



W.P(MD)No.15181 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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A.Ambujan

... Petitioner

Vs.

1.State Express Transport Corporation (T.N) Ltd,
Rep. by its Managing Director,
Thiruvalluvar Illam, Pallavan Salai,
Chennai – 600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai
Chennai – 600 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the respondent in Ref.No.015585/Ma.Va5/A.Vi.Po.Ka/2019 dated 14.10.2019 quash the same as illegal insofar as denying to promote the petitioner as Junior Engineer with continuity of Service and in consequently direct the respondents to promote him as Junior Engineer with effect from 03.06.1987 with continuity of service on par with his



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Co-Employees and to re-fix his pay and also to pay the difference in Terminal Benefits together with 18 percentage interest from the date of his retirement 31.05.2016 to till the date of payment and all other attendant benefit to him with the time frame that may be stipulated by this Court.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.K.Senthilkumar,
Standing Counsel for R1.

Mr.S.C.Herold Singh,
Standing Counsel for R2.

ORDER

Heard the learned counsel on either side.

2.The petitioner joined the respondent corporation as Technical Staff (Helper) on 01.07.1981. His services were regularized with effect from 01.07.1982. The petitioner obtained permission from the employer and underwent DME (Mechanical Engineering Course) in the evening college. He successfully obtained DME Diploma in the year 1986. He represented to the management for promoting him as Junior Engineer.



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The petitioner's request was accepted and the petitioner was appointed as Junior Engineer with effect from 03.12.1987. The petitioner also resigned from the post of Helper with effect from 02.12.1987. The petitioner reached the age of superannuation on 31.05.2016. His terminal benefits were also settled.

3.Subsequently, the petitioner made a request for treating the period of service rendered by him as Helper for the purposing of computing his pensionary benefits. The petitioner's request was rejected vide order dated 14.10.2020. Challenging the same, this writ petition came to be filed.

4.The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

5.The respondents have filed counter affidavit and the learned standing counsel took me through its contents. The stand of the learned



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standing counsel for the Corporation as well as the Pension Fund Trust is that when the petitioner resigned from the post of Helper on 02.12.1987, the service rendered by him in the said post should be forfeited. They would also point out that the petitioner was paid the gratuity dues payable to him for the service rendered in the post of Helper. According to the learned standing counsel, the petitioner is estopped from making a claim for including the period of service rendered by him as Helper for computing his pensionary benefits. They pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. In my view, the case on hand is squarely covered by the order dated 01.08.2019 made in W.P.No.24944 of 2018 (J.Sridharan Vs. State of Tamil Nadu and Others). A learned Judge of this Court relying on Rule 16(e) of TNSTC Employees Pension Fund Trust Rules allowed a similar claim made by the writ petitioner therein. Rule 16(e) is as follows:-

“Rule:16(e) – Forfeiture of Service on Resignation:



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Resignation from service or post entails forfeiture of past services.

Provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, under Government Department/State Public Sector Undertaking/Board. In such case, the pensionary benefits shall be transferred to the new employer's pension fund/EP Scheme 1995, as the case may be, and such benefits shall not be directly paid to the individual."

7. In normal circumstances, resignation from service or post entails forfeiture of past service. But the proviso to the Rule carves out an exception. The question that arises for consideration is whether the case on hand would fall within the scope of proviso. I am more than satisfied that the petitioner is entitled to claim the benefit of the proviso to the Rule. The petitioner admittedly underwent evening course in DME (Mechanical Engineering) only after getting permission from the employer. After successfully obtaining diploma, the petitioner and similarly placed co-employees made a request for promoting them to the post of Junior Engineer. The request of such persons was considered and accepted by the management. Copy of the proceedings dated 03.12.1987



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has been enclosed in the typed set of papers. Paragraph Nos.1 and 2 of the said proceedings read as follows:-

“The following Tradesmen who acquired the additional Technical Qualification viz. Diploma in Electrical / Mechanical Engineering represented for promotion to the highest post. Their requests have been examined and accepted.

They tendered resignation to the post of Tradesman and on acceptance of their resignation they were appointed as Company Trainees for a period of one year on a consolidated wages of Rs. 860/- per month as detailed below. They have completed 3 months training on the dates noted in column No.5 against each.

<i>Sl. No.</i>	<i>Name</i>	<i>Date of acceptance of resignation</i>	<i>Date of appointment on consolidated wages</i>	<i>Date of completion of 3 months training</i>
<i>THIRUVALARGAL:</i>				
<i>1.G.Vetrimurusu</i>		<i>1-7-1987</i>	<i>2-7-1987</i>	<i>1-10-1987</i>
<i>2.A.Ambujam</i>		<i>2-6-1987</i>	<i>3-6-1987</i>	<i>2-09-1987</i>

8.From a reading of the aforesaid proceedings, one can clearly come to the conclusion that it is the management which appointed the



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petitioner to the post of Junior Engineer by taking into account his newly acquired qualification. Thus, the requirement set out in the proviso i.e., getting permission is more than fulfilled. As rightly pointed out by the learned counsel for the petitioner, if the petitioner is appointed in some other establishment, department or corporation, the question of taking permission for accepting the new appointment would arise. In this case, the petitioner was appointed to a higher post in the very same corporation and by the very same management.

9.In these circumstances, resignation of the petitioner from the post of Helper can only be called as technical resignation and nothing else. The respondents are directed to revise the petitioner's pension by taking into account, the period of service rendered by him as Helper. Of course, the question of paying arrears will not arise. The petitioner's pension will be refixed with effect from 01.06.2023. If the petitioner had accepted any gratuity amount, the same shall be repaid to the management. I am not calling upon the petitioner to pay any interest because the petitioner will be getting revised pension only from 01.06.2023. The order impugned in this writ petition is set aside.



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G.R.SWAMINATHAN, J.

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10.The writ petition is allowed on these terms. No costs.

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NCC : Yes/No
Index : Yes / No
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