



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.23494 of 2015

M.Muthiah

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.The Management,
Tamilnadu State Transport Corporation,
(Madurai Division-I) Limited,
Bye Pass Road, Madurai-625 016.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records connected with the impugned order passed by the first respondent in I.D.No.29 of 2012, dated 09.12.2013 and to quash the same to the extent of denial of continuity of service for the period from 03.12.2003 to 13.03.2011 and consequently, to direct the respondents to consider the claim of the petitioner for continuity of service from 03.12.2003 to 13.03.2011 notionally for the purpose of calculation of pensionary benefits without backwages.

For Petitioners	: Mr.S.Govindan
For R1	: Labour Court
For R2	: Mr.A.P.Muthu Pandian

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in I.D.No.29 of 2012, dated 09.12.2013 to the extent of denial of continuity of service for the period from 03.12.2003 to 13.03.2011 and consequently, to direct the respondents to consider the claim of the petitioner for continuity of service from 03.12.2003 to 13.03.2011 notionally for the purpose of calculation of pensionary benefits without backwages.

2. The brief facts of the case are that the petitioner was appointed as Conductor on 26.06.1987 in the second respondent Corporation. The petitioner was dismissed from service with effect from 02.12.2003. The allegation against the petitioner is that he



has misappropriated Rs.24/- in the collection of ticker fair. The second respondent filed a petition under Section 33 (2) (b) of the Industrial Disputes Act for approval of dismissal before the Joint Commissioner of Labour, Chennai and the same was taken on file and numbered as Approval Petition No.397 of 2003. After giving adequate opportunity to the concerned parties, the Joint Commissioner of Labour has passed final orders on 03.08.2007, approving the dismissal. The petitioner challenged the dismissal order in W.P. (MD)No.4310 of 2008 and this Court by an order, dated 09.11.2010, directed the petitioner to file a petition before the Labour Court under Section 2 (A)(2) and numbered as I.D.No.29 of 2012. The Labour Court directed the respondents to reinstate the petitioner into service within three months from the date of receipt of the order with continuity of service excluding the period 03.12.2003 and 13.03.2011 without backwages and other benefits, vide order, dated 09.12.2013.

3.The petitioner submitted a detailed representation on 17.07.2014, to reinstate the petitioner. Thereafter, the petitioner was reinstated on 17.02.2015 and the petitioner continued to do his work. The petitioner was dismissed from service in 2003 and it is because of the delay by the respondent to get an approval for the period of 8 years and the same was held against the petitioner. Therefore, the petitioner prayed to consider to grant continuity of service for the said period from 2003 to 2011 as service period and direct the respondents to add the said period along with the existing period of 22 years and grant pension.

4. The respondents filed a counter affidavit stating that the petitioner was dismissed from service for the allegation of misappropriation of a sum of Rs.24/-. After adequate opportunity, the petitioner was dismissed from service. As per statutory provision, the management filed Form-T under Section 33 (2) b of Industrial Disputes Act and the JCL had granted approval on 03.08.2007. The petitioner challenged the Approval Petition No. 397 of 2003 in the Writ Petition W.P.(MD)No.4310 of 2008 and the same was dismissed vide order dated 08.12.2010 directing the petitioner to raise an Industrial Dispute before the Tribunal. The Labour Court vide order dated 09.12.2013 granted the relief directing the respondents to reinstate the petitioner without back wages and the service period from 03.12.2003 to 13.03.2011 was excluded. The petitioner has challenged the said order after a lapse of two years



in the earlier round of litigation. The petitioner has filed the present Writ Petition with delay of two years. The petitioner is not entitled to equity also. Hence, the second respondent prayed to dismiss the Writ Petition.

5. Heard Mr.S.Govindan, learned Counsel appearing for the petitioner and Mr.A.P.Muthu Pandian, learned Counsel appearing for the second respondent.

6. It is seen that the petitioner joined the service on 26.06.1987 and he was dismissed from service on 02.12.2003. The petitioner was having more than 22 years of service. The petitioner is already receiving the pension for the said 22 years and now the petitioner has come up with this Writ Petition to set aside the I.D. order, where it is directed to exclude the period from 2003 to 2011 while granting continuity of service.

7. When the Writ Petition was taken up for hearing, the learned Counsel appearing for the petitioner submitted that the petitioner died and prayed to disburse the benefits to the legal heirs. Therefore, he addressed this Court on behalf of the legal heirs without filing any petition.

8. On perusing the entire records, it is seen that the petitioner was dismissed in the year 2003 and the approval was granted in the year 2007. The contention of the petitioner is that it is the lapse of the second respondent, that is why the four years was not taken into account. But the learned Counsel appearing for the second respondent submitted that it was not in the hands of the second respondent also. It was the Labour Officials who took so much time to pass the final order while granting approval for the punishment of dismissal from service. Therefore, the said delay cannot be enforced on the second respondent.

9. The contention of the second respondent is that the petitioner ought to have filed immediately after the dismissal of the order. The petitioner need not wait until the approval. The petitioner contended that there are several judgments where it states that the delinquent ought to wait until the approval is granted.

10. This Court is not able to appreciate the stand of the petitioner, since the petitioner is not prevented or banned by any statutory provision from filing any petition before the Labour Court, challenging the dismissal order. If any petition is filed before any authority, naturally it will take some time. The petitioner cannot take a stand that since the approval is not effected, the petitioner is prevented from filing any petition. The



petitioner has again chosen wrong forum for filing the Writ Petition before this Court, instead of filing a petition under Section 2(A). The said lapse was surely on the petitioner alone. The petitioner preferred the Industrial Dispute and it took 2 years to complete the said proceedings and the final order was passed in the year 2013. Therefore, the 8 years was excluded by the Labour Court.

11. Since the petitioner is receiving pension by taking 22 years of service, the petitioner is over jealous by claiming to calculate the said 8 years by blaming the delay on the part of the respondents. This Court is not able to appreciate the attitude of the petitioner and inclined to dismiss this Writ Petition.

12. Therefore, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Admin I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Presiding Officer,
Labour Court, Madurai.

W.P. (MD) No. 23494 of 2015

17.02.2022

MGJ(02.06.2022) 4P 2C