



W.P.(MD).No.19664 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.19664 of 2016

and

W.M.P.(MD).Nos.14171 and 14172 of 2016

A.Sigamani

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Special Commissioner
and Secretary to Government,
(Transports) Department,
Fort St.George,
Chennai – 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli.

3.The General Manager,
Tamil Nadu State Transport Corporation,
Ranithottam, Nagercoil,
Kanyakumari District.

4.The Administrator,
Tamil Nadu State Transport Corporation
Pension Fund Trust,
Thirvalluvar Illam,
Pallavan Salai,
Chennai – 2.

... Respondents

(R-4 is impleaded vide Court Order dated 28.09.2022 in W.M.P.(MD).No.8780 of 2022 in W.P.(MD).No.19664 of 2016)



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the third respondent pertaining to his order in letter No. 7439/legal2/TSTC/1991 dated 26.03.2016 and quash the same and consequently direct the respondent to disburse the pension for the services with effect from 01.10.1981 to the date of retirement on superannuation of the petitioner on 31.03.2008.

For Petitioner : Mr.S.Siva Kumar

For R-1 : Mrs.D.Farjana Ghoushia,
Special Government Pleader.

For R-2 and R-3 : Mr.K.Sathiyasingh,
Standing Counsel for TNSTC

For R-4 : No Appearance

ORDER

This Writ Petition has been filed for Writ of Certiorarified Mandamus, to quash the impugned order dated 26.03.2016 and consequently direct the respondent to disburse the pension for the services with effect from 01.10.1981 till the date of superannuation of the petitioner on 31.03.2008.

2. The brief facts as stated in the affidavit are that the petitioner was appointed as a Driver in the respondent Corporation and his service was regularized on 01.10.1981. On 18.02.1987, a charge memo was issued for the



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accident wherein at about 5.15 am the petitioner dashed an old lady while driving the bus and the same caused to her death. However, the petitioner denied the allegation. After enquiry, the petitioner was dismissed from service on 30.12.1987. The petitioner challenged the same by filing O.S.No.12 of 1988 before the Principal District Munsif Court and obtained an interim injunction and subsequently, the same was dismissed on 28.06.1991. Thereafter, the petitioner approached the Assistant Labour Commissioner for conciliation proceedings but ended in futile. Hence, the petitioner approached this Court by way of filing writ petition in W.P.(MD).No.10577 of 1991, in which the petitioner was directed to approach the Labour Court. Pursuant to the order, the petitioner filed I.D.No.177 of 1995 and the Labour Court vide order dated 30.08.2004 directed the Transport Corporation to reinstate the petitioner with continuity of service along with 25% of back wages. Aggrieved over, the Transport Corporation preferred writ petition in W.P.(MD).No.148 of 2006 and the petitioner also preferred writ petition against the award of the Labour Court in W.P.(MD).No.429 of 2007 prayed for 100% backwages. This Court vide order dated 13.12.2011 confirmed the award of the Labour Court and held as the workman had already retired from service, the Management is directed to compute the backwages and the workman is at liberty to withdraw the balance lying in deposit and also claim the arrears directly from the Management. The petitioner attained superannuation on 31.03.2008. Thereafter, the petitioner



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approached the third respondent to grant retirement benefits and pension. The petitioner submitted representation dated 23.09.2014 to the respondents for granting retirement benefits and pension. Since no action was taken, the petitioner preferred writ petition in W.P.(MD).No.2876 of 2015 directing the respondents to grant notional promotion and disburse the pension for the service with effect from 01.10.1981 to 31.03.2008. This Court vide order dated 04.03.2015 disposed of the writ petition by directing the respondents to consider the representation and pass order within a period of 8 weeks. Since the order of this Court was not complied, the petitioner preferred the Contempt Petition in Cont. P. (MD) No.1581 of 2015. Thereafter, the impugned order came to be passed. Aggrieved over the same, the present Writ Petition is filed.

