



W.A.No.1836 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.09.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1836 of 2022

A.Subramanian

.. Appellant

Vs.

1.The Managing Director
Tamil Nadu State Transport Corporation (Salem) Ltd.
No.12, Ramakrishna Road
Salem-7

2.The Administrator
TNSTC Employers Pension Fund Trust Department
No.2, State Express Transport
Thiruvalluvar House, Pallavan Salai
Chennai-02

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.11.2019 passed in W.P.No.33115 of 2019.

For Appellant	: Mr.L.Aishwaryalakshmi
For R1	: Mr.K.Raja Standing Counsel
For R2	: Mr.C.S.K.Sathish



W.A.No.1836 of 2022

JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN, J.]

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Challenging the order dated 29.11.2019 passed by the learned Judge in W.P.No.33115 of 2019, the writ petitioner has filed this writ appeal.

2. It is the case of the appellant that he had joined duty as Driver in the 1st respondent Corporation on 01.01.1981. Due to viral fever, he was unable to attend duty for two weeks, for which, he submitted the doctor certificate, which was not accepted by the 1st respondent and he was dismissed from service, by order dated 04.11.1996, citing his unauthorised absence. The appellant challenged his dismissal by filing ID No.40/2002 before the Labour Court, Salem, which ordered reinstatement with continuity of service, without backwages. Pursuant to the same, the appellant was reinstated in service on 18.09.2003 and thereafter, he retired from service on 30.06.2010. The appellant further stated that though he has completed 23 years of service in the Corporation, he was not given retirement and other benefits, despite several requests made by him. Finally, he submitted representations dated 11.10.2019 and 14.10.2019, claiming his retirement benefits and arrears of pension. Even thereafter, nothing moved. Therefore, the appellant



W.A.No.1836 of 2022

filed a writ petition seeking a mandamus to the respondents to consider the said representations. The learned Judge, by order dated 29.11.2019, dismissed the writ petition, on the ground of delay. Aggrieved by the same, the writ petitioner is before this Court with the present appeal.

3. The learned counsel appearing for the appellant submitted that without considering the fact that the appellant having served more than 23 years in the respondent Corporation, is legally entitled for the retirement and pensionary benefits, but the same were denied by the authorities without any valid reason. The learned Judge also erroneously dismissed the writ petition, by holding that the appellant had approached the authorities after a delay of nine years. It is also submitted that the appellant is undergoing treatment for his various ailment and he has no source of income and hence, appropriate direction may be given to the respondent Corporation to consider the claim of the appellant.

4. Heard the learned counsel appearing for the respondent authorities, who submitted that for his unauthorised absence, the appellant was dismissed from service on 04.11.1996 and thereafter, he was reinstated in service, based on the



W.A.No.1836 of 2022

order of the Labour Court. However, the learned counsel is unable to explain as to why the claim of the appellant was not considered till date.

5. This court considered the submissions made by the parties and also perused the documents enclosed in the typed set of papers.

6. It appears that while he was in service, the appellant was dismissed from service on 04.11.1996, but he was reinstated in service, pursuant to the order of the Labour Court, on 18.09.2003, and he retired from service on 30.06.2010, but his service benefits including pension have not been settled by the respondent Corporation. In this regard, he made a representation on 11.10.2019, which was not considered by the authorities. Seeking a mandamus to the respondent authorities, he preferred the writ petition, which was dismissed by the learned Judge, on the ground of delay and laches, by the order impugned herein. Therefore, this writ appeal by the appellant.

7. It is settled law that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere



W.A.No.1836 of 2022

bounties, or given out of generosity by the employer. An employee earns these benefits by virtue of his long, continuous, faithful and unblemished service [Refer: *State of Jharkhand v. Jitendra Kumar Srivastav*, (2013) 12 SCC 210]. Further, it was held by the Supreme Court in *State of West Bengal v. Haresh C. Banerjee*, [(2006) 7 SCC 651] that the right to receive pension has been held to be a right to property protected under Article 300-A of the Constitution even after the repeal of Article 31(1) by the Constitution (44th Amendment) Act, 1978 with effect from 20.06.1979. Thus, it is clear that the pension is not a bounty to be payable on the sweet will and pleasure of the employer, but is a valuable right of the employee for rendering his service.

8. There is no dispute with regard to the employment of the appellant in the respondent Corporation. Though the appellant pleaded that he continuously approached the respondent Corporation right from the date of his retirement, no proof was produced to substantiate the same. Based on the records, he submitted his written representation only in the year 2019, (i.e.) after a period of 9 years. Taking note of the same, the learned Judge dismissed the writ petition filed by the appellant, which course cannot be countenanced by this court, in the light of the



W.A.No.1836 of 2022

legal position referred to above. This court is of the opinion that the delay in approaching the respondent authorities, will not disentitle the appellant to claim his valuable right of pensionary benefits, which have to be settled by the respondent Corporation in accordance with law, if he is entitled to, however, without any interest for the delay and laches committed on his part.

9. In such view of the matter, the order of the learned Judge is set aside and the appellant is directed to submit a copy of the representation dated 11.10.2019 along with a copy of this judgment, to the respondent authorities within a period of two weeks from the date of receipt of a copy of this judgment. On receipt of the same, the respondent authorities shall consider and pass appropriate orders, purely on merits and in accordance with law, after affording an opportunity of personal hearing to the appellant, within a period of eight weeks thereafter.

10. This writ appeal stands disposed of in the above terms. No costs.

[R.M.D.,J.] [M.S.Q., J.]
22.09.2023

Internet : Yes
Neutral Citation: Yes / No
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W.A.No.1836 of 2022

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W.A.No.1836 of 2022

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