appointed the petitioner in the said post only with effect from 09.08.2001. Further, the petitioner's service has been regularized only from 01.01.2004 instead of completing 240 days. The award of the labour Court was passed on 09.08.2001 and reinstatement ought to have been made with effect from 09.08.2001. However, the petitioner was reinstated as fresh entrant with effect from 20.12.2001 and not in a regular service.

7. The contention of the petitioner is that the respondents reinstated the petitioner in service in order to avoid the payment of Section 17(B) of ID Act, 1947. The respondents regularized the petitioner's service only from 01.01.2004, on completion of 240 days of service, by computing his service period only from 11.11.2002 instead of 09.08.2001. It is the case of the petitioner that the respondents regularized the service period only from 11.11.2002. However, the Labour Court, Trichy has granted regularization of the petitioner's service from 09.08.2001. Since there is a discrepancy in regularization of the period, the petitioner has filed this writ petition.

8. The respondents have filed a counter stating that the writ petitioner was working as Driver in the second respondent Corporation from 29.07.1997, and he was performing duty in the bus bearing Registration No.TN 45 N 1101. While the bus was proceeding from Trichy to Ariyalur, Near Melapazhur, the petitioner drove the bus in a rash and negligent manner, dashed against a pedestrian and caused a fatal accident. In respect of the alleged misconduct, the petitioner was dismissed from service by an order dated 27.10.1999 after following all formalities. Aggrieved by the order of dismissal, the petitioner raised an industrial dispute before the Labour Court, Trichy, in I.D.No.87 of 2000. The case came up for



hearing on 09.08.2001. After hearing both side arguments, the Labour Court has directed the respondents to appoint the petitioner as fresh entrant without back wages and without continuity of service. Aggrieved over the same, the respondents have filed a writ petition before the Principal Seat of this Court in W.P.No.35890 of 2002 and this Court granted interim stay on condition that the respondents have to deposit the arrears of wages before the Labour Court and also to pay 17(B) wages every month. Accordingly, the respondent Corporation has deposited a sum of Rs.48,094/- before the Labour Court towards arrears of wages from 09.08.2001 to 18.09.2002 and he was permitted to join duty without prejudice to the writ petition from 05.11.2002 and the petitioner has joined the duty on 11.11.2002. The said writ petition again came up for final hearing on 10.09.2012 and the writ petition was dismissed by the Principal Seat of this Court. Thereafter, the petitioner was appointed as a driver as fresh entrant with effect from 20.12.2001 as per the Labour court, award from the date of implementation of the Labour Court award without continuity of service and without back wages vide office order TNSTC/Pa.Pi-Pi3/296/2013 dated 24.05.2013 and the petitioner's service was confirmed in the respondent Corporation. The delinquent has also accepted the same. The Labour Court, Trichy, has granted reinstatement. However, the continuity of service, back wages and other benefits were declined. Hence, he prayed dismissal of this petition.

9. Heard Mr.A.Rahul, the learned counsel appearing for the petitioner and Mr.D.Sivaraman, the learned standing counsel appearing for the respondents respectively and perused the records.

10. The contention of the petitioner is that the Labour Court has granted reinstatement without continuity of service and the Labour Court has not stated "fresh entrant" and therefore the respondents ought to take the period from the date of original appointment for granting pension benefits. But the plea of the respondents is that since the Labour Court has granted reinstatement without continuity of service and without back wages then the petitioner is not entitled calculate the period from the original appointment for any benefits. The Labour Court may not have used the word 'fresh entrant' but without continuity of service will have the effect of "fresh entrant" only. The sum and substance of the order is that the Labour Court directed the respondents to grant reinstatement only.

11. The phrase "continuity of service" means that the service of the affected employee is treated as unbroken. Then the phrase "without continuity of service" means that the service of the affected employee is treated as broken. Therefore, this Court is of the considered opinion that the interpretation submitted by the petitioner is not acceptable. The phrase "without continuity of service" can only mean only fresh entrant even though the Labour Court



have not used the word 'fresh entrant'. If the plea of the petitioner is accepted then the meaning for the phrase "without continuity of service" would be absurd. Therefore, the petitioner's claim is rejected.

12. The learned Counsel for the petitioner submitted that the petitioner was reinstated on 20.12.2001 and is entitled to be regularized after 240 days. But the respondents have regularized the petitioner after three years i.e. on 01.01.2004. If the petitioner is regularized after 240 days he would be entitled to pension. Hence this Court is of the considered opinion that the petitioner is entitled to be regularized after 240 days from the date of reinstatement i.e. after 240 days from 20.12.2001 with consequential benefits.

13. Hence the writ petition is disposed of with a direction to regularize the petitioner after 240 days from the 20.12.2001. No Costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

Vsg

TO:

- 1.The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam) Limited,
Bye Pass Road, New Railway Station Road,
Kumbakonam.
- 2.The General Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Trichy Region, Trichy.
- 3.The Branch Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Thuvarankurichi Branch, Trichy.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-25656[F] dated 14/06/2022)

+1 CC to M/s.A. RAHUL, Advocate (SR-25940[F] dated 15/06/2022)

W.P. (MD)No.14145 of 2014

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