



W.A.(MD)No.966 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

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and

M.P.(MD)No.2 of 2015

1.The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Rep. by its Managing Director,
1.Periya Milaguparai,
Tiruchirapalli – 1.

2.The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Rep. by its Managing Director,
Kumbakonam.

...Appellants

/Vs./

1.Ponnambalam

2.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Transport (TBC) Department,
Fort St.George,
Chennai.

...Respondents



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PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order passed by this Court dated 04.08.2013 in W.P. (MD)No.5507 of 2007 on the file of this Court.

For Appellants : Mr.S.C.Herold Singh
For Respondents : Mr.M.Saravanakumar (R1)
Mr.M.Siddharthan (R2)
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

The writ petitioner joined the services of the Transport Department of the Government of Tamil Nadu, as Heavy Transport Vehicle Driver, holding Employee number 5338 on 06.09.1969. The vehicle allotted to him had suffered an incident, whereby a child had been injured and subsequently, passed away. He was tried for offences under Section 304 of IPC by the First Additional Magistrate at Thiruvellore and convicted in C.C.No.434 of 1970 on 07.07.1971.



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2. Based on the criminal case, proceedings were initiated for suspension and he was suspended from duty for the period between 22.10.1971 and 19.03.1972. The writ petitioner had suffered an order of conviction on 17.07.1971 and an appeal had been preferred before the Sessions Judge, Chengalpattu, that came to be dismissed on 13.12.1971. A criminal revision petition in CrI.R.C.No.1239 of 1971 filed by him was allowed on 02.11.1972. During the pendency of the criminal case, the writ petitioner had been dismissed on 20.03.1972. The criminal revision petition had been allowed on 02.11.1972.

3. Thus, with the aforesaid acquittal, the conviction and sentence originally imposed were set aside. He intimated the same to the Transport Department on 21.01.1973 joining duty on 17.01.1974. In the interests of clarity, the total period of suspension is from 22.10.1971 to 19.03.1972 and from 20.03.1972 to 16.01.1974.

4. All employees of the erstwhile State Transport Department were absorbed into the services of the Tamil Nadu State Transport



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Corporation, Kumbakonam (earlier Cholan Roadways Corporation) and the writ petitioner was absorbed in that Corporation with effect from 28.06.1975.

5. At that juncture in time, there was no pension scheme in force for employees in the Transport Department and it was only pursuant to the Judgment of the Hon'ble Supreme Court in SLP Civil Appeal Nos.1444 to 1445 of 1999 dated 29.10.2003 and Judgment dated 01.02.2005 in Review Petition Civil Nos.648 to 649 of 2004, that the Government of TamilNadu issued G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 providing for payment of pension to employees in the Transport Corporation.

6. That GO provided for pension to be paid to erstwhile TamilNadu State Transport Department employees, who had been absorbed in the State Transport Corporation. The pre-condition for such payment was that the employee should (i) have retired either prior to 01.01.1988 or after 01.01.1988 and before 01.09.1998, and (ii) have put



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in qualifying service of 10 years as on 01.04.1982. The period of daily paid services, leave on loss of pay and suspension treated as specific punishment were to be excluded while arriving at net qualifying service.

7. The petitioner superannuated on 30.04.1992. It was only with issuance of G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 that the petitioner made a claim before R1 / State Transport Corporation seeking pension, being of the view that he had achieved the qualifying criteria of 10 years of pensionable service.

8. The request has been rejected by way of order dated 18.01.2007 to the effect that the writ petitioner does not qualify for pension for the reason that the claim was made belatedly. WP(MD)No. 5505 of 2007 thus came to be filed by the petitioner seeking a quash of the order of rejection and seeking a consequent direction to the Transport Department to regularize his services for the period between 22.10.1971 and 19.03.1972 and between 20.03.1972 and 16.01.1974 with backwages and other service benefits along with pension. To be noted, there has



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been no claim for backwages by the writ petitioner at any point of time and even before us his learned counsel would specifically eschew such a claim.

