



WP(MD)No.24440 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.24440 of 2018

S.Krishnamoorthy

... Petitioner

/vs./

1.The Administrator,
Tamil Nadu State Transport Corporation,
Employee's Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai – 2.

2.The Management of Tamil Nadu State Transport Corporation,
(Kumbakonam Division – III),
Head Office,
Karaikudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent and quash the same insofar as fixation of the service period of the petitioner by the first respondent is concerned and consequently



WP(MD)No.24440 of 2018

direct the first respondent herein to count the period between 15.11.1997 to 15.04.2008 as continuity of service period in order to fix the last drawn wages of the petitioner notionally for the purpose of calculating pension and terminal benefits of petitioner and to re-fix petitioner's pension from the date of his retirement ie., from 30.04.2016.

For Petitioner : Mr.S.M.Mohan Gandhi

For Respondent No.1 : Mr.S.C.Herold Singh
Standing Counsel

For Respondent No.2 : Mr.D.Sivaraman
Standing Counsel

ORDER

The short point involved in the present writ petition is as to whether the Transport Corporation can exclude the period between dismissal from service and the Award of the Labour Court, for the purpose of calculating the pensionable service, when an order of dismissal has been set aside and reinstatement together with continuity of service has been ordered?



WP(MD)No.24440 of 2018

WEB COPY

2.The petitioner herein had joined the services of the respondent Corporation as a Conductor on 11.08.1990. Based on certain proven charges, he was terminated from service on 15.11.1997. When the order of termination was challenged before the Labour Court, Madurai, in I.D.No.138 of 1999, an Award came to be passed on 15.04.2008, ordering for reinstatement with continuity of service. The challenge to the Award by the workman, as well as the respondent Corporation, in WP.Nos.5246 and 2150 of 2010, came to be dismissed on 16.03.2016, confirming the Award of the Labour Court.

3.In this background, the petitioner herein had retired from service on 30.04.2016. The respondent Corporation, while calculating the pensionable service, had taken into account his date of initial appointment into the Corporation ie., from 11.08.1990, till 15.11.1997, when he was terminated from service and also the period between 15.04.2008 ie., the date of the Award of the Labour Court and the petitioner's date of retirement ie., 30.04.2016.



WP(MD)No.24440 of 2018

WEB COPY

4. Apparently, the period of non-employment between 16.11.1997 and 14.04.2008, was not counted. Such a procedure for calculation of pensionable service, is opposed to service jurisprudence. When an order of dismissal / termination of a workman is set aside by the Labour Court and the Management is directed to reinstate a workman back into service, together with continuity of service, such reinstatement would revert back to the date of dismissal. Consequently, the period of pensionable service, requires to be reckoned from the date of the workman's termination till the date of his superannuation, as if the petitioner herein was never terminated from service inbetween.

5. If that be so, non-inclusion of the period of non-employment of the petitioner, for the purpose of calculating the petitioner's pensionable service is opposed to the position stated above. Thus, the service rendered by the petitioner between 16.11.1997 and 14.04.2008 requires to be calculated for grant of pension.

6. Accordingly, the impugned order passed by the first respondent is hereby quashed and consequently, there shall be a direction to the respondents herein to



WP(MD)No.24440 of 2018

pass appropriate orders, revising the petitioner's pensionable service, by including the period of his service between 15.11.1997 and 14.04.2008, as pensionable service and consequently, revise the petitioner's pension and disburse the arrears of pension, together with consequential revised monthly pension, atleast within a period of eight (8) weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no order as to costs.

01.08.2022

Index : Yes / No

Internet : Yes / No

sm

Note: Issue Order Copy on 18.08.2022.

TO:

- 1.The Administrator,
Tamil Nadu State Transport Corporation,
Employee's Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai – 2.
- 2.The Management of Tamil Nadu State Transport Corporation,
(Kumbakonam Division – III),
Head Office,
Karaikudi.



WEB COPY



WP(MD)No.24440 of 2018

M.S.RAMESH, J.

Sm

Order made in
W.P.(MD)No.24440 of 2018

Dated:
01.08.2022