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W.P.No.1067 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

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THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 1067 of 2022

A.Sivagurunathan

.... Petitioner

Vs

1. Tamil Nadu State Transport Corporation (Villupuram) Limited,
Rep. by its Managing Director,
No.3/137, Salamedu,
Villupuram – 605 602.

2. The General Manager,
Tamil Nadu State Transport Corporation (Villupuram) Limited,
Cuddalore Region, Cuddalore – 607 002.

3. Tamil Nadu State Transport Corporation's Employee's Pension Trust,
Rep. by its Administrator,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 2.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of declaration declaring that the action of the Respondents in not treating the period from 26.12.1994 to 30.05.2011 as



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duty and as Pensionable service / qualifying service and denying and not paying the Petitioner 100 percentage of wages from the date of award to the date of reinstatement as illegal and arbitrary and consequently direct the respondents to pay him revised monthly pension for his entire service from 1989 to 30.06.2018, including the period from 26.12.1994 to 30.05.2011, with effect from 01.07.2018 with arrears of difference in pension direct the respondents to pay him the revised gratuity and all other attendant benefits payable to him and to pay him the balance 50 percentage back wages from the date of award to the date of reinstatement, within a specified time as may be stipulated by this Honble Court together with interest at the rate of 12 percentage per annum.

For Petitioner : Mr.V.Ajoy Khose
For R1 & R2 : Mr.M.Ashwin
For R3 : No appearance

ORDER

This Writ Petition has been filed for declaration declaring that the action of the respondents in not treating the period from 26.12.1994 to 30.05.2011 as duty and as pensionable service as illegal.

2. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1 & 2 and perused the materials available on record.



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3. The petitioner had joined the service of the first respondent as Conductor in the year 1989 and he was made permanent on 01.07.1990. While being so, on inspection, it was found that the petitioner had not issued tickets to 21 passengers and misappropriated to the tune of Rs.25.20/-. Further, excess amount of Rs.29.85/- was found in his cash bag. Pursuant to the charges, an enquiry was conducted and the petitioner was dismissed from service on 26.12.1994. Therefore, the petitioner raised Industrial Dispute in I.D.No.68 of 1995 on the file of the Labour Court, Cuddalore. By an Award dated 07.01.2001, the order of dismissal was set aside and the first respondent was directed to reinstate the petitioner with continuity of service and with full backwages.

4. However, it was challenged by the respondent in W.P.No.20964 of 2001 before this Court. By an order dated 09.11.2011, this Court confirmed the order of reinstatement with continuity of service and modified the backwages to 50% and the petitioner was directed to withdraw the 50% of the backwages, which was deposited to the credit



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of I.D.No.68 of 1995. Accordingly, the petitioner was reinstated into service on 01.06.2011. Thereafter, the petitioner had retired from service on 30.06.2018 on attaining the age of superannuation. The 50% of backwages to be calculated from the date of his dismissal till the date of the Award, i.e., from 26.12.1994 to 07.03.2001. After awarding the amount, the petitioner is entitled to get full salary i.e., from 07.03.2001 to 01.06.2011. However, the respondents calculated the 50% of backwages for the entire period i.e., from 26.12.1994 to 01.06.2011.

5. That apart, the respondents paid retirement benefits to the petitioner such as, gratuity amount, earned leave amount and other benefits only on 31.08.2019, after fourteen months from the date his superannuation. Though the petitioner has qualified with pensionable service of twenty nine years, the respondents had taken only eleven years of pensionable service and they failed to consider the period of dismissal as qualifying service. Therefore, the petitioner submitted a representation. However, it was not considered and he was paid very meagre pension.



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6. A perusal of the counter filed by the respondents and the submissions made by the learned counsel appearing for the first and second respondents reveals that as directed by this Court, the backwages was calculated and disbursed to the petitioner. If 100% of backwages is awarded, his entire contribution will be taken into account and therefore the period of actual service will be calculated as pensionable service. Since there is no contribution for the period between 1994 to 2011, those period is considered as non-qualifying service for calculating pension. As stated supra, the Labour Court, Cuddalore, categorically set aside the order of dismissal and directed the respondents to reinstate the petitioner with continuity of service and with full backwages.

7. However, insofar as the backwages is concerned, this Court in W.P.No.20964 of 2011, by an order dated 09.11.2011, modified the backwages to 50%. Therefore, the entire service of the petitioner has to be taken into account as qualifying service for calculating all benefits including pension. Insofar as the backwages from the date of award, the respondents had paid salary as per the interim direction given by this Court under Section 17(b) of the Industrial Dispute Act.



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8. In view of the above, the respondents are directed to treat the period from 26.12.1994 to 30.05.2011 as duty and as pensionable service and revise the monthly pension of the petitioner for his entire service i.e., from 1989 to 30.06.2018 and pay the arrears of the difference in pension along with revised gratuity and other attendant benefits if any with interest at the rate of 6% per annum within a period of six weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is directed to deposit his contribution for the period from 1994 to 2011 for revision of pension within a period of two weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition stands allowed. No costs.

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Speaking/Non-speaking order
Neutral Citation : Yes/No
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