



W.P.No.17899 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM

THE HON'BLE MR. JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P.No.17899 of 2012

and

M.P.No. 2 of 2012

M.Kanagaraj

..Petitioner

Vs.

1. The State Express Transport
Corporation Limited,
by its General Manager,
Pallavan Salai,
Chennai – 600 002.

2. The State Express Transport
Corporation Limited,
Represented by
Assistant Manager (W & A),
Chennai – 600 002.

3. The Branch Manager,
State Express Transport
Corporation Limited,
Coimbatore.

..Respondent



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other Writ or Order or direction in the nature of a Writ, to call for the records pertaining to proceedings No.020276/WA3/SETC H.O/12 dated 28.04.2012 and consequently direct the Respondents to pay the salary till the date of acceptance of resignation by the Respondent Corporation and to settle the retirement benefit and pension benefit to the Petitioner within a time frame that may fixed by this Court.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.S.Sivasubramani
Senior Counsel

ORDER

This Writ Petition has been filed to call for the records pertaining to the Proceedings No.020276/WA3/SETC H.O/12 dated 28.04.2012 and consequently direct the Respondents to pay the salary till the date of acceptance of resignation by the Respondent Corporation and to settle the retirement benefit and pension benefit to the Petitioner within a time frame.

2. The case of the Petitioner is that the Petitioner was appointed as Conductor on 22.03.1989 with the Respondent Corporation and his service was regularized from 01.07.1990 by the Respondent Corporation vide



service No.89 CR 003. The Petitioner was suffering from Lumber Spine problem and he underwent a surgery for Lumbar Disc in the year 1992. Thereafter, the Senior Civil Surgeon, Department of Orthopedics, Coimbatore Medical College and Hospital, Coimbatore has opined that he could not work as a Conductor in view of the Bilateral Sliaca. Thereafter, the Petitioner was directed by the Respondent to appear before the Medical Board on 15.02.2008 and he appeared before the Medical Board, Coimbatore and on examination, the Medical Board gave a report to the first Respondent that he is not fit to continue as Conductor in view of the Bilateral Sliaca and MRI report. The said report issued by the Medical Board, Coimbatore on 15.12.2008 to the Respondent Corporation.

3. The learned Counsel for the Petitioner would submit that despite the Medical Board report, the Respondent Corporation has not appointed him in the alternative light work other than the Conductor job and hence he made a representation on 29.08.2011 to grant a job to the Petitioner to save his life. Subsequently, he made another representation on 06.07.2011 requesting the Respondent Corporation to relieve him from service. Thereafter, another representation dated 21.12.2011 was given to the



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Respondent Corporation requesting to accept his resignation due to the reasons submitted by the Medical Board and the same was received by the third Respondent Corporation on 21.12.2011. Further, he would submit that the Petitioner received a communication from the second Respondent vide letter dated 31.01.2012 imposing censure punishment for the Charge made on 30.04.2008 by the Respondent Corporation. The Respondent Corporation served a letter in Order No.032143/Ma.Va.3/SETCTN/2011 dated 01.02.2012 stating that the resignation letter dated 21.12.2011 was accepted and the Petitioner was permitted to resign from the post of Conductor with effect from 10.02.2012. The Petitioner made a representation to the Respondent Corporation to pay salary till his resignation was accepted and also pay pension amount. The Petitioner has received the impugned Order vide Proceedings in 020276/WA3/SETC H.O./12, dated 28.04.2012 issued by the third Respondent by informing the Petitioner to pay a sum of Rs.61,465/- in favour of the third Respondent Corporation for the punishment awarded in Order dated 09.06.2005, 07.12.2007 and 05.09.2009 whereby stoppage of increment was imposed by the Respondent Corporation.



4. The learned Counsel for the Petitioner would further submit that the Respondent Corporation has permitted the Petitioner to resign from the service and directed him to pay a sum of Rs.61,465/- without any justification and the same is illegal. Aggrieved by the Order passed by the Respondent Corporation, the Petitioner is before this Court with this Writ Petition.

5. The learned Counsel for the Petitioner would further submit that the Petitioner is entitled to get the salary till his resignation is accepted. Hence, the non-payment of salary for the said period will amount to injustice caused to the Petitioner. The second Respondent ought to have granted the retirement benefit and the pension amount as per the Provisions of law, but the Respondent Corporation has not settled the retirement benefit and pension amount to the Petitioner. The second Respondent ought to have considered the Petitioner's representation to provide a lighter job in the light of the reasons submitted by the Medical Board, Coimbatore Medical College and Hospital in the report dated 15.12.2008.

6. The learned Counsel for the Petitioner would submit that he has



raised an additional grounds in that under Section 20 (4) of Rights of Persons with Disabilities Act, 2016, which states as follows:

20. Non-discrimination in employment -

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if a employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

7. The learned Counsel for the Petitioner also filed the memo of calculation for the salary for a period from 15.02.2008 to the date of acceptance of the resignation letter of the Petitioner on 10.02.2012, which is extracted hereunder:

MEMO OF CALCUALATION

15.02.2008 : ½ Month Salary the date of which the Medical Board issued a Certificate that he was not fit to Work as Conductor.

