



W.P.No.19208 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.19208 of 2019

C.Samidurai

.. Petitioner

VS

The General Manager
Tamil Nadu State Transport Corporation Ltd.,
Villupuram 605 602.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the proceedings of the respondent made in K.No.4302/Vaivni/T.N.Apok (V)/2018 dated 28.03.2018 (this date has been wrongly typed as 28.03.2018 instead of 28.03.2019), to quash the same and consequently direct the respondent to forthwith calculate and arrive at the qualifying services of the petitioner with effect from 14.01.1987 till the date of superannuation i.e., 31.05.2015 and to sanction and accord pension and other pensionary benefits from the date on which the same fell due till the date of realization with accrued interest rate at 24% per annum.

For Petitioner : Ms.N.R.Jasmine Padma

For Respondent : Mr.M.Aswin



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ORDER

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Writ petition has been filed in the nature of a certiorarified mandamus seeking for the records relating to the proceedings of the respondent made in K.No.4302/Vaivni/T.N.Apok (V)/2018 dated 28.03.2018, which according to the petitioner has been wrongly typed as 28.03.2018 instead of 28.03.2019, to quash the same and direct the respondent to calculate and arrive at the qualifying services of the petitioner with effect from 14.01.1987 till the date of superannuation i.e., 31.05.2015, and sanction and accord pension and other pensionary benefits from the date on which the same fell due till the date of realization with accrued interest rate at 24% per annum.

2. The petitioner was appointed as Driver on 14.01.1987 and he was brought into regular service on 01.12.1987. He was issued a memo on 23.10.1999 alleging that he was unauthorizedly absent and, therefore, caused loss and hardship to the Management. Further proceedings were initiated and finally, punishment of dismissal from service was passed vide proceedings dated 27.11.2000.



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3. The petitioner then approached the Labour Court at Cuddalore in I.D.No.62 of 2003. By award dated 15.09.2010, the Labour Court, held that the petitioner is entitled for re-instatement but did not accede to his request for continuity of services and for payment of back wages.

4. The petitioner then filed W.P.No.13369 of 2011. A learned Single Judge of this Court had, after considering the rival contentions, finally held as follows:-

"9. This Court after consideration of the rival submissions and pleadings and materials placed on record, is of the considered view that once the Labour Court has found that the act of misconduct of the petitioner was minor, the same did not call for extreme punishment of dismissal from service and while passing the award, the Labour Court cannot deny continuity of service. Such denial of continuity of service would have far reaching monetary implications for the petitioner as that by itself would be a major penalty. Such serious consequences would take away the intention of the Labour Court interfering with the quantum of penalty of dismissal from service.

10. In the above circumstances, the ultimate award of the Labour Court, atleast on



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the aspect of denial of continuity of service is without any justification in the facts and circumstances of the case. As fairly conceded by the learned counsel for the petitioner that the grant of back wages would not arise and therefore, the same is not pressed for the simply reason that the workman is not entitled to back wages on the principle of "no work no pay". The denial of back wages by itself for a long period is a sufficient punishment in the place of dismissal from service. Further denial of continuity of service would take away the valuable service rendered by the petitioner in the Corporation. Such denial by the Labour Court takes away the spirit in which the Labour Court interfered with the quantum of penalty viz., dismissal from service.

11. In the fitness of things, this Court is of the considered view that the award of the Labour Court ought to be modified and the same is modified to the extent of denial of continuity of service to the petitioner. Therefore, this Court directs that the petitioner is entitled to continuity of service on being reinstated in service with all the benefits that the petitioner is entitled to by virtue of continuity of service ordered by this Court. It is also made clear that in respect of denial of back wages, the award as passed by the Labour



Court shall remain intact. The first respondent is directed to comply with the direction passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands partially allowed as indicated above. No costs."

5. The directions issued in the aforementioned order of learned Single Judge are put to question now. This Court is neither an appellate Court nor called upon to sit in appeal over the order of learned Single Judge and, therefore, the respondent is bound to follow the directions. The respondent could have very well filed appeal / review / modification against that order passed.

6. The learned counsel for the respondent raises questions about the reasoning of the learned Single Judge. This cannot be permitted to be advanced and such an argument cannot be also heard by this Court. It does not lie in the mouth of the respondent today to interpret the order stating that there is no continuity of service and there is no qualification.

7. It is contended by the learned counsel for the respondent that qualifying service is different, continuity of service



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is different and actual service rendered is different, and, therefore, the petitioner has been disqualified from receiving pension. These are aspects which could have been adjudicated before the learned Single Judge when he had taken a decision to grant continuity of service and more over not just continuity of service, but continuity with all the benefits which the petitioner is entitled to by virtue of continuity of service. This was ordered by the learned Single Judge. Therefore, this order is directly binding on the respondent herein. The respondent cannot sit in judgment over the said order of learned Single Judge and he has no right to do so.

8. Even though, learned counsel for the respondent made a futile attempt to argue on the correctness of the said judgment, such argument was not permitted to be advanced by this Court. The judgment referred above has to be followed in letter and in spirit.

9. In view of the above reasons, this writ petition stands allowed. A direction is issued to the respondent to forthwith calculate and arrive at the qualifying service of the petitioner in accordance with the said judgment and sanction and accord pension and other benefits to the petitioner herein. Since the delay is purely on the part of the respondent, the petitioner is also entitled for



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interest at the rate of 6% (simple interest) from the date of the
impugned order, namely, 28.03.2018, till date of actual payment.

Since interest is granted to the petitioner, this Court waives
necessity from imposing/awarding costs.

24.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

The General Manager
Tamil Nadu State Transport Corporation Ltd.,
Villupuram 605 602.



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C.V.KARTHIKEYAN,J.

ssm

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