



W.P. No.29782 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P. No.29782 of 2015

D.Panneer

... Petitioner

Vs.

1.The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Salai, Chennai-2.

2.The Financial Advisor Cum Chief Accounts Officer,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Salai, Chennai-2.

3.The Senior Deputy Manager (HRD),
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Salai, Chennai-2.

4.The Administrator,
Tamilnadu State Transport Corporation
Employees Pension Trust,
Pallavan Salai, Chennai-2.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 07.03.2013 passed by the 2nd Respondent in Letter No.4956/Ku.Oo.1/Pension/MTC/2008 and the order dated 14.11.2014 passed by the 3rd Respondent in Letter No.3786/LS(CM) I/MTC/2004, quash the same and



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consequently direct the Respondents to pay the petitioner commuted value of pension and other terminal benefits based on the salary payable to the petitioner as on the date of petitioner's retirement by counting also his service from the date of his dismissal to the date of his superannuation and to pay the petitioner monthly pension with effect from 01.07.2003 with arrears, revision in pension and D.A. By counting the petitioner's entire service both prior to and after the petitioner's medical discharge together with interest, after adjusting the amounts paid already, award costs.

For Petitioner : Ms.V.Porkodi
for Mr.R.Krishnaswamy

For Respondents : Mr.C.Gauthamraj (for R1 to R3)
Mr.C.S.K.Sathish (for R4)

ORDER

The petitioner herein was initially appointed as Driver on 18.01.1974, in the erstwhile Pallavan Transport Corporation Limited which is now operating as Metropolitan Transport Corporation and then the service of the petitioner was absorbed on regular basis with effect from 04.11.1974. It was thereafter the petitioner was discharged from service on medical grounds vide order dated 24.12.1985. However, thereafter based upon the settlement arrived at between the petitioner and the Respondent Corporation, the petitioner was provided with re-employment as fresh entrant on 08.06.1988 without continuity of the services. Thereafter, the petitioner was served with disciplinary proceedings vide order dated 12.10.1999 and thereafter a charge memo dated 12.10.1999 was issued and



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finally after concluding the disciplinary proceedings the petitioner was dismissed from service by order dated 10.10.2001. While the disciplinary proceedings were pending, the petitioner was reinstated in service on 03.11.1999 and continued in service till the date on which he was dismissed from service on 10.10.2001.

2. Aggrieved by the said order of dismissal from service, the petitioner raised an Industrial Dispute before the Labour Court in I.D.No.266 of 2004 and the said case was allowed in favour of the petitioner by an order dated 15.04.2008 holding that the charges against the petitioner were not proved and the learned Labour Court having taken note of the fact that the petitioner has already attained the age of superannuation during the pendency of the said case, an order was passed directing the Respondents to pay retiral and pensionary benefits to the petitioner as if the petitioner was reinstated in service from the date of dismissal and continued in service till the date of superannuation but without backwages.

3. Pursuant to the said award, the petitioner was paid with all the terminal benefits but he was not extended the benefit of monthly pension on the ground that the petitioner has not completed 10 years of service after his reinstatement on 08.06.1988 till the date of his superannuation on 30.06.2003 on the ground



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that the petitioner has not completed the requisite minimum service of 10 years in order to be eligible for payment of pension in terms of Rule 13 of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust (hereinafter referred to as “TNSTCEPF”) by passing the impugned order. Aggrieved by the said order of the Respondents, the petitioner approached this Court by filing this writ petition.

4. The Respondent Corporation filed a counter affidavit contending that on dismissal of the petitioner from service by order dated 10.10.2001 the petitioner was paid the entire pension contribution in terms of Rule 18 of the TNSTCEPF Rules for the services rendered by the petitioner from 08.06.1988 till the date of dismissal from service and also contended that the period during which the petitioner was out of service i.e., from the date of dismissal on 10.10.2001 till the date of superannuation cannot be taken into consideration as he was denied backwages and no contribution was made to the pension fund and the said service cannot be taken into account as it stood excluded. Thus, it is contended that the petitioner fell short of 10 years of service and the petitioner was left with only 9 years, 8 months and 10 days of qualifying service and as such he is not entitled for payment of pension in terms of the TNSTCEPF Rules.



