



WEB COPY



W.P.No.19795 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.19795 of 2023

and

W.M.P.No.19109 of 2023

Tamil Nadu State Transport Corporation
(Villupuram) Limited, Villupuram Region,
Rep by its Managing Director,
137, Salamedu Village, Vazhuthareddy Post,
Villupuram – 605 602.

... Petitioner

Vs.

1.The Administrator,
Tamil Nadu State Transport Corporation
Employees' Provident Fund Trust,
No.2, Pallavan Salai,
Chennai – 600 002.

2.M.Samuel Sekar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of order passed by the Presiding Officer Principle Labour Court, Cuddalore in C.P.No.11 of 2018 dated 30.12.2021 and quash the same as illegal.

For Petitioner : Ms.S.Pavithra



W.P.No.19795 of 2023

ORDER

WEB COPY

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of order passed by the Presiding Officer Principle Labour Court, Cuddalore in C.P.No.11 of 2018 dated 30.12.2021 and quash the same as illegal.

2. Since no adverse order is passed against the second respondent, notice to the second respondent is dispensed with.

3. The case of the petitioner is that, the second respondent was a driver in the petitioner-Corporation from 20.02.1987 and was made permanent on 01.12.1987. On the basis of medical certificate, due to medical ailment, the second respondent was discharged from service on 16.10.1998 and paid with monetary benefits. Thereafter, the second respondent was appointed as non I.T.I. helper and he attained superannuation on 30.04.2013. Challenging the discharge on medical grounds, the second respondent filed a writ petition in W.P.No.9546 of 2012 under Section 47A of the Disabilities Act, 1995. The said writ petition was dismissed on 29.01.2013. Aggrieved by the same, the second respondent preferred a writ appeal in W.A.No.343 of 2013 and this



W.P.No.19795 of 2023

Court, allowed the same by order dated 13.10.2014 directing the petitioner Corporation to treat the second respondent as having served as driver from the date of discharge i.e., 16.10.1998 till the date of superannuation on 30.04.2013 and to pay difference in salary to the second respondent from 01.04.2012 as if he served in the post of driver from the date of discharge along with promotion and other attendant benefits. The Division Bench also directed the petitioner Corporation to pay the difference of pay from 01.04.2012 to 30.04.2013 with a condition that the second respondent is not entitled for difference of pay from 16.10.1998 to 31.03.2012. As against the order passed by the Division Bench of this Court, the petitioner Corporation filed SLP before the Apex Court in S.L.P.CC.No.15718 of 2015 and the same was dismissed confirming the order passed by the Division Bench of this Court. Accordingly, the revised pension arrear was quantified at Rs.1,35,835/- and commutation arrear at Rs.48,418/- totalling to Rs.1,84,253/-. As the said amount was not paid, the second respondent filed contempt petition before this Court. Thereafter, the balance amount was paid to the second respondent. However, subsequently, the second respondent filed claim petition before the Presiding Officer, Labour Court, Cuddalore in C.P.No.11 of 2018 for computing a sum of Rs.1,21,365/-. The Presiding



W.P.No.19795 of 2023

Officer allowed the claim petition filed by the second respondent computing a sum of Rs.1,21,364/- as due to the second respondent. Challenging the same, the above writ petition has been filed before this Court.

4. The learned counsel appearing for the petitioner Corporation submits that, the second respondent entered service in the year 1987 and was made permanent in the same year itself. Subsequently, on medical ground, he was discharged from duty in the year 1988 and the same was challenged before this Court by way of a writ petition. However, the said writ petition was dismissed, against which, a writ appeal has been filed and the same was allowed. In the said writ appeal, the second respondent filed an undertaking affidavit stating that, he is foregoing the back wages from 16.10.1998 till 31.03.2012. When the second respondent, on his own had given up the entire backwages from 16.10.1998 till 31.03.2012, therefore, for that period, he is not entitled for any backwages and other terminal benefits. However, for that period, filing claim petition before the Labour Court is not sustainable and the second respondent qualifying service is only for a period of 14 years from 1998 till 2013 and the difference amount claimed by the second respondent is not sustainable. Accordingly, he prays for appropriate orders.



W.P.No.19795 of 2023

WEB COPY

5. Heard the learned counsel appearing for the petitioner Corporation and perused the materials available on record.

6. Admittedly, the second respondent entered service as a driver in the year 1987 and was made permanent in the same year. Thereafter, on medical grounds, he was discharged from service in the year 1998 and the same was challenged before this Court and the same was dismissed. Thereafter, the Division Bench of this Court, ultimately, held that the order of discharge is bad in law and directed the petitioner Corporation to treat the second respondent having served as driver from the date of discharge i.e., 16.10.1998 and the date of superannuation on 30.04.2013. However, the issue that is raised in the present writ petition is that, the second respondent's qualifying service in the petitioner Corporation is only 14 years from the date of permanency of the second respondent, however, the second respondent claim that there was an arrear in calculating pension amount arrived by the petitioner Corporation by contending that the length of the qualifying service of the second respondent is 25 years 5 months and 2 days for computing pension as per the order of the Division Bench of this Court. On calculation,



W.P.No.19795 of 2023

the eligible pension of the second respondent is Rs.4,142/- and by adding Dearness Allowance for the appropriate period, the petitioner Corporation had to pay the difference in pension amount of Rs.2,57,199/- to the second respondent, however, the petitioner Corporation has already paid a sum of Rs.1,21,364/- and the balance amount is Rs.1,35,835/- as pension arrears.

7. Though it is the claim of the petitioner that the second respondent had given an undertaking to forego the wages for the said period, however, it is to be pointed out that the second respondent had given undertaking only to forego the claim for wages during the period and not for giving up the period of service. The present computation petition is only for the purpose of computing the pension arrears by taking into account the service during the said period. The issue has been considered in proper perspective by the Labour Court to arrive at the conclusion that the second respondent is entitled for the claim. There is no perversity in the order passed by the Labour Court as the second respondent is entitled to claim the arrears of pension by including the qualifying service, which has not been given up and there also being no order by the Division Bench not to take into account the service of the second respondent during the said period, the petitioner



W.P.No.19795 of 2023

Corporation was not right in not including the said period for the purpose of computing the pension.

8. Further, it is the consistent ratio laid down by the Courts that, the order of the Labour Court, cannot be interfered with, unless there is a perversity in the order of Labour Court. In the present case, there is no perversity in the order passed by the Labour Court and the same cannot be interfered with. Hence, the writ petition is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

05.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

The Administrator,
Tamil Nadu State Transport Corporation
Employees' Provident Fund Trust,
No.2, Pallavan Salai,
Chennai – 600 002.



WEB COPY



W.P.No.19795 of 2023

M.DHANDAPANI, J.

sp

W.P.No.19795 of 2023

05.07.2023