



W.P.(MD)No.4106 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.4106 of 2020

and

W.M.P(MD)No.3471 of 2020

P.Karuppasamy

... Petitioner

Vs.

1.Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Karur Region,
Karur.

3.The Administrator,
Tamil Nadu State Transport
Corporation Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai – 2.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned entry in Page No.59 of the service record book of the petitioner with regard to non-qualifying service to the extent of 9 years, 4 months and 13 days, quash the same insofar as the action of the respondents in excluding period from 21.12.1998 to 04.05.2008 (9 years, 4 months and 13 days) for the purpose of calculating pension, gratuity and commuted value of pension as illegal, arbitrary and contrary to the order passed in W.A.No.2399 of 2003 dated 23.11.2017 and consequently, direct the respondents to re-fix the petitioner's monthly pension, commuted value of pension and his gratuity by taking the entire service rendered by the petitioner in the first respondent corporation from 30.09.1988 to 30.06.2017 as qualifying service including the period from the date of dismissal to the date of reinstatement i.e., from 21.12.1998 to 04.05.2008 and consequently, direct the respondents to re-fix the petitioner's retirement benefits and to disburse the difference in pension, difference in commuted value of pension, difference amount in gratuity together with arrears along with interest at the rate of 18% per annum within a time limit that may be fixed by this Court.

For Petitioner	: Mr.A.Rahul
For R1 & R2	: Mr.P.Balasubramanian
For R3	: Mr.S.C.Herold Singh



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ORDER

This writ petition has been filed to quash the impugned entry in Page No.59 of the service record book of the petitioner with regard to non-qualifying service as 9 years, 4 months and 13 days, insofar as the action of the respondents in excluding the period from 21.12.1998 to 04.05.2008 (9 years, 4 months and 13 days) for the purpose of calculating pension, gratuity and commuted value of pension as illegal, arbitrary and contrary to the order passed in W.A.No.2399 of 2003, dated 23.11.2017 and consequently, direct the respondents to re-fix the petitioner's monthly pension, commuted value of pension and his gratuity by taking the entire service rendered by the petitioner in the first respondent corporation from 30.09.1988 to 30.06.2017 as qualifying service including the period from the date of dismissal to the date of reinstatement i.e., from 21.12.1998 to 04.05.2008 and consequently, direct the respondents to re-fix the petitioner's retirement benefits and to disburse the difference in pension, difference in commuted value of pension, difference amount in gratuity together with arrears along with interest at the rate of 18% per annum, within a specified period.



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2. The case of the petitioner is that the petitioner joined duty as Driver on 30.09.1988 and the same was confirmed on 15.07.1989. He attained the age of superannuation on 30.06.2017. He rendered 28 years and 9 months of service. The grievance of the petitioner is that for the purpose of computing gratuity, 19 years of service alone was taken into account. Even though the dismissal order was modified as reinstatement with 50% back wages with all other attendant benefits, the period from the date of dismissal to the date of reinstatement ie., from 21.12.1998 to 04.05.2008, was not taken into account for the purpose of computing gratuity and pension and thereby, the impugned entry in page No.59 in the service record book of the petitioner was made. Hence, challenging the same the petitioner has filed this writ petition.

3. The learned counsel appearing for the petitioner would submit that admittedly, while the petitioner was in service, on 21.12.1998, he was dismissed from service on the ground of alleged misconduct. Challenging the same, the petitioner filed a writ petition in W.P.No.5354 of 2000, wherein this Court vide order, dated 21.01.2003,



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allowed the writ petition setting aside the order of dismissal and directed reinstatement of the petitioner with all consequential benefits. The said order was challenged before a Division Bench in W.A.No.2399 of 2003. The Division Bench modified the said order to the effect that the petitioner shall be reinstated with 50% of back wages with all other attendant benefits. However, the dismissal period was not included for the purpose of computing gratuity and pension, which is not sustainable one and prays for allowing of this writ petition.

4. The learned standing counsel appearing for the respondent Corporation, would submit that as per Rule-2(p)(ii) (modified), Sub-Rule V, “Pensionable Service” means, the service rendered by the member for which contributions have been received. Since there is no pay or salary was given or received by the workman from the employer due to his non-employment, no contribution was paid to the Pension Fund Trust and hence, the workman/petitioner is not entitled to get any pensionary benefit for that non-contributory period. This Court has also specifically passed orders, ordering payment of 50% back wages with all



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other attendant benefits. Since no contribution was made, the petitioner is not entitled to get any pensionary benefits for the dismissal period. Further, the respondent Corporation is a Government/Public Service oriented Institution, it's having its own Rules and Regulations and hence, it cannot go beyond its limitations to the satisfaction of the workman and therefore, there is no merit in this writ petition and the same is liable to be dismissed.

5. Heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for the respondents and perused the materials placed before this Court.

6. Admittedly, the petitioner entered into service in the year 1988. He attained the age of superannuation in the year 2007. While he was in service, he was dismissed from service in the year 1998. The said dismissal order was challenged before this Court in W.P.No.5354 of 2000. The said writ petition was allowed and on appeal, the said punishment was modified to the effect that the petitioner is entitled to



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50% back wages with all attendant benefits. However, the dismissal period from 21.12.1998 to 04.05.2008, was not included, which is nonest in law and contrary to the order passed by this Court in W.A.No.2399 of 2003. Hence, without interfering with the impugned entry made in the service book of the petitioner with regard to non-qualifying service, this Court is inclined to issue a direction to the first respondent for computing the dismissal period.

7. Accordingly, the first respondent is directed to pass a revised order, for the purpose of taking into account the dismissal period from 21.12.1998 to 04.05.2008, for the purpose of computing the pensionary benefits, in terms of the order passed in W.A.No.2399 of 2003, dated 23.11.2007, within a period of six weeks from the date of receipt of a copy of this order and forward a fresh pension proposal to the Pension Fund Trust and settle the benefits after deducting the dues from the petitioner.



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With the above direction, this writ petition is disposed of.

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No Costs. Consequently, connected miscellaneous petition is closed.

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NCC:Yes/No

Index:Yes/No

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M.DHANDAPANI,J.

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