



W.P.No.22186 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.22186 of 2015

K. Marimuthu

... Petitioner

Vs.

1.State Express Transport Corporation Ltd.
Rep.by its Managing Director
Thiruvalluvar Illm,
Anna Salai, Chennai-2.

2.The General Manager(Operation)
State Express Transport Corporation Ltd.
Thiruvalluvar Illam
Anna Salai, Chennai-2.

3.Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
rep. by its Administrator, Thiruvalluvar Illam,
Anna Salai, Chennai-2.

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of Declaration, Declaring that the action of
the respondents in not counting the petitioner entire service from the date of



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appointment to the date of retirement, including the service after the accident during which he was granted injury leave and given light duty for calculation and payment of terminal benefits as illegal and unconstitutional and consequently direct the respondents to pay the petitioner gratuity, pension, commuted value of pension, the earned leave salary, the Benefit under the Labour Welfare Fund, provident fund, commuted value of pension, monthly pension together with increase at the rate of 15% with effect from 01.04.2015, etc, by counting the petitioner entire service from the date of his appointment to the date of retirement/superannuation and after adjusting the amounts already paid to the petitioner, together with interest at the rate of 12% per annum and also to refund the petitioner the sum of Rs.1,804/- which was collected from the petitioner twice with interest at the rate of 12% per annum.

For Petitioner : M/s.R.Krishnaswamy

For Respondents :
(for R1 to R.3) : M/s.C.Gauthamaraj

ORDER

This Writ Petition has been filed to declare that the action of the respondents in not counting the petitioner entire service from the date of appointment to the date of retirement, including the service after the



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accident during which he was granted injury leave and given light duty for calculation and payment of terminal benefits as illegal and unconstitutional and consequently direct the respondents to pay the petitioner gratuity, pension, commuted value of pension, the earned leave salary, the Benefit under the Labour Welfare Fund, provident fund, commuted value of pension, monthly pension together with increase at the rate of 15% with effect from 01.04.2015, etc, by counting the petitioner entire service from the date of his appointment to the date of retirement/superannuation and after adjusting the amounts already paid to the petitioner, together with interest at the rate of 12% per annum and also to refund the petitioner the sum of Rs.1,804/- which was collected from the petitioner twice with interest at the rate of 12% per annum as invalid.

2. The facts leading to the filing of the Writ Petition are as follows:-

2.1 The petitioner had joined the services of the 1st respondent Corporation on 05.06.1981 as a Driver. During the course of his employment on 26.05.1993 when he was driving from Thiruvotriyur in Chennai to Papanasam and as the bus was proceeding near



Thuvrankurichi another bus belonging to the Thirunelveli Depot plying between Thirunelveli and Neyveli collided with the petitioner's bus. As a result of the accident, his left leg below his knee was injured. On account of this accident, he became unfit for the post of a Driver and had been taking treatment. He was granted Medical Leave with pay. After the treatment was over, he was given a light duty in the office of the Thirunelveli Depot.

2.2. The petitioner was thereafter referred to the Medical Board to find out his fitness for the post of Driver. The Medical Board submitted a report dated 16.06.1997 certifying that the petitioner was not fit for the post of Driver. As a result of the report, the 2nd respondent had issued a show cause notice on 31.07.1997 calling upon the petitioner to show cause as to why he should not be discharged from service on medical grounds.

2.3. The petitioner had made a representation requesting the 2nd respondent to provide him with an alternate employment with continuity of service, pay protection and other service benefits with



back wages. However, the 2nd respondent had discharged the petitioner from service on medical grounds by an order dated 03.10.1997 with effect from 30.09.1997. The 2nd respondent provided the petitioner with an alternate employment as a Helper. However, as a fresh entrant with effect from 07.01.1998.

2.4. The petitioner had challenged the above order giving him alternate employment as a fresh entrant Helper in W.P.No.13391 of 2009. This Court by order dated 28.04.2010 was pleased to allow the writ petition as prayed for and directed the 2nd respondent to implement the order within a period of 8 weeks from the date of receipt of a copy of the order. The petitioner in that writ petition has sought for a declaration declaring that the action of the respondent in discharging petitioner's service on the ground of disability which the petitioner acquired during his service and giving alternative employment only as a fresh entrant as illegal, unjust, arbitrary and unreasonable and consequently direct the respondent to give the petitioner continuity of service, pay protection, service benefits with all arrears and consequential benefits from the date of his



appointment as a fresh entrant Helper.

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2.5. Thereafter, the 2nd respondent by an order dated 29.03.2012 had implemented the order of this Court by paying him a sum of Rs.1,74,884/- and granting him the benefit of continuity of service, back wages and other attendant benefits. The petitioner had retired from service on 31.03.2012 on attaining the age of superannuation.

2.6. The petitioner would submit that he had been terminated in the year 1997 on medical grounds and he was paid a sum of Rs.11,790/- towards gratuity. However, the PF amount was not settled. The petitioner would submit that instead of paying the gratuity for a total period of 22 years 5 months 26 days, the 2nd respondent had paid gratuity only for a period of 20 years and deducted 2 years service from his total service. The 2 years that were deducted from his service was the period during which the petitioner was granted medical leave and assigned light duty.

2.7. The petitioner would also submit that his basic pay was



fixed at Rs.10,525/- whereas his colleague who had joined services along with him as a Driver was given a basic pay of Rs.10,625/-.

Therefore, the calculation for the purpose of pension disbursement was also on the basis of an erroneous basic pay and the deduction of terminal benefits for 2 years was totally unconscionable. Therefore, the petitioner has come forward with the above Writ Petition.

3. Though no counter has been filed, the writ petition could be disposed of on the material placed for the consideration of the Court.

4. W.P.No.13391 of 2009 had been allowed granting continuity of service, pay protection, service benefits including arrears and consequential benefits. The order passed therein does not suffer from any ambiguity. That apart, the respondents have also implemented the said order. While so, the deduction of gratuity and another terminal benefits for 2 years and the wrong fixation of the basic pay runs totally contrary to the order passed in W.P.13391 of 2009 which has not been challenged by the respondents.



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5. In view of the above, the Writ Petition is allowed with a direction that the petitioner would be entitled to interest at the rate of 12% from the date when the amounts fell due until the date of payment. No costs.

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(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

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P.T. ASHA. J.,

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