



WEB COPY



W.P.No.18617 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

W.P. No.18617 of 2018

V.Mani, CR 2156
S/o.Vadivel
Old No.2/35, New No.47/40
Nadu Street
Agraharanattarmankalam Post
Valapadi Taluk
Salem District.

... Petitioner

/Vs/

The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Limited
12, Ramakrishna Salai
Salem 636 007

2.The Administrator
Tamil Nadu State Transport
Corporation Employees Pension Trust
Administrative Office
Thiruvalluvar House
Pallavan Salai
Chennai 600 002
Respondents

...

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the Respondents to regularise the service of 6 years of leave on loss of pay for the purpose of calculating the



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retirement benefits and to pay the difference in payment of gratuity, pension and commutation, at the revised rate of dearness allowance.

For Petitioner : Mr.G.Pugazhenth
For Respondents : Mr.S.Illamvaludhi (for R1)
for Mr.R.Babu
Mr.C.S.K.Sathish (for R2)

ORDER

This Writ Petition has been filed for issuance of Writ of Mandamus directing the Respondents to regularise the service of 6 years of leave on loss of pay for the purpose of calculating the retirement benefits and to pay the difference in payment of gratuity, pension and commutation, at the revised rate of dearness allowance.

2.The case of the Petitioner is that the Petitioner was entered into service as Conductor on 28.08.1986 in the Respondent Corporation and retired from service on 31.05.2017, on attaining the age of superannuation as Selection Grade Senior Conductor, his employee number is CR2156. At that time, he was involved in the trade union activities viz., Tholilalar Munnetra Sanga Peravai (Reg. No.120/SLM) in the Salem District. He was elected as Treasurer of the



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above said union during the year 2006 and the same was intimated to the respondent management by a letter dated 05.11.2008. Then he was selected as General Secretary of the said union and the same was intimated to the respondent management by a letter dated 26.02.2016. Since he was involved in the trade union activities, he was unable to attend his duty and therefore he took leave on loss of pay for a period of 6 years during his service.

3.The total period of qualifying service rendered by the Petitioner is calculated as 24 years, 5 months and 15 days and the non qualifying service is calculated as 6 years, 3 months and 15 days. In the non qualifying service, 2264 ½ days are mentioned as leave on loss of pay in the service book. Since his retirement benefits are not provided to him, he obtained an order in W.P.No.21344 of 2017 dated 10.08.2017 directing the respondent to make payment of retirement benefits in 12 instalments. While calculating the retirement benefits, the respondent management has taken only 24 years, 5 months and 15 days and it did not take into consideration of years which was mentioned as leave on loss of pay. Therefore he made a representation dated 03.01.2018 requesting the Respondent Corporation to calculate the retirement benefits taking into consideration of 30 years of service along with 6 years of leave on loss of pay and the pay difference amount to him. In spite of receiving



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the representation, no action was taken to disburse the benefits of retirement.

Hence this Writ Petition.

4.Heard Mr.G.Pugazhenth, learned counsel for the Petitioner, Mr.S.Illamvaludhi, learned counsel for the first Respondent and Mr.C.S.K.Sathish, learned counsel for the second Respondent.

5.To support his case, Mr.G.Pugazhenth, learned counsel for the Petitioner made reliance on Section 2A of Payment of Gratuity Act, 1972, which was usefully extracted as follows, and sought direction to the Respondent Corporation to disburse the retirement benefits taking into consideration of six years of leave on loss of pay with interest:

“Section 2A in the Payment of Gratuity Act, 1972. Continuous service. For the purposes of this Act,

(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation



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of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.”

The learned counsel for the Petitioner's main contention is that the Petitioner was orally permitted by his employer to take leave to participate in the union activities and prayed to take the period of loss of pay as qualifying service.

6.Mr.S.Illamvaludhi, learned counsel appearing for Mr.R.Babu, learned counsel for the first Respondent submitted that the Petitioner is the member of the Trade Union and he can be permitted to involve in the Union activities, but the Petitioner cannot avail such long leave, without submitting any valid leave application and without permission of the Management and such leave on loss of pay for a long period of six years, cannot be treated as qualifying service, while calculating retiral benefits.

7.The Petitioner's contention that he got permission from the Management, orally and availed leave to attend the Union activities is not substantiated by any of the documents.

8.Taking into consideration the averments made on either sides and on



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perusal of details of the Service Register of the Petitioner and the fact that the Petitioner was on leave on loss of pay totally for a period of 2264.5 days, there is no valid point to accept the prayer of the Petitioner and this Writ Petition is devoid of merits and the same is hereby rejected.

9.In the result, this Writ Petition is dismissed. No costs.

06.11.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To

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V.BHAVANI SUBBAROYAN, J.

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