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W.P.No.144 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19..01..2023

Coram

The Honourable Mr. Justice **N.ANAND VENKATESH**

Writ Petition No.144 of 2020

S.Anbalagan

..... Petitioner

-Versus-

1.The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai 600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund,
Pallavan Salai, Chennai 600 002.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to revise the pension of the petitioner taking note of review benefits as per settlement in vogue and pay Leave Salary, Festival Holiday Salary, Bonus and Ex-gratia for the non employment period from 04.12.1991 to 11.04.2013.

For Petitioner : Mr.S.T.Varadarajalu

*For Respondents : Mr.R.Balaji,
Standing Counsel for R1
Mr.C.S.K.Sathish,
Standing Counsel for R2*



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ORDER

This writ petition has been filed for the issue of writ of mandamus directing the respondents to revise the pension granted to the petitioner by taking note of the benefits as conferred in the settlement under Section 12(3) of the Industrial Disputes Act, 1947, dated 31.01.2011 and incorporate the same for the period from 04.12.1991 to 11.04.2013 and pay the balance amount towards those benefits to the petitioner.

2. The petitioner joined as a Conductor before the 1st respondent corporation on 29.08.1980. The petitioner was dismissed from service for certain alleged misconduct, through an order dated 04.12.1991. The petitioner raised a dispute before the I Additional Labour Court, Chennai and the Labour Court, through an award dated 05.09.2022 in I.D.No.633 of 1996 directed the transport corporation to reinstate the petitioner into service with 50% back wages, continuity of service and with all other attendant benefits.

3. The above award became a subject matter of challenge both by the petitioner as well as the transport corporation in W.P.No.49749 of 2006 and W.P.No.22280 of 2003 respectively. The writ petition filed by



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the transport corporation was allowed and the writ petition filed by the petitioner was dismissed, through a common order dated 26.11.2010.

4. Aggrieved by the same, the petitioner filed an appeal in W.A.No.374 of 2011. When the said writ appeal was pending, the dispute was referred to the Lok Adalat and the petitioner and the transport corporation agreed for a settlement of the dispute and, accordingly, the Lok Adalat passed an award on 05.12.2012. For proper appreciation, the terms of settlement are extracted hereunder:-

“The award passed in I.D.No.633 of 2022, dated 05.09.2022 is modified by directing the respondent, i.e., Management of Metropolitan Transport Corporation (Chennai Division – I) Limited, to reinstate the appellant with continuity of service with all other attendant benefits. Only thing given up is full back wages. The award grants 50% of the back wages and that benefit are given up by the appellant viz., Mr.Anbalagan.

2. It is also agreed that the amount deposited by the Management before the Lower Court that is Rs.1,19,397/- (Rupees One Lakh Nineteen Thousand Three Hundred Ninety Seven only, with interest if any shall be returned to the



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respondent/Metropolitan Transport Corporation, Chennai Division. To that effect the award is modified accordingly. Four weeks time is granted to implement the award.”

5. As per the above settlement, the petitioner gave up the entire back wages. Insofar as the other reliefs that were granted by the Labour Court, the same was accepted by the respondent transport corporation and it became final.

6. Pursuant to the above settlement, the petitioner was reinstated into service on 11.04.2013 and he retired on superannuation with effect from 31.05.2014. The petitioner, thereafter, was making representations seeking for the terminal benefits and since the same were not considered, the petitioner was constrained to file a writ petition in W.P.No.22166 of 2015 before this court. The said writ petition was allowed and aggrieved by the same, the transport corporation filed an appeal in W.A.No.1145 of 2016. The said writ appeal was disposed of through a judgement dated 18.09.2017 whereby the transport corporation was directed to pay the entire arrears of pension and other benefits within a time frame. Consequent upon the said judgement, terminal benefits were settled to the



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petitioner.

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7. Now, the grievance of the petitioner is that the respondent corporation while fixing the pension, did not take into account the settlement that was arrived at under Section 12(3) of the Industrial Disputes Act and hence, the fixation of pension requires a revision for the period from 04.12.1991 to 11.04.2013. Therefore, representations were made by the petitioner repeatedly and since they were not considered, the present writ petition has been filed before this court seeking for appropriate directions.

8. Heard Mr.S.T.Varadarajalu, learned counsel for the petitioner; Mr.R.Balaji, learned standing counsel for the 1st respondent and Mr.C.S.K.Sathish, learned standing counsel for the 2nd respondent.

9. It is clear from the above facts that the order passed in favour of the petitioner was sustained insofar as the reinstatement into service and for all other attendant benefits. As per the settlement, what was given up was only the back wages and nothing more. Pension has been sanctioned to the petitioner along with other attendant benefits. As per the petitioner,



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there was a settlement arrived at under Section 12(3) of the Industrial Disputes Act on 31.01.2011 which came into force from 01.09.2010 whereby a new portion was introduced to the effect that a workman who completes 32 years of service will be eligible to get 5 review benefits and will be given 5 higher levels of pay. According to the petitioner, this benefit that was conferred under the settlement was not taken into account while fixing his pension. The same is also evident from the materials placed before this court wherein the respondent corporation has specifically stated that the review benefits that were made under the settlement were not taken into consideration while calculating the pension of the petitioner.

10. The petitioner for all purposes must be considered to be a regular employee of the transport corporation who on completion of his service attained superannuation and thereafter, retired from service. Therefore, whatever benefits were conferred for any other employee of the respondent corporation by taking into account the settlement arrived at under Section 12(3) of the Industrial Disputes Act, must also be conferred on the petitioner and the petitioner cannot be denied of this right. On the given materials, it is clear that the respondent corporation has not



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considered the review benefit that was made under 12(3) Settlement and given effect to from 01.09.2010 onwards. Hence, this court deems it fit and proper to direct the respondents to act upon the representations made by the petitioner and take a decision within a time frame to be fixed.

11. In the light of the above discussion, this Writ Petition is disposed of with a direction to the 1st respondent to act upon the representations made by the petitioner dated 23.08.2018 and 19.11.2019 and deal with the same in line with Section 12(3) Settlement dated 31.01.2011 and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. The petitioner is directed to make a fresh representation to the 1st respondent along with a copy of the relevant documents and also a copy of this order.

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Index : yes / no

Neutral Citation : yes / no

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To

1.The Managing Director, Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam, Chennai 600 002.

2.The Administrator, Tamil Nadu State Transport Corporation
Employees Pension Fund, Pallavan Salai, Chennai 600 002.

N.ANAND VENKATESH.J.,



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