



W.P.(MD) No.2656 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.2656 of 2020
and WMP (MD) Nos.2287, 2289 and 2290 of 2020

G.Ramalingam (died)

- 1.Krishnaveni
- 2.Kumaresan
- 3.Venkateswaran

... Petitioners

(P1 to P3 were substituted vide order
dated 29.03.2022 in WMP No.16813/2021)

-VS-

- 1.The Tamil Nadu State Transport,
Corporation (Kumbakonam) Limited,
Rep. By its Managing Director,
Kumbakonam.
- 2.The General Manager,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Nagapattinam Region,
Nagapattinam.



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3 The Tamil Nadu State Transport Corporations
employees' Pension Fund Trust,
Rep. By its the Administrator,
Thiruvalluvar Illam
Pallavan salai, Chennai.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 2nd respondent in Ku.Aa.No.107/Pa.Pi-E5/TNSTC(KU)/Nagai/2016 dated 28.11.2016 and consequential order of the 2nd respondent in Ref.No.TNSTC/Kum/Legal/L2/178258/2019 dated 31.10.2019 quash the same in so far as not treating the period from 23.2.2009 to 27.11.2016 as duty for the purpose of terminal benefits such as fixation of pay gratuity pension etc and consequently direct the respondents to treat the period from 23.2.2009 to 27.11.2016 as duty and further directing the respondents to pay annual and special increments review and pay revision benefits for the aforesaid period and to pay the petitioner monthly pension from 1.12.2018, gratuity, earned leave salary and other terminal benefits based on the revised pay by counting his entire service from the date of his original appointment in the 1st respondent corporation to till the date of the petitioner's superannuation.

For Petitioners : Mr.A.Rahul

For Respondents : Mr.P.Balasubramaniam for R1 & R2
Mr.S.C.Herold Singh for R3



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ORDER

Challenging the impugned orders of the 2nd respondent dated 28.11.2016 and 31.10.2019 and for consequential direction to the respondents to treat the period from 23.2.2009 to 27.11.2016 as duty and further directing the respondents to pay annual and special increments review and pay revision benefits for the aforesaid period and to pay the petitioner monthly pension from 1.12.2018, gratuity, earned leave salary and other terminal benefits based on the revised pay by counting his entire service from the date of his original appointment in the 1st respondent corporation to till the date of the petitioner's superannuation, the writ petition has been filed.

2. Though the original petitioner died, the present petitioners being the legal heirs of the deceased petitioner, have been substituted in his place. For the sake of convenience, the original petitioner has been referred in the order.



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3.The case of the petitioner is that he was appointed as a Driver in the respondent Corporation. While so, due to fall of a coconut in his head, he suffered neurological disorder and his limbs were paralysed from 06.11.2009. He has also been diagnosed with diabetes and hypertensive. Due to his health condition, he made representation to the respondents seeking for alternate/light duty. Since his representation was not considered, he was constrained to file W.P.(MD) No.10397/2015 for a direction to the respondents to consider his request. Pursuant to the said order, the petitioner was referred to the Medical Board at Thanjavur and subsequently to the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai to ascertain his medical fitness. Accordingly, a certificate dated 05.02.2016 was issued by the Regional Medical Board stating that he is not fit to drive. On the strength of the said certificate, the petitioner approached the respondents for providing him alternative employment. Thus, he was also provided with alternative employment with continuity of service and he retired on 30.11.2018. Since the petitioner was given alternative employment along with continuity of service, he is entitled for the terminal benefits. However, his pension, gratuity, commuted value of



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pension, Provident Fund amount were not sanctioned. When the petitioner approached the respondents, he was informed that since he was put in only 9 years and 2 months of service, he is not entitled for pension. It is the further case of the petitioner that when the respondents have reinstated the petitioner without giving pay protection, his services from 23.02.2009 to 27.11.2016 ought to have been taken for annual increments, pension etc. However, the respondents have excluded the said period for the purpose of pension. Therefore, the petitioner filed W.P.(MD) No.17828/2019 challenging the order dated 28.11.2016 praying for attendant benefits since he has been provided with alternative employment. The said writ petition was disposed of on 16.08.2019 by directing the respondents to consider the representation of the petitioner. Pursuant to which, the present impugned order came to be passed thereby rejecting the claim of the petitioner. Challenging which, the petitioner is before this Court.

4. In the counter affidavit, it is averred by the respondents that during the period of service, the petitioner unauthorisedly absented himself for 22 times. Since there is a shortfall of 8 months for monthly pension, he



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is not entitled to be considered. As per Rule 18 of the Pension Trust Rules, if a member has not rendered the eligible service of 10 years as on the date of retirement, he would be entitled to gratuity benefits. Accordingly, as per the Rules, gratuity amount has been paid and hence, no interference is warranted.

5. The learned counsel for the petitioner would submit that the order dated 28.11.2016 itself makes it clear that the petitioner is entitled for continuity of service with pay protection with alternative employment. However, the said order was not simply ignored by the first respondent and thereby rejecting the claim of the petitioner for payment of pension, which is not sustainable. Though the petitioner is not entitled for any backwages, provident fund and other benefits, however, the petitioner is entitled to continuity of service for the period from 23.02.2009 to 27.11.2016. Hence, the impugned order passed by the respondent is liable to be interfered with, he contended.



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6. Heard the learned counsel for the respondents 1 to 3 on the averments made in the counter affidavit.

7. The facts that the petitioner suffered mental illness, due to which, alternative employment was granted and subsequently he retired from service are not in dispute. Admittedly, the petitioner has not attended duty from 23.02.2009 onwards due to ill health. It is also not disputed that the petitioner was referred to the medical board, which gave a certificate to the effect that he is not fit to work as a Driver. Subsequently, when the petitioner approached the respondents for continuity of service, the respondents passed an order dated 28.11.2016 thereby allotting alternative employment. This Court perused the order, which reveals that the first respondent specifically stated that the petitioner is entitled to continuity of service with pay protection. Accordingly, they provided the alternative employment and allotted to Mannarkudi Branch. However, the present impugned order passed rejecting the petitioner's request for inclusion of his service for calculation of pension for the period and rejected the petitioner's claim when he rendered 9 years 2 months of service, whereas, the earlier



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order was not taken into consideration, is not sustainable. Hence, the impugned order is set aside and the matter is remanded back to the first respondent for fresh consideration. The order dated 28.11.2016 makes it clear that the petitioner is entitled to pay protection with continuity of service. However, the same was not considered. Hence, this Court is inclined to issue a direction to the respondents to treat the period from 23.02.2009 to 27.11.2016 as continuity of service in terms of order dated 28.11.2016 and provide the pension to the petitioner within a period of twelve weeks. However, it is made clear that if the petitioner is not entitled for any other benefits except pension, after making necessary deduction, shall pay the eligible amount.

8. This writ petition is allowed on the above terms. No costs. Consequently connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes/No



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To

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M.DHANDAPANI, J.

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