Monthly Salary Rs.15,000x1/2 =Rs. , 7,500.00



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2009 „	Rs.15,000x12	=Rs.1,80,000.00
2010 „	Rs.23,000x12	=Rs.2,76,000.00
2011 „	Rs.23,000x12	=Rs.2,76,000.00
2012	one month January	=Rs. 23,000.00
	10 days Feb.	=Rs. 7,600.00

	Total Annual Salary	=Rs.7,70,100.00
	P.F. As on Octo.2011	=Rs.1,42,978.00

8. The learned Counsel for the Petitioner has relied on the Judgment of the Hon'ble Supreme Court reported in **(2014) 16 SCC 260** in the case of ***Shashikala Devi Vs. Central Bank of India and Others***, wherein it has been held as follows:

“A. Service Law- Pension – Entitlement to – Effect of resignation and voluntary retirement, contrasted - Use of word “resignation” in letter dt. 8-10-2007 seeking to quit employment on account of physical inability to continue in service because of failing health – Inference from – Held, use of expression “resignation” is not conclusive even when clear distinction between “resignation” and “voluntary retirement” is always maintained – Whether a given communication is letter of resignation simpliciter or is request of each case and applicable rules.

B. Service Law – Pension – Generally – Held, pension is neither a bounty nor matter of grace but is a payment for past



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services rendered by employee – Hence, could would be reluctant in presuming that employee intended to waive or abandon such valuable right without cogent reasons – On facts held, evidence on record far from suggesting any conscious surrender, abandonment or waiver of right of retiral benefit, indicate that employee vide letter dt. 8-10-2007 sought release of his retiral benefits at the earliest to enable him to undergo required medical treatment – Central Bank of India (Employees) Pension Regulations, 1995, Regns. 14 and 29.”

9. In the counter affidavit filed by the Respondents on 01.09.2017, it is stated that the Petitioner had absented for work without prior permission and the Petitioner's act has caused much inconvenience to the Corporation in operating the scheduled buses in time and his past records were examined and found that he had been punished many times for his previous misconducts and he was relieved from duty under Voluntary Retirement Scheme with effect from 10.02.2012. It is further stated that the amount of Rs.61,465/- has not been remitted by the Petitioner. The following due amount has not been recovered from the Petitioner.

1. The excess amount payable for
27 days (Medical Leave) = Rs. 17,820/-
2. The excess amount payable
in 3/2008 Salary =Rs. 6,205/-



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3. The amount of non-implementation
of punishment charges =Rs. 37,440/-

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Total =Rs.61,465/-

10. The Petitioner was absented from 19.10.2011 and resigned the work on 10.02.2012 and hence, the salary amount could not be paid.

11. The Respondent Corporation also filed additional counter affidavit in the month of September, 2022 wherein it is stated that the Petitioner was made a representation on 06.11.2011 requesting to accept his resignation due to the reasons stated by the Medical Board and it was decided to accept by the Respondent Corporation on 10.02.2012. Out of 22 years of service, fifteen years are found as non qualifying service, as per loss of pay available in the service book and Gratuity arrived is for Rs.73,662/-. It is also stated that the eligibility for pension is 10 years whereas the Petitioner is having seven years of qualifying service. Hence, he is not eligible for pension. A sum of Rs.61,465/- has to be remitted by the Petitioner which was not remitted to the Respondent Corporation despite the letter dated 28.11.2012 sent by the Respondent Corporation.



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12. Heard the learned Counsel for both sides and perused the materials available on record.

13. In this case on hand, it is an admitted fact that the Petitioner suffering from Lumber Spine problem and he underwent a surgery for Lumbar Disc in the year 1992 and he was examined by the Coimbatore Medical College and Hospital, Coimbatore and the report was issued by the Medical Board, Coimbatore on 15.12.2008 to the Respondent Corporation in which it is stated that the Petitioner cannot perform the job of the Conductor. Thereafter, the Petitioner has given several representations to the Respondent Corporation to give alternate job since he could not function as Conductor. His request was not accepted by the Respondent Corporation. The Petitioner has given resignation letter dated 21.12.2011 and the same was accepted by the Respondent Corporation and permitted him to resign from the Post of Conductor with effect from 10.02.2012 by invalidating his duty from 10.08.2008 to 10.02.2012. It is pertinent to mention Section 20 (4) of Rights of Persons with Disabilities Act, 2016 and is extracted below:



20. Non-discrimination in employment -

(4) No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if a employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

14. As per Section 20 (4) of Rights of Persons with Disabilities Act, 2016, the **Petitioner is entitled for alternative job with equal pay and equal rank.** Since the Petitioner was not given alternate job despite several representations were submitted to the respondent. As per Section 20 (4) of Rights of Persons with Disabilities Act, 2016, the Petitioner is entitled for payment of salary for invalidate period which is a sum of Rs.9,13,078/- as per the calculation memo filed by the learned Counsel for the Petitioner.

15. In view of the above factual matrix and the ratio laid down by the Hon'ble Supreme Court of India, this Court is of the considered view that the



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impugned Order passed by the third Respondent dated 28.04.2012 is liable to be quashed and the same is hereby quashed.

In the result, ***this Writ Petition is allowed*** and the Respondent is directed to pay the salary along with interest of 7% p.a, PF, Gratuity for the invalidate period from 10.08.2008 to 10.02.2012 as per the Rules and Regulations of the Respondent Corporation Act within a period of eight weeks from the date of receipt of a copy of this Order. Consequently, connected Miscellaneous Petition is closed. No costs.

08.02.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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- To
1. The State Express Transport Corporation Limited,
by its General Manager,
Pallavan Salai,
Chennai – 600 002.
 2. The State Express Transport Corporation Limited,
Represented by
Assistant Manager (W & A),
Chennai – 600 002.
 3. The Branch Manager,
State Express Transport Corporation Limited,
Coimbatore.



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J.SATHYA NARAYANA PRASAD.J.,

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