9. Thus, and to reiterate, Writ petitioner has pursued his prayer only for continuity in service for eligibility of pensionable service and pension and has given up all other claims including backwages. The Writ petition came to be allowed on 08.04.2013. As regards the rejection on the ground of laches / delay, writ petitioner's contentions have been accepted by the writ Court noticing that it was only with the issuance of G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 that the employees of the State Transport Corporation became eligible for pension per se.

10. Hence, there could not have been no prior enabling occasion when such employees including the petitioner could have approached the authorities concerned seeking payment of pension. At para 4, of order dated 08.04.2013, after a detailed discussion referring to



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the Judgment of the Hon'ble Supreme Court and the GO as aforesaid, Writ Court has found the application of the petitioner to be well in time.

11. On the question of entitlement of pension itself, the service records were called for and the Writ Court has found that the entirety of the period of suspension between 23.10.1971 and 22.11.1973 would stand regularized. In this context, a reference is made to the pages 14 and 15 of the service register and an endorsement made by the authority on 29.09.1988 to such effect.

12. We agree with the view of the Writ Court that the services of the employee for the period between 23.10.1971 to 22.11.1973 are to be regularized. The writ petitioner has initially joined on daily wages and his services were regularized on 01.08.1970. We find on a perusal of the Service Register (portion relating to his services in the Transport Department), that the factum of his suspension, dismissal and reinstatement pursuant to acquittal, have been duly recorded. There is an endorsement to the effect that such periods would be treated as leave on



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loss of pay. There is no specific order regularizing the service for this period.

13. However, in the present case, there has been a conscious decision of the respondents not to initiate disciplinary proceedings. The suspension, dismissal and subsequent reinstatement of the writ petitioner have had their genesis only in the criminal proceedings and acquittal. We are hence of the considered view that the periods would stand regularized without any further necessity for departmental intervention in this regard. This is the tone and tenure of the order of the Writ Court as well, with which we concur.

14. Infact, we would go so far to say that the endorsements made by the authorities of the State Transport Corporation in 1989 would be wholly uncalled for, since they deal with a position prior to 1975, when the writ petitioner was not an employee of the Transport Corporation but of the State Transport Department. That chapter in the service of the writ petitioner stands closed, and with the absorption of the



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writ petitioner in the State Transport Corporation in 1989, there is no justification for the subsequent employer to intervene in that regard.

15. To reiterate, there need be no separate order of regularization by the Transport Department for the reason that there has been no departmental intervention by the authorities in regard to his service even at the first instance, consciously.

16. G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 makes a reference to the exclusion of '*leave on loss of pay and suspension be treated as specific punishment*' while arriving at net qualifying service. This exclusion, in our view would not have any impact in the present case, since the loss of pay and suspension has not been the subject matter of departmental enquiry or punishment and has been a consequence only of the criminal proceedings, where ultimately the writ petitioner was fully exonerated. Thus, this too would not stand in the way of the writ petitioner being entitled to his claim.



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17. The Transport Corporation relies on the judgments in the cases of *Mithilesh Kumar @ Mithilesh Singh vs. Union of India & Others* (2020 (12) SCC 423) and *State Bank of Bikaner & Jaipur vs. Nemi Chand Nalwaya* (2011 (4) SCC 584).

18. Both these cases are fully distinguishable for the position that they deal with the consequence of a departmental enquiry, which has taken place in those cases, parallelly with the criminal proceedings. In such circumstances, there would certainly be a consequence upon the service of an employee. However, in the absence of any such departmental proceedings having been initiated, it does not lie in the mouth of the Transport Corporation to attribute any adverse consequences to the services of an employee. The Writ Court has, in conclusion, set aside the order impugned and directed, rightly the State Transport Corporation to pass orders enabling the writ petitioner to receive pension.



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19. To be noted that the relief sought for by the writ petitioner was as against the Transport Department, which has been suitably modified by the Writ Court to address the Transport Corporation instead. This would be the right position insofar as at the time of superannuation, it was the Transport Corporation which was the employer of the writ petitioner.

20. In the present case, in light of the discussion as above, we are of categorical view that the writ petitioner has the requisite qualifying service. The order of the Writ Court is confirmed. There is a direction to compute the amount payable to the petitioner and pay over the same within four weeks from the date of receipt of a copy of this order. This Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

[A.S.M.J.] & [R.V.J.]
09.08.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes

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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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