



W.P. No.20998 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P. No.20998 of 2013

J.Sivaprakasam

... Petitioner

Vs.

1.Tamilnadu State Transport Corporation
(Salem) Ltd.,
Rep. By its Managing Director,
12, Ramakrishnan Salai, Salem-7.

2.The General Manager,
Tamilnadu State Transport Corporation
(Salem) Ltd.,
Dharmapuri Region, Bharathipuram,
Dharmapuri.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration declaring that the action of the Respondents in not treating the period from 22.05.2003 to 01.12.2009 as duty and not giving the petitioner increments, revision of pay, review/ promotion, etc., with arrears and not fixing the petitioner pay by giving the petitioner pay protection from the date of giving the petitioner alternative employment as illegal and consequently direct the Respondents to treat the period from 22.05.2003 to 01.12.2009 as duty for all purposes and to give the petitioner increments, revision of pay and review/promotion together with arrears for the period from



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22.05.2003 to 01.12.2009 and difference in wages from 02.12.2009 to 30.04.2011 and to pay the petitioner the revised terminal benefits based on the pay to which the petitioner was actually entitled to as on the date the petitioner retirement/ superannuation together with interest at the rate of 12% per annum.

For Petitioner : Ms.G.K.Dharshini
for Mr.V.Ajoy Khose

For Respondents : Mr.M.Aswin

ORDER

The writ petition is filed to declare the action of the Respondents in not treating the period from 22.05.2003 to 01.12.2009 as duty and not giving the petitioner increments, revision of pay, review/ promotion, etc., with arrears and in not fixing the petitioner pay by giving the petitioner pay protection from the date of giving the petitioner alternative employment as illegal and consequently direct the Respondents to treat the period from 22.05.2003 to 01.12.2009 as duty for all purposes and to give the petitioner increments, revision of pay and review/promotion together with arrears for the period from 22.05.2003 to 01.12.2009 and difference in wages from 02.12.2009 to 30.04.2011 and to pay the petitioner the revised terminal benefits based on the pay to which the petitioner was actually entitled to as on the date the petitioner retirement/ superannuation together with interest at the rate of 12% per annum.



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2. While the petitioner was working as Conductor in Krishnagiri Depot of the Respondent Corporation, on 22.05.2003, he met with an accident during the course of his employment and was treated as in-patient and out-patient for quite a long time and also undergone major surgeries. In this connection, the petitioner became unfit for the post of Conductor and could not join the post of Conductor. However, the petitioner was not given any alternative employment. In those circumstances, the petitioner approached this Court by filing a writ petition in W.P.No.17858 of 2008 seeking a direction to refer to Medical Board and to give a suitable employment in terms of Section 47(1) of the Persons with Disabilities Act, 1995. The said writ petition was disposed of on 04.08.2008 directing the Respondents to refer the petitioner to the Medical Board and it is thereafter, the petitioner was referred to the Medical Board. It is only thereafter the petitioner was provided with alternative employment as Helper by order dated 10.11.2009. Aggrieved, the petitioner was relieved from the Krishnagiri Depot on 12.11.2009 and thereafter he was given reposting orders by order dated 02.12.2009 at Dharmapuri Town Depot in the post of Helper by giving him a new staff number MHR 565. However, thereafter the petitioner submitted various representations claiming for pay protection and for continuity of service but the same was not considered by the Respondents. Finally, the petitioner retired from service on



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30.04.2011 on attaining the age of superannuation. As the services of the petitioner from 22.05.2003 to 02.12.2009 was not taken into consideration for the purpose of payment of terminal benefits and pay protection was not granted on re-employment, the petitioner approached this Court by filing the present writ petition praying to treat the period from 22.05.2003 to 01.12.2009 as duty with arrears of pay and also for fixing the pay of the petitioner accordingly by duly providing pay protection from the date of giving alternate employment.

3. This matter earlier came up for consideration before this Court on 13.09.2024. After hearing the matter at length, this Court felt that the action of the Respondent Corporation in not giving pay protection and treating the period during when the petitioner was out of service due to medical reasons as arbitrary and observed that the said period should be taken into consideration for the purpose of fixation of terminal benefits to the petitioner and adjourned the case for the learned counsel for the Respondent Corporation to seek instructions in this regard.

4. Today, when the matter is taken up for consideration, Mr.Aswin, the learned counsel appearing for the Respondent Corporation submitted that the Respondent Corporation is ready and willing to extend the benefit of pay



protection to the petitioner for the period from 22.05.2003 to 01.12.2009 as duty for the purpose of pay fixation and other consequential benefits including to count the said service as qualifying service for calculating the terminal benefits of the petitioner, provided the petitioner does not claim any arrears of salary for the said period. The petitioner also filed an additional affidavit today, the relevant paragraphs of the additional affidavit reads as under:

“5. I respectfully submit that I do hereby state and declare that I am agreeable to the above offer made by the Corporation and also I do hereby agree and declare that I will be satisfied that the period from 22.05.2003 to 01.12.2009 is treated as duty period notionally and without any monetary benefits and if I am paid gratuity and monthly pension by notionally giving me pay revision, increments from 22.05.2003 upto 30.04.2011 based on the revised and increased pay payable to me as on the date of my retirement based on the above notional fixation and by remitting the employer contribution of PF alone for the above period. I do hereby state and declare that I will not make any claim in future for payment of arrears of wages for the period from 22.05.2003 to 01.12.2009 and difference in wages from 01.12.2009 to 30.04.2011.

6. I do hereby agree to dispose the above writ petition based on my undertaking and also, I do hereby declare and state that I will not make any claim in future in any manner towards



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back wages/ arrears for the said period.”

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5. In the light of the above, further adjudication of the matter on merits is not required. The writ petition is disposed of directing the Respondents to allow the benefit of pay protection to the petitioner on re-employment and also treat the period from 22.05.2003 to 01.12.2009 as duty for all practical purposes except for arrears of salary including fixation of pay and calculation of pay payable to the petitioner on his retirement with effect from 30.04.2011. The amounts that are payable to the petitioner pursuant to this order shall be calculated and paid to the petitioner as expeditiously as possible, within a period of 8 weeks from the date of receipt of a copy of this order. No costs.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

- 1.The Managing Director,
Tamilnadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishnan Salai, Salem-7.
- 2.The General Manager,
Tamilnadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Region, Bharathipuram,
Dharmapuri.



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MUMMINENI SUDHEER KUMAR, J.

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