



W.P.(MD)No.2391 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2391 of 2020

and

W.M.P(MD)Nos.2047 and 2049 of 2020

S.Michael Anthony Samy

... Petitioner

Vs.

1.The Secretary to the Government,
Transport Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 9.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Tirunelveli.

3.The General Manager,
Tamil Nadu State Transport Corporation(Tili Limited)
Tirunelveli Division,
Tirunelveli.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the impugned order passed by the third respondent in Ka.No.5663/Ni.Ya3/Tha.A.Poka/Thili/2019, dated 07.12.2019 and quash



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the same as illegal and direct the respondents to treat the leg fracture treatment period of the petitioner from 20.12.2011 to 26.02.2013 as period of service and to disburse the proportionate salary and other remaining benefits to the petitioner for the said period from 20.12.2011 to 26.02.2013, amounting to 260 days, as the said leg fracture injury was incurred in the course of employment.

For Petitioner	: Mr.K.R.Laxman
For R-1	: Mrs.K.Christy Theboral, Additional Government Pleader
For R-2 & R-3	: Mr.R.Rajamohan

ORDER

This writ petition has been filed to quash the impugned order passed by the third respondent in Ka.No.5663/Ni.Ya3/Tha.A.Poka/Thili/2019, dated 07.12.2019, as illegal and to direct the respondents to treat the leg fracture treatment period of the petitioner from 20.12.2011 to 26.02.2013 as period of service and to disburse the proportionate salary and other remaining benefits to the petitioner for the said period from 20.12.2011 to 26.02.2013, amounting to 260 days, as the said leg fracture injury was incurred in the course of employment.



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2. The case of the petitioner is that the petitioner was appointed as a Driver on 29.03.1989. On 19.12.2011, while he was on duty, he sustained fracture in his leg. Due to that injury, he was not able to drive the bus. Hence, expressing his inability, he has made a representation to the respondents requesting to give alternative duty. Since the same was not considered, the petitioner has filed a writ petition in W.P(MD)No.9699 of 2012, seeking for a direction to the respondents to send the petitioner to the Medical Board and to further direct the respondents to provide alternative job in lieu of the petitioner's present cadre as Driver. This Court vide order, dated 26.07.2012, allowed the writ petition. The Medical Board upon investigation certified that the petitioner is not fit for driving a bus and hence, suggested to give alternative employment. Thereafter, the petitioner was given alternative employment and subsequently, he retired from service on 31.05.2015. The grievance of the petitioner is that due to the fracture sustained by him, the petitioner was not able to perform duty between 20.12.2011 to 26.02.2013 and those days were treated as period of loss of pay, which is not proper. Hence, the petitioner has made a representation to the respondents to pay proportionate salary for the above said period. Since



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the same was not considered, the petitioner has filed W.P.(MD)No.22198 of 2018, wherein, this Court vide order, dated 31.10.2018, directed the petitioner to send a representation and on receipt of the same, the authority concerned was directed to consider the same in accordance with law. Pursuant to the said order, the petitioner gave a representation to the respondent, on which, the third respondent passed the impugned order, dated 07.12.2019, rejecting the request of the petitioner. Hence, challenging the same, the petitioner has filed this writ petition with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that the petitioner suffered fracture in his leg on 19.12.2011 and thereafter, the petitioner did not attend duty from 20.12.2011 to 26.02.2013 and after recovery, he made an application for providing alternative employment and the Corporation provided the same in the year 2014 and subsequently, in the year 2015, the petitioner retired from service. However, no salary was disbursed to the petitioner for the above said period. Hence, the petitioner agitated the matter. However, till date, no amount has been paid to the petitioner, which is highly arbitrary and



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hence, prays for appropriate orders.
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4. Per contra, the learned standing counsel appearing for the respondents 2 and 3, would submit that the petitioner was appointed as a Driver in the respondent Transport Corporation on 29.03.1989. Since he sustained leg fracture, he was disqualified for the driver post and the respondent Corporation provided him with alternative employment as non ITI Helper on 04.02.2014 with pay protection. Subsequently, the petitioner retired from service on 31.05.2015. The petitioner was paid with any salary during his absent from duty period. The petitioner is not entitled for any salary or any other benefits for the non-employment period from 20.12.2011 to 26.02.2013 on the principle of 'no work no pay' and there is no irregularity or infirmity in the order passed by the third respondent in rejecting the claim made by the petitioner.

5. The learned standing counsel would further submit that the issue involved in this writ petition is purely an industrial dispute and therefore, the petitioner has to approach the Labour Court. However, without exhausting the alternative remedy, the petitioner has filed this writ



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petition, which is not maintainable and prays for dismissal of this writ petition.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. Though the petitioner claimed that he suffered fracture in his leg, he did not disclose whether he reported duty or not till 26.02.2013. Only in the year 2013, the petitioner agitated the issue for alternative employment. Subsequently, he was given alternative employment in the year 2014 and in the year 2015, he retired from service. While he was in service, he did not raise the issue with regard to non-payment of salary for period from 20.12.2011 to 26.02.2013 and no material was placed before this Court with regard to the permission granted by the respondent Corporation for taking medical leave or any other leave. Without furnishing any details, after retirement making a claim for payment of salary for the non-working period is not sustainable and therefore, this Court is not inclined to interfere with the order impugned in this writ petition.



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8. In the result, this writ petition is dismissed. No Costs.

Consequently, connected miscellaneous petitions are closed.

08.02.2023

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Index:Yes/No

NCC:Yes/No

To:

The Secretary to the Government,
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M.DHANDAPANI, J.

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