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5. Heard Ms.V.Porkodi, the learned counsel for the petitioner and Mr.C.Gauthamraj, the learned counsel for the Respondents 1 to 3/Corporation and also Mr.C.S.K.Sathish, the learned counsel for the 4th Respondent /Pension Trust.

6. On perusal of the impugned order, it is noticed that the total service of 5 years, 4 months and 12 days is treated as leave on loss of pay which includes the period during which the petitioner was out of service due to the order of dismissal from service with effect from 10.10.2001 till 30.06.2003 i.e., the date of superannuation. As already noted above, by virtue of the award passed by the Labour Court in I.D.No.266 of 2004, the order of dismissal dated 10.10.2001 was found fault with and the petitioner was declared to have been continued in service till the date of superannuation i.e., on 30.06.2003, however, he was denied backwages. The mere fact that the petitioner was denied backwages does not mean that the petitioner was out of service and that period should be treated as leave on loss of pay.

7. The Labour Court consciously came to the conclusion that the petitioner is entitled for reinstatement with continuity of service till the date of attaining superannuation and had denied backwages. Thus the petitioner is



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deemed to have continued in service and under no circumstances it can be said that the said period cannot be counted as service for the purpose of pension. Once the petitioner was granted continuity of service from the date of dismissal from service till the date of superannuation, the stand of the Respondents in excluding the said period and not considering the same as qualifying service for the purpose of payment of pension cannot be sustained.

8. However, the contentions of the Respondents that the petitioner has been paid pension contribution after he was dismissed from service is concerned, no doubt the said amount if any received by the petitioner from the Respondent after dismissal from service before passing of the order in I.D.No.266 of 2004, the said amount is liable to be refunded to the 4th Respondent with appropriate interest.

9. Then, coming to the objection on the ground that there was no contribution to pension fund during the period 10.10.2001 till 30.03.2003 by the petitioner and the Corporation is concerned, in the considered view of this Court the same is also not sustainable.



10. Admittedly, the petitioner was granted relief of reinstatement with continuity of service, however backwages were denied. Hence, it is for the Respondent Corporation to remit the contribution as well as contribution payable by the petitioner towards pension fund during the period the petitioner was out of employment because of the illegal order passed by the Respondent Corporation. In the circumstances, for the period from 10.10.2001 to 30.06.2003, the monies due by the Respondent Corporation as well as the petitioner herein to the pension fund is liable to be remitted by the Respondent Corporation to Respondent 4/ Pension Trust with appropriate interest.

11. In the circumstances, the action of the Respondent Corporation in excluding the period from 10.10.2001 to 30.06.2003 being the period out of service is illegal and unsustainable and the impugned order is accordingly set aside. The writ petition is disposed of directing the Respondent Corporation to remit the contributions payable to the petitioner on its behalf as well as on behalf of the petitioner for the period from 10.10.2001 to 30.06.2003 to the Respondent 4 with interest at the rate of 12% compounded annually to the Respondent 4 within a period of two months from the date of receipt of a copy of this order. Further, in case the petitioner has already received any amount under Rule 18 of the TNSTCEPF Act, the said amount shall be remitted by the petitioner together



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with interest at 12% compounded annually to the 4th Respondent. On remittance of the said amount by the petitioner, the 4th Respondent shall extend the benefit in terms of TNSTCEPF Rules to the petitioner taking into consideration the petitioner's service from 10.10.2001 to 30.06.2003 as qualifying service and extend the benefit of monthly pension to the petitioner with effect from 30.06.2003 within a period of 4 weeks from the date of remittance of the above amount by the petitioner.

12. The writ petition stands disposed of. No costs.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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Pallavan Salai, Chennai-2.
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MUMMINENI SUDHEER KUMAR, J.

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