



W.P.No.3147 of 2021
and W.M.P.Nos.3581 & 3584 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.3147 of 2021
and W.M.P.Nos.3581 & 3584 of 2021

A.Abdul Azeez

... Petitioner

Vs.

1.The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
Kumbakonam Division,
Kumbakonam - 612 001.

2.The General Manager,
Tamilnadu State Transport Corporation Ltd.,
Kumbakonam Division,
Kumbakonam - 612 001.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent pertaining to his proceedings in Pension Pay Order No.4222 with the Pension Working Sheet dated 10.01.2020 and quash the same in so far as it reduce the Pension Basic of the petitioner as Rs.591/- for 15 years as his pensionable service, and subsequently direct the respondents to pay the monthly pension of the petitioner by calculating his Pension Basic Rs.3,782/- along with the allowable Dearness Allowance and Medical Allowance and also to pay the arrears of pension, gratuity and all other retirement benefits, along with interest at the rate of 12% from 21.12.2017.



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For Petitioner : Mr.R.Sivakumar
For Respondents : Mr.S.Sathya Gandhi
Standing Counsel

ORDER

This Writ Petition has been filed, calling for the records of the second respondent pertaining to his proceedings in Pension Pay Order No.4222 with the Pension Working Sheet dated 10.01.2020 and quash the same in so far as it reduces the Pension Basic of the petitioner as Rs.591/- by taking 15 years as his pensionable service, and subsequently direct the respondents to pay the monthly pension of the petitioner by calculating his Pension Basic Rs.3,782/- along with the allowable Dearness Allowance and Medical Allowance and also to pay the arrears of pension, gratuity and all other retirement benefits, along with interest at the rate of 12% from 21.12.2017.

2. Heard Mr.R.Sivakumar, learned counsel appearing for the petitioner and Mr.S.Sathya Gandhi, learned Standing Counsel appearing for the Respondents.



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3. The petitioner was working as a Driver in the respondent Corporation. Challenging the order of dismissal faced by him at the end of a disciplinary proceedings initiated against him, he raised an industrial dispute in I.D.No.73/2001 in which the following Award has been passed :

"In this case the petitioner submitted Ex.W1 Leave Application and the submission of leave application by the petitioner was admitted by M.W.1 , so there was no intention on the part of the petitioner to be absent from duty or there was no abandonment of duty on the part of the petitioner. Considering the above facts and circumstances of this case and considering the above decisions, the punishment of dismissal passed by the respondent/management on the basis of the exparte domestic enquiry report for the alleged absence of the petitioner is not proportionate to the misconduct of alleged absent on the part of the petitioner. Hence the dismissal order dated 09.08.1995 is set aside and the petitioner is ordered to be reinstated in the respondent/management without continuity of service, without back wages and without other attendant benefits. This point is decided accordingly."

4. The said order was challenged by the petitioner in respect of the denial of backwages and continuity of service in W.P.No.21758/2011 and in which the Award has been modified as below :



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"18. In the above circumstances, this Court is of the considered view that the award of the Labour Court has to be modified as follows:-

"The petitioner workman is entitled to continuity of service with 25% back wages during the period of his non-employment. The denial of 75% back wages is a sufficient punishment for the petitioner for remaining absent without sanction for leave by the Corporation. It is also made clear that any contribution payable to the Provident Fund towards the petitioner's service, shall be adjusted from the amount payable to the petitioner towards back wages. Since the petitioner had attained the age of superannuation on 30.06.2012, the petitioner shall be entitled to arrears of wages due from the date of the award till the date of retirement and also entitled to all retirement benefits as admissible to him."

5. As the same has not been implemented, the petitioner has filed a contempt petition in Cont.P.No.2667/2017, in which the following orders has been passed on 01.03.2019 :

"2. Accordingly, while closing the contempt petition in view of substantial compliance by the respondent, the respondent is directed to disclose the basis of the calculation for arriving at



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*the final figure to the petitioner within a period of four weeks
from the date of receipt of a copy of this order."*

6. In compliance of the orders made in W.P.No.21758/2011 and consequent orders passed in Cont.P.No.2667/2017, the respondent Corporation has passed an order stating that the petitioner is entitled to 25% backwages from the date of removal of service till the date of the Award passed by the Labour Court and from the date of the Award of the Labour Court till the date of the retirement at 100%. The petitioner has got no grievance in the order dated 02.03.2019 which has been passed in compliance of the earlier order passed in W.P.No.21758/2011. Since the orders of the Court has not been complied in respect of the pension eligibility of the petitioner, the petitioner once again filed a Cont.P.No.1739/2019 and after, receiving the statutory notice the respondent appeared before the Court and passed the impugned order by allowing the pensionary benefits of the petitioner at Rs.2,009/- per month. Aggrieved over the same, the present writ petition has been filed.



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7. Mr.S.Sathya Gandhi, learned Standing Counsel appearing for the respondents would submit that the calculation has been done in accordance with the modified order passed by this Court in W.P.No.21758/2011 and does not warrant any interference of this Court.

8. Now the grievance of the petitioner is in respect of the calculation made for pension in Para 17 of the order and it is as seen under :

17. Pension (Gross)

$$\begin{array}{rcccl} \text{(i) Rs.9455} & \times & 15 \text{ years} & & \\ \hline 2 & & 30 & = & \frac{2364}{4} = 591 \end{array}$$

$$\begin{array}{rcccl} \text{(ii) Rs.9455} & \times & 9 \text{ years} & & \\ \hline 2 & & 30 & & = 1418 \end{array}$$

$$\text{TOTAL PENSION} = 2009$$

(i) The first part of the pension which has been worked out for 15 years by keeping last drawn wages at Rs.9,455/- has been divided by 4.

(ii) However, the second segment for 9 years has been calculated by



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keeping last drawn wages at same Rs.9,445/- at the rate of Rs.1,418/-.

(iii) The first segment calculated for 15 years was Rs.591/- and both together in total pension is worked out to Rs.2,009/-.

9. The above exercise appears to have been made in view of the fact that the respondents have wrongly construed 25% of the backwages as that of 25% pension for a period between the removal of service till the date of the Award of the Labour Court. The order of this Court is clear that 25% and 100% is only in respect of backwages and there is no order of deduction in terms of continuity of service or pension. In such case the respondent ought to have worked out the pension calculation without deducting 75% in the first segment and by allowing only 25% and thereby reducing the pension amount without the order of the Court. Since the order of the respondent is due to misunderstanding of the modified Award passed in the order of the writ petition in W.P.No.21758/2011, the order is liable to be set aside and the respondent is directed to redo the pension calculation without any deduction in both the segments of pension worked



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out for 15 years and 9 years respectively and pass a fresh order in this regard within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the retirement benefits of the petitioner shall not suffer any reduction. In view of the fact that the reduction is made only in respect of the backwages allowed to the petitioner in the Award, the delay was caused due to default on the part of the petitioner, the payment of pension shall carry interest at the rate of 4% per annum from the date of retirement till the date of dismissal.

10. Accordingly, this Writ Petition is allowed. No costs.
Consequently, connected Writ Miscellaneous Petitions are closed.

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Index: Yes / No
Speaking order / Non-speaking order
mtl



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To:

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- 2.The General Manager,
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R.N.MANJULA ,J.

mtl

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