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W.P.No.9838 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9838 of 2014

and

W.M.P.No.6403 of 2018

I.Balraj

... Petitioner

-Vs-

1.The Managing Director,
Tamilnadu State Transport Corporation Limited,
Kumbakonam Division,
Kumbakonam.

2.The General Manager,
Tamilnadu State Transport Corporation Limited,
Kumbakonam Division,
Periyamilaguparai,
Trichy – 612 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Mandamus, directing the respondents to pass final orders regularizing the pay and allowance admissible to the petitioner during the period of his reinstatement on 24.01.2001 and superannuation on 28.02.2009 and consequently, calculate all other retirement benefits like PF, Gratuity Pension, Pension Order, etc., on that basis and settle the same with interest at the rate of 24% per annum further date it became payable and till the date of payment.



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For Petitioner : Mr.D.Muthu Kumar
for M/s Paul and Paul

For Respondents : Mr.S.Sathya Gandhi
Standing Counsel

ORDER

This writ petition has been filed for direction directing the respondents to regularize the pay and allowances admissible to the petitioner from the date of his reinstatement and consequently calculate all other retirement benefits like PF, Gratuity Pension, Pension Order, etc.,

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

3. The petitioner had joined in the service of the respondents as Technical Assistant on 21.03.1974. While being so, he was served with a charge memo dated 28.02.1995 alleging that he was absent from duty unauthorizedly. After enquiry, he was found guilty of all the charges. Ultimately, by an order dated 27.06.1995, he was dismissed from service. The order of dismissal was also approved by the Industrial Tribunal. Therefore, the petitioner raised an Industrial Dispute in I.D.No.28 of 1997 on the file of the Labour Court. Though the Labour Court set aside the order of dismissal as



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disproportionate to the gravity of the charges, the Labour Court did not award any backwages and awarded only reinstatement into service with backwages and without continuity of service. The Management had challenged the Award in W.P.No.10085 of 2000. The said Award was also challenged by the petitioner in W.P.No.17379 of 2000.

4. Pending writ petitions, the petitioner was reinstated into service with effect from 24.01.2001 as fresh entrant by the respondents. This Court confirmed the Award passed by the Labour Court. Insofar as the reinstatement is concerned, it was modified to the effect that the petitioner is entitled for continuity of service without backwages. Thereafter, the petitioner had retired from service on attainment of superannuation on 28.02.2009. However, he was not paid pension. At last, he was paid pension and other benefits only on 01.10.2011. However, his total period of service was not taken into consideration for calculating his pensionary benefits and pension. However, when this Court modified the Award to the effect that the petitioner is entitled for continuity of service, the entire period has to be taken into consideration for calculating all benefits including revision of his salary. However, the respondents reinstated the petitioner as fresh entrant on 24.01.2001. As per the order passed by this Court, on the date of his reinstatement, he is entitled for



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revision of pay and other allowances admissible to him.

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5. A perusal of the counter filed by the respondents revealed that the petitioner was paid a sum of Rs.3,546/- as monthly pension from 01.03.2009. Now, he is receiving a sum of Rs.6,288/- as his monthly pension. The pension trust has been paying the monthly pension to the petitioner and it acts as an independent body and the respondents had adopted the pension scheme. Accordingly, the respondents and the employee pay their respective contribution to the pension trust and based on the contribution, the trust will pay the pension to the employee. The qualifying service, which is contributory period, would be taken for arriving at the monthly pension. Though the petitioner had completed 32 years of service, the pension trust had taken only 23 years of service as qualifying service for the purpose of pension. 9 years of service has not been taken for the reason that there was no contribution from 27.06.1995 to 23.01.2001. As per the order passed by this Court, the petitioner is entitled for continuity of service. Since the Labour Court had awarded only reinstatement of service without backwages and without continuity of service, the petitioner was reinstated into service as fresh entrant on 24.01.2001, while pending writ petitions. Finally, this Court confirmed the Award passed by the Labour Court and modified the Award to the effect that the petitioner is entitled



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for continuity of service. Therefore, the entire service of the petitioner has to be taken into consideration for calculating all the benefits. The petitioner is also entitled for revision of pay and other allowances in accordance with law from the date of his reinstatement viz., 24.01.2001.

6. Though the respondent reinstated the petitioner as per the order passed by the Labour Court, after the order passed by this Court modifying the Award to the above said effect, the respondents ought to have revised the salary and other allowances admissible to the petitioner. However, the salary of the petitioner was not revised and he was not paid any other allowances applicable to him.

7. In view of the above discussions, the respondents are directed to regularize the pay and other allowances admissible to the petitioner from the period of his reinstatement viz., 24.01.2001 till his date of superannuation viz., 28.02.2009. Accordingly, as per the revised scale of pay, the pension trust shall calculate the other retirement benefits such as PF, Gratuity Pension, etc., and disburse the same with applicable interest, within a period of twelve weeks from the date of receipt of a copy of this order, on condition that the petitioner shall deposit his contribution to the pension trust from 27.06.1995 to



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23.01.2001.

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8. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Managing Director,
Tamilnadu State Transport Corporation Limited,
Kumbakonam Division,
Kumbakonam.
- 2.The General Manager,
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