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W.P.(MD)No.20053 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.20053 of 2016
and
W.M.P.(MD)No.14408 of 2016

A.Manuel Devadoss

... Petitioner

vs.

1.The Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
represented by its Managing Director,
Tirunelveli.

2.The General Manager,
The Tamil Nadu State Transport
Corporation (Tirunelveli) Limited,
Tirunelveli Region, Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent in File No.14505/Nir10/Tha Aa Po Ka/Thili/15, dated 04.08.2015, to quash the same as illegal, arbitrary and in



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gross violation of award of the Labour Court, Tirunelveli, dated 21.04.2011, in I.D.No.2 of 2008 and consequently, to direct the respondents to grant continuity of service, notional increments and other eligible service benefits to the petitioner for the period from 03.01.2004 to 02.09.2012 and further, to direct the respondents to grant 2nd review benefit to him with effect from 17.09.2006 and to compute and re-fix his salary as per the above award and to pay arrears of difference in salary together with interest at 18% per annum payable from the date of the award.

For Petitioner : Mr.A.Rahul
For Respondents : Mr.K.Sathiya Singh

ORDER

This writ petition is filed for writ of Certiorarified Mandamus, to quash the impugned order dated 04.08.2015 passed by the 2nd respondent as as illegal, arbitrary and in gross violation of award of the Labour Court, Tirunelveli, dated 21.04.2011, in I.D.No.2 of 2008 and consequently, to direct the respondents to grant continuity of service, notional increments and other eligible service benefits to the petitioner for the period from 03.01.2004 to 02.09.2012 and further, to



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direct the respondents to grant 2nd review benefit to him with effect from 17.09.2006 and to compute and re-fix his salary as per the above award and to pay arrears of difference in salary together with interest at 18% per annum payable from the date of the award.

2. The petitioner joined the 2nd respondent Corporation as Driver with effect from 17.09.1993 and has rendered 23 years of service. On 24.09.2013, he committed an accident due to negligent driving. Hence, the respondents initiated domestic enquiry, the charge was held to be proved and the petitioner was dismissed from service, vide order, dated 03.01.2004. Aggrieved over the same, the petitioner preferred I.D.No.2 of 2008 and the Labour Court allowed the petition directing the respondents to reinstate the petitioner in service with continuity of service and grant all the benefits the petitioner is legally entitled to, but without backwages. The respondents have implemented the order and reinstated the petitioner into service with effect from 02.01.2012, pursuant to the



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Circular Resolution No.22 of the Board of Directors, dated 11.07.2012.

3. The contention of the petitioner is that the petitioner was reinstated in service but he was not granted continuity of service and attendant benefits including increments and 2nd review was denied. Hence, the petitioner submitted a representation, dated 15.07.2015 and the same was declined, vide order, dated 04.08.2015. The respondents informed the petitioner that the period from the date of dismissal to the date of reinstatement will be treated as loss of pay and the same cannot be counted for service benefits and a 2nd review will be granted only after 12.01.2018. Aggrieved over the same, the present writ petition is filed.

4. The 2nd respondent has filed a counter affidavit stating that the petitioner was not in service from 03.01.2004 to 02.09.2012. As per the order of the Labour Court, he was not eligible to get wages for the said period. As such that period can be taken only as no work no pay and the same cannot be treated as qualifying



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service. As there is no physical performance, the same cannot be counted in the case of the petitioner and declined the review benefits. Therefore, the 2nd respondent prayed to dismiss the writ petition.

5.Heard Mr.A.Rahul, learned Counsel appearing for the petitioner and Mr.K.Sathiya Singh, learned Standing Counsel appearing for the respondents and perused the records.

6. It is an admitted fact that the Labour Court has granted continuity of service, but declined the backwages. The relevant portion of the award is extracted here under:

“32.முடிவாக இந்த மனுவானது பகுதியாக அனுமதிக்கப்பட்டு மனுதாரருக்குப் பணித் தொடர்ச்சியுடன் மீண்டும் பணியும், சட்டப்படியான சலுகைகளும் எதிர்மனுதாரர் கொடுக்க வேண்டுமென்று உத்தரவிட்டும், பின் சம்பளத்தைப் பொறுத்து மனுவைத் தள்ளுபடி செய்தும் தீர்வம் பிறப்பிக்கப்படுகிறது.”

The Labour Court has specifically stated one more aspect to grant all benefits



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which the petitioner is legally entitled to. By this relying on this phase, the petitioner is claiming attendant benefits as well.

7. However, the respondents vehemently contended that the said period cannot be taken for any benefits, since the backwages was declined. The said plea of the respondents cannot be entertained. The Labour Court has granted continuity of service which means the petitioner is entitled to all service benefits. If the continuity of service is not granted, then the petitioner is not entitled to any benefits. When the continuity is granted then the petitioner is entitled to the service benefits. In the present case, continuity of service was granted with a specific direction to grant all the benefits the petitioner is legally entitled to, which means the petitioner is entitled to increments as well.

8. As far as the review benefits is concerned, the respondents have taken a plea that the physical performance is one of the conditions for granting review



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benefits. Since during that period the petitioner was not in service, review benefits cannot be entertained. The said contention cannot be entertained, since in the respondent Corporation, the review benefits are granted which is time bound review benefits. When continuity of service is granted, then the petitioner is deemed to have been in service. Therefore, the said plea of the respondents cannot be entertained. The petitioner is also entitled to review benefits.

9. Therefore, this Court is of the considered opinion that the petitioner is entitled to increments, review benefits and other benefits and the same shall be fixed notionally. It is made clear that the dearness allowances can be included in notional calculation. However, the petitioner is not entitled to any salary modification while calculating the pensionary benefits by including the dearness allowances. The petitioner is not entitled to backwages, but the salary and other increments shall be notionally calculated, based on which the respondent's contribution shall be calculated. The respondent's contribution shall be alone



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transferred to Pension Trust and from such transfer of amount, the petitioner is entitled to pensionary benefits. The petitioner is not entitled to any interest.

10. With the above said observation, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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

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