



W.P.(MD) No.17155 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 27.09.2023

ORDERS PRONOUNCED ON : 20.10.2023

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THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.17155 of 2019

R.Murugesan

... Petitioner

Vs.

1.The Managing Director,
Tamilnadu State Transport Corpn. (MDU) Ltd.,
Bye Pass Road, Madurai-625 016.

2.The Financial Advisor,
Tamilnadu State Transport Corpn. (MDU) Ltd.,
Bye Pass Road, Madurai-625 016.

3.The Administrator,
TNSTC Employees Pension Trust,
Thiruvalluvar House,
No.2, Pallavan Salai, Chennai-600 002.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents to take the 30 years of full service of the petitioner instead of 19 years of service for full pension and also for pension arrears with interest at the rate of 12% per annum



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payable from the date of retirement of the petitioner to till the date of payment of the said pension benefit.

For Petitioner : Mr.K.Gokul

For Respondents : Mr.S.C.Herold Singh
Standing Counsel

ORDER

The petitioner has filed this writ petition seeking Writ of Mandamus directing the respondents to take his 30 years of full service instead of 19 years of service for full pension and also for pension arrears with interest at the rate of 12% per annum payable from the date of retirement of the petitioner to till the date of payment of the said pension benefit.

2. Heard Mr.K.Gokul, learned counsel for the petitioner and Mr.S.C.Herold Singh, learned Standing Counsel appearing for the respondents.



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3. The case of the petitioner is that he was appointed as a Driver in the respondent-Corporation in the year 1987 and his service was also regularised by an order dated 26.08.1988 and he was made permanent employee. While he was working as Driver, on 19.10.1988, the bus bearing Registration No.4041, driven by him, met with an accident and he suffered injury in his right hip. Consequent to this, he was found to be unfit to work as Driver by the Medical Board. Because of the injury sustained by him, he was unable to work as Driver. Subsequently, he was posted as Conductor. But due to the injury sustained by him in the right hip, the petitioner was unable to continue as Conductor. Basing on this, the petitioner was directed to appear before the Medical Board, Madurai, to ascertain whether he was fit to work as Conductor. The Medical Board, Madurai, gave a representation dated 07.03.2021 to the effect that the petitioner was unable to work as Conductor. Subsequently, the petitioner was discharged from service by order dated 28.03.2021. Aggrieved by the same, the petitioner filed a writ petition in W.P.(MD) No.4967 of 2008 before this Court contending that without giving any alternative employment, the petitioner has been discharged from service by the respondent-Corporation illegally.



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4. On hearing both sides, the said writ petition was allowed by order dated 10.06.2008. While setting aside the order impugned therein, the respondent-Corporation was directed to provide alternative employment to the petitioner within a period of two months from the date of receipt of a copy of the order. Recording the statement of the learned counsel for the petitioner therein that the petitioner is willing to forego the back wages, the Court held that the petitioner is not entitled for back wages. However, the Court held that the petitioner is entitled to have the continuity of service.

5. In compliance of the order of this Court, the respondent-Corporation reinstated the petitioner into service as Non-ITI Helper without back wages. After that, he was promoted to the post of Non-ITI Senior Helper and retired from service on 31.08.2017. While the petitioner was in service, a sum of Rs.93,088/- has been recovered towards pension contribution. The respondent-Corporation instead of taking the petitioner's service as 30 years, wrongly took as 19 years against to the order of this Court in W.P.(MD) No.4967 of 2008. Therefore, the petitioner sent a



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representation dated 05.07.2019 to the respondents. The respondents failed to consider the representation.

6. Though the writ petition is of the year 2019 and inspite of granting time on several occasions, the respondents did not choose to file counter affidavit till date.

7. Learned counsel for the petitioner would submit that though the Court categorically held while allowing the writ petition in W.P.(MD) No. 4967 of 2008 that the petitioner is entitled to have the continuity of service, the respondent-Corporation, without counting the entire service, considered only the service rendered by the petitioner as Non-ITI Helper. Due to this reason, though the petitioner was eligible for pension amount of Rs.7,403/-, the respondents are paying the monthly pension at the rate of Rs.4,688/- only.

8. The learned counsel also submits that though the petitioner has submitted a representation dated 05.07.2019 to the respondents, to take his



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30 years of full service, instead of 19 years of service, for granting full pension, it is not considered by the respondent-Corporation. The learned counsel would submit that due to the inaction of the respondent-Corporation, the petitioner is getting pension amount of Rs.4,688/- only, though he is entitled for more pension and the petitioner is suffering irreparable loss and hardship due to the inaction of the respondent-Corporation.

9. Learned Standing Counsel appearing for the respondents submits that the representation of the petitioner will be considered to address his grievances, if the Court directs them to consider the representation.

10. Having heard the submissions of the respective counsels and upon carefully perusing the material available on record, this Court is of the opinion that there is no any dispute with regard to the admitted facts of the case.



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11. The only issue to be considered in this writ petition is whether the petitioner is entitled for pension taking into consideration of his entire service in the respondent-Corporation or not?

12. It is an admitted fact that the petitioner was unable to work as Driver and Conductor due to the injury sustained by him in an accident occurred during the course of his employment as Driver and he was discharged from service by order dated 28.03.2001, which was under challenge before this Court in W.P.No.4967 of 2008. This Court while allowing the said writ petition, by order dated 10.06.2008, directed the respondent-Corporation to provide alternative employment to the petitioner within a period of two months from the date of receipt of a copy of this order. In the said order, this Court gave categorical finding that the petitioner is entitled to have the continuity of service. Admittedly, in compliance of the said order, the petitioner was reinstated into service as Non-ITI Helper. Subsequently, he retired from service on 31.08.2017. The complaint of the petitioner is that the respondent-Corporation without counting the entire service rendered by the petitioner in the respondent-



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Corporation from the beginning, fixed the pension by considering his service after reinstatement as Non-ITI Helper as per the order of this Court in W.P.(MD) No.4967 of 2008.

13. In the considered opinion of this Court, the action of the respondent-Corporation in fixing the pension amount to the petitioner, after his retirement, without considering his entire service rendered in the Corporation from 1987 is unjustified. In spite of specific finding of this Court that the petitioner is entitled for the continuity of service, without following the said order, taking his 19 years service only to fix the pension is illegal, arbitrary, unjust and against to the order in W.P.(MD) No.4967 of 2008.

14. For the above mentioned reasons, this Writ Petition is allowed with the following directions:

- i. The respondents are directed to revise the pension of the petitioner taking into his 30 years of service rendered in the respondent-Corporation from the date of his appointment as Driver in the 1st



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respondent-Corporation and pay the same every month hereinafter;

- ii. The respondents are directed to pay differential amount of the pension and arrears with interest at the rate of 6% per annum from the date of retirement of the petitioner to till the date of the actual payment.
- iii. The refixation of the pension and payment of the differential pension amount and arrears with interest shall be made within a period of four weeks from the date of receipt of a copy of this order.

15. There shall be no order as to costs.

20.10.2023

Note: Issue order copy by 26.10.2023.

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

1.The Managing Director,
Tamilnadu State Transport Corpn. (MDU) Ltd.,
Bye Pass Road, Madurai-625 016.



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BATTU DEVANAND, J.

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Bye Pass Road, Madurai-625 016.

3.The Administrator,
TNSTC Employees Pension Trust,
Thiruvalluvar House,
No.2, Pallavan Salai, Chennai-600 002.

Pre-delivery Order made in
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20.10.2023