



W.P. No.20999 of 2013

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20999 of 2013

P.Vasu

... Petitioner

Vs.

1.Tamilnadu State Transport Coporation
(Salem) Ltd.,
Rep. by its Managing Director
12, Ramakrishna Salai, Salem-7.

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 10.11.2009 in P.A.2/1788/TNSTC (Dharmapuri)/2009 passed by the 2nd respondent and 10.03.2010 in P.A.2/20/TNSTC(SAlem)/Dharmapuri/2010 passed by the 1st respondent,



W.P. No.20999 of 2013

quash the same in so far as not giving the petitioner continuity of service, pay protection and other service benefits and backwages with effect from 08.12.2003 and consequently direct the respondents to treat the period from 08.2.2003 to 12.11.2009 as duty for all purposes and also to pay him the arrears of wages and all other attendant benefits and also to fix his pay correctly by giving increments, review, etc., from 08.12.2003 with all consequential benefits, award costs.

For Petitioner : Ms.G.K.Dharshini

For Respondents : Mr.M.Aswin

ORDER

This writ petition has been filed seeking writ of Certiorarified Mandamus to call for the records pertaining to the order dated 10.11.2009 in P.A.2/1788/TNSTC (Dharmapuri)/2009 passed by the 2nd respondent and 10.03.2010 in P.A.2/20/TNSTC(SAlem)/Dharmapuri/2010 passed by the 1st respondent and to quash the same in so far as not giving the petitioner continuity of service, pay protection and other service benefits and backwages with effect from 08.12.2003 and also sought for consequential direction to the respondents to treat the period from 08.2.2003 to 12.11.2009 as duty for all purposes and also to pay him the arrears of wages and all other attendant



benefits and also to fix his pay correctly by giving increments, review, etc., from 08.12.2003 with all consequential benefits.

2. While the petitioner was working as Driver at Harur Depot in Salem of the Respondent Corporation, he was unauthorisedly absent from 04.07.2022 and the disciplinary action was taken against him and the petitioner expressed his inability to discharge his duty as Driver, due to his pain and frequent loss of sense in the leg. While so, the petitioner was referred to Medical Board and the Medical Board after examination, submitted its report dated 08.12.2003 that the petitioner is found unfit for the Driver post. However, the petitioner was not given any alternative employment. Under those circumstances, the petitioner approached this Court by filing a writ petition in W.P.No.38094 of 2005 seeking a direction to give alternate employment based on Medical invalidation certificate dated 08.12.2003 issued by the Medical Board and to disburse the entire terminal benefits with interest from 07.01.2004. The said writ petition was withdrawn by the petitioner on 02.12.2009 as the respondent Corporation issued proceedings vide letter No.PA2/1788/TNSTC (Dharmapuri)/2009, dated 10.11.2009 providing, alternate employment as “Helper” by mentioning that



W.P. No.20999 of 2013

the staff No. for the post of Helper will be allotted later. 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. As the services of the petitioner from 08.12.2003 to 12.11.2009 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 08.12.2003 to 12.11.2009 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 to enable the learned counsel for the Respondent Corporation to seek instructions in this regard.



WEB COPY

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 08.12.2003 to 12.11.2009 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 08.12.2003 to 12.11.2009 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 08.12.2003 to 12.11.2009, 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 08.12.2003 to 12.11.2009 and difference in wages from 13.12.2009 to the date of my retirement.

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 back wages/ arrears for the said period.”

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 08.12.2003 to 12.11.2009 as duty for all practical purposes including fixation of pay and calculation of terminal benefits payable to the petitioner on his retirement except for arrears of salary. The amounts that are payable to the petitioner pursuant to this order shall be calculated and paid to the petitioner as expeditiously as possible, at any rate within a period of 8 weeks from the date of receipt of a copy of this order. No costs.



W.P. No.20999 of 2013

26.09.2024

Index : Yes/No
Speaking Order : Yes/No
dpa

To

1.The Managing Director,
Tamilnadu State Transport Corporation
(Salem) Ltd.,
12, Ramakrishna Salai, Salem-7.

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

MUMMINENI SUDHEER KUMAR,J.

dpa



WEB COPY



W.P. No.20999 of 2013

W.P.No.20999 of 2013

26.09.2024