3. The respondents have filed counter affidavit stating that the writ petitioner was appointed as daily paid Driver on 05.01.1981. Due to fatal accident, the petitioner was dismissed from service. The petitioner preferred I.D.No.177 of 1995 before the Labour Court vide order dated 30.08.2004 directed the Transport Corporation to reinstate the petitioner with continuity of service along with 25% of back wages. The petitioner applied for pension with effect from 01.04.2008. After examining the petitioner's application, it is clearly stated that the petitioner should have attained a minimum qualifying service of 10 years as per pension rules and for that qualifying service, P.F contribution of



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the employee and employer share must be received in full. The petitioner was absorbed in 25% backwages only, as such from 31.12.1987 to 30.08.2004, only 25% of contribution was received for 16 years and 2 months, which cannot be counted for qualifying service for pension as per Pension Trust Rules. The petitioner has qualifying service of 9 years 7 months and 2 days which is below 10 years. So that, the petitioner is not eligible for receiving pension as per Pension Trust Rules. Hence, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.S.Siva Kumar, learned counsel for the petitioner, Mrs.D.Farjana Ghoushia, learned Special Government Pleader, for the first respondent and Mr.K.Sathiyasingh, learned Standing Counsel for TNSTC for the second and third respondents and perused the records.

5. The first contention that was raised by the respondents is that the service of the petitioner in the respondent Corporation is only 9 years, 7 months and 2 days and the petitioner has not completed 10 years of service. Therefore, the petitioner is not entitled to the pension. The contention of the respondents is not sustainable in law. Wherever the service is 9 years and 7 months there is a provision for rounding off it to 10 years. This proposition was laid down in several cases and the Pension Rules also states that if the employee is having



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service for more than 9 years 7 months, it can be rounded off for the rest of the month and hence the respondents ought to have rounded off the service to 10 years. Therefore, the contention of the respondents is not legally sustainable. This Court is of the considered opinion that the petitioner is entitled to pension even if the disputed period is not taken into account.

6. The next contention that was putforth by the learned counsel for the petitioner is that the petitioner is having 28 years of qualifying service. The same was disputed by the respondents stating that the petitioner was granted continuity of service but the backwages was not granted to the petitioner in full. The petitioner was granted 25% of backwages for the period from 31.12.1988 to 30.08.2004 and was granted full wages from 01.09.2004 to 31.03.2008. The respondents have submitted a calculations sheet before this Court which is extracted hereunder:

SI	Total Wages	Gross	P.F.	17(B)	Net
1.	31.12.1988 to 30.08.2004 25% Backwages only.	1,82,349.00/-	19,442.00/-	65,821.00/-	97,086.00/-
2.	01.09.2004 to 31.03.2008 Full Wages	3,77,683.00/-	42,525.00/-	52,453.00/-	2,82,705.00/-
		5,60,032.00/-	61,967.00/-	1,18,274.00/-	3,79,791.00/-



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While perusing this salary details, it is seen that the petitioner's salary was paid for the period from 31.12.1998 to 30.08.2004 with 25% backwages, wherein, the respondents deducted P.F. contribution from the employee to the tune of Rs.19,442/-. For the full wages paid from 01.09.2004 to 31.03.2008, the respondents have deducted the employee contribution to the tune of Rs.42,525/-. Totally, Rs.61,967/- was deducted as employee contribution. Therefore, having deducted the P.F. contribution, the petitioner is entitled to pension to an equal amount that was deducted. Hence, the impugned order declining P.F. is not legally sustainable.

7. Now the question arises is what would be the contribution from the employer side. Since the Labour Court has granted continuity of service, but only declined backwages, that is the petitioner is not entitled to backwages for the period from 1998 to 2004. However, there is continuity of service. The respondents are duty bound to take entire period as if the full wages were paid to the petitioner and deduct the employer contribution and the said amount ought to be deposited in the Pension Trust. Therefore, this Court is of the considered opinion that the employer ought to deposit the employer contribution to the pension trust.



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8. Therefore this Court is passing the following order:

i. The management is directed to deposit their contribution for the entire period

ii. The management shall deposit with Rs.61,967/- (Rupees Sixty One Thousand and Nine Hundred and Sixty Seven only) being the amount deducted from the employee contribution to the Pension Trust.

iii. Thereafter, the pension trust shall pay the pension amount from both the amount that is deposited.

iv. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order

9. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
Nsr



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S.SRIMATHY, J.

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