



W.P.(MD)No.27540 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.27540 of 2022

C.Bose Packiaraj

... Petitioner

Vs.

1.The Assistant Manager (Personnel and Administration)
Tamil Nadu State Transport Corporation (Tirunelveli) Limited,
Tirunelveli Region,
Tirunelveli.

2.The Administrator
Tamil Nadu State Transport Employees' Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai - 2.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records from the first respondent relating to the impugned order in Ka.No. 9299/PaA/E5 TNSTC/(Thili) Ltd/2018 dated 27.04.2019, quash the same



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and consequently directing the first respondent to revise the scale of pay of the petitioner w.e.f. 01.09.2013 based on the wage settlement dated 13.04.2015 and consequently to revise his terminal benefits namely Gratuity, Encashment of leave, based on such revised scale of pay payable to him on the month of his retirement i.e., December, 2013, together with 18% interest per annum and further directing the respondents to revise his monthly pension with effect from January 2014, based on such revised scale of pay payable to him on the month of his retirement i.e., December, 2013 and to pay him arrears of the same for the period from January, 2014, together with 18% interest per annum.

For Petitioner : Mr.S.Arunachalam

For Respondents : Mr.D.Jebaraj - for R1

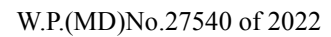
Standing Counsel

Mr.S.C.Herold Singh - for R2

Standing Counsel

ORDER

This writ petition has been filed to quash the impugned order in Ka.No.9299/PaA/E5 TNSTC/(Thili) Ltd/2018 dated 27.04.2019 on the file



2. The learned counsel appearing for the petitioner submitted that petitioner was employed in the first respondent Corporation as from 05.02.1987 onwards. After completion of more than 26 service, he upgraded as Special Grade Conductor and he was retired from service on 31.12.2013. The scale of pay of the petitioner payable to the petitioner on the month of his retirement is to be revised in view of 12(3) settlement, dated 13.04.2015, which



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has given the retrospective effect. Hence, the respondents are bound to revise the terminal benefits and pension benefits. Since the petitioner submitted Voluntary Retirement Service (VRS) application on 30.10.2013 and the same was accepted on 31.12.2013. However, the same was not extended to the petitioner, thereby the petitioner made a representation, dated 04.05.2018 to revise his pay scale as per the 12(3) settlement dated 13.04.2015 and the same was not considered. Hence, the petitioner filed a writ petition before this Court in W.P.(MD) No.5201 of 2019 and this Court by order, dated 06.03.2019, issued a direction to the respondent therein to pass appropriate orders on the petitioner's representation. Pursuant to which, the present impugned order is passed, rejecting the petitioner's claim on the said ground, that the petitioner is not in service and he obtained leave and he was not physically worked on the particular day thereby, on the ground the same was rejected. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner further submitted that though the petitioner entered into service as Conductor from 05.02.1987,



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due to illness, he submitted his Voluntary Retirement Service application on 30.10.2013 and the same was accepted on 31.12.2013, allowing the petitioner to go on Voluntarily Retirement. However, for all practical purpose, the petitioner is in service in the respondent corporation on 31.12.2013 and thereafter, he is not in service, however, the rejection order says the petitioner is on leave on loss of pay and physically not employed in the respondent corporation and rejected the petitioner application, which is not sustainable one. Whether the petitioner physically is present or not when the petitioner is an employee of the respondent corporation on 31.12.2013 till accepting his VRS. It is presumed to be the employee of the respondent corporation necessarily they have to extend the benefit of 12(3) settlement, dated 13.04.2015 to the petitioner. Accordingly, he prayed for allowing the writ petition.

4. Per contra, the learned Standing Counsel appearing for the respondent Corporation submitted that the petitioner was on leave under loss of pay from 28.06.2013 upto 31.12.2013, when he opted for voluntary retirement. The settlement is applicable only to the permanent employee as



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on 31.08.2013. The petitioner being out of service on loss of pay as on 31.08.2013, is not entitled to the benefit of wage revision as per the settlement. Thereafter, the writ petitioner had filed W.P.(MD) No.5201 of 2019 for wage revision, which was ordered to be considered in accordance with law by order, dated 06.03.2019. The claim of the petitioner was considered and the petitioner being absent on loss of pay as on 31.08.2013 and having voluntarily retired on 31.12.2013, was found not eligible for wage revision by order, dated 27.04.2019. Challenging the same, the present writ petition is filed. The petitioner is not working and in loss of pay from 28.06.2013 to 31.12.2013, so he is not entitled to the benefit of wage revision, as per the settlement. Hence, he prayed for dismissal of the writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service as Conductor in the respondent Corporation



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in the year 1987 and he submitted his Voluntary Retirement application on 30.10.2013 and the same was accepted on 31.12.2013. At the time of retirement, the petitioner was employed as a Special Grade Conductor and admittedly, there was a 12(3) settlement on 13.04.2015, in which, the person who employed in the Transport Corporation is entitled for revision of wages from 01.09.2013 with retrospective effect and the issue arise in the present writ petition is that whether the petitioner was in service as on 31.12.2013.

7. Admittedly, the petitioner has submitted his VRS application on 30.10.2013 and the same was accepted on 31.12.2013. However, the respondent claimed that the petitioner was on leave on loss of pay from 28.06.2013 upto 31.12.2013, declaring the loss of pay for the period will not be a bar for claiming the rights which was accrued as per 12(3) settlement, dated 13.04.2015, whereas, the settlement makes it clear that the person who was on service on 01.09.2013, is entitled for revision of pay. Hence, the impugned order passed by the respondent Corporation is liable to be set aside.



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8. Accordingly, the impugned order is set aside. The respondent corporation is directed to revise the pay scale, monthly pension and terminal benefits of the petitioner as per 12(3) settlement, dated 13.04.2015, and other benefits, if the petitioner is so eligible, within a period of 12 weeks from the date of receipt of a copy of this order.

9. With the above directions, this writ petition is allowed. No costs.

06.02.2023

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

RM



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M.DHANDAPANI,J.

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