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W.P.No.6316 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2024

CORAM

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No. 6316 of 2020

and

W.M.P.No.7447 of 2020

P.Murthy

...Petitioner

Vs.

1.The Managing Director,
Metropolitan Transport Corporation (Chennai) Limited,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
Pallavan Salai,
Chennai – 600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records pertaining to the order Ka. No. 25608/ Sa Pi (Ni Na)5 / Ma Po Ka/ 2019 dated 28.5.2019 of the 1st respondent, quash the same and consequently direct the 1st respondent to fix correct basic pay on the date of reinstatement on 29.05.2012 and to revise the pension of the petitioner taking note of his entire service and correct wage payable to him.



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W.P.No.6316 of 2020

For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Mr.C.Gowthamaraj for R1
Mr.C.S.K.Sathish for R2

ORDER

The instant Writ Petition has been filed challenging the order of the 1st respondent dated 28.05.2019.

2.The learned counsel for the petitioner would submit that at the time of retirement, his pay was not fixed properly and therefore, he was forced to get a reduced pension. He would further submit that though the respondents dismissed the petitioner from service on 17.06.1994, he preferred an industrial dispute in I.D.No.544 of 1997, wherein the Principal Labour Court, Chennai, vide order dated 26.03.2003, ordered to reinstate the petitioner with continuity of service, backwages and other attendant benefits. Against which, the Corporation preferred a Writ Petition in W.P.No.22684 of 2004, wherein the learned Single Judge vide order dated 19.01.2012 has passed the following orders. The relevant paragraph is paragraph 11, which reads as follows:

“11.In the result, the writ petition is partly allowed in the following terms:

(i)The award of the Labour Court to the extent of reinstating the second respondent in service with continuity of service is confirmed;

(ii)So far as the backwages ordered by the Labour Court



W.P.No.6316 of 2020

WEB COPY

is concerned, it is modified to the effect that the petitioner shall pay only 50% of the backwages from the date of dismissal till the date of Award of this Labour Court; and

(iii) The amount already paid as per the interim order of this Court shall be accordingly adjusted.”

3. In view of the above order, the order of the Labour Court in respect of continuity of service of the petitioner is confirmed. Further, for the backwages, the learned Single Judge modified to 50% . Hence, the learned counsel for the petitioner would submit that the impugned order is liable to be interfered with.

4. Per contra, the learned counsel for the 1st respondent would submit that they calculated the pension according to the last pay of the petitioner and that the period of dismissal and the subsequent reinstatement could not be calculated for pension, as the petitioner did not pay his portion of the subscription. Therefore, he would submit that the order is well merited. The learned counsel would take this Court to the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, and would submit that as per Rule 2(o), “contributory service” means the period of “actual service” rendered by the member for which the contributions to the Fund have been received, and he would also take this Court to the provision of Rule 2(t), where it speaks about “Non-contributory service” is the period of “actual service” rendered by a



member to which no contribution paid to the Pension. Therefore, those period cannot be construed as a pensionable period to get pension and hence, he would pray to dismiss this petition.

5.I have given my anxious consideration to either side submissions.

6.The prime concern of the learned counsel for the petitioner is that on the date of his retirement, his pay was not rightly fixed. In support of his contention, the learned counsel relied upon the Salary Certificate of the petitioner, as well as one of his Junior Manoharan. On perusal of the Salary Certificate of the petitioner for the month of July 2012, the petitioner's basic pay was Rs.10,125/-. Whereas his junior Mr.Manoharan has received the basic pay of Rs.13,290/- for the month of 5th May 2012. Therefore, it is apparent that after reinstatement, the respondents did not fix the correct pay of the petitioner. Hence, it is appropriate to direct the respondents to fix the correct pay, taking into consideration of pay slip of Mr.Manoharan, having P.F.No.22514 for the month of May 2012. and fix the correct pay of the petitioner, and regulate the pension in accordance with the refixed pay.

7.Coming to the next limb of the submission, the non inclusion of the unemployment period for fixing the pay, *qua* from the date of dismissal till he



was ordered to be reinstated is concerned, it is the submission of the respondents that, since the petitioner did not pay his contribution towards pension, in accordance to the “Tamil Nadu State Transport Corporation Employees' Pension Fund Rules”, he is not eligible to get the pension. However, the learned counsel for the petitioner would fairly submit that he is willing to pay his contribution for the non employment period. In such view of the matter, now the discrepancy urged by the respondents would be regularized by paying the employee contribution for the unemployment period. Accordingly, in view of what is stated herein above, this Court is of the firm view that there is a merit in this Writ Petition.

8. In the result, this Writ Petition is allowed, directing the respondents to re-fix his pay, taking into consideration of his co-employee Mr. Manoharan's salary and also re-fix the quantum of pension. Further, on payment of the petitioner's contribution for the pension amount, the 1st respondent is directed to take into consideration of the non employment period for the calculation of the pension and regulate the pension in accordance with the applicable Rules within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is directed to pay his contribution amount without interest. If there is any due on the part of the petitioner, the 2nd respondent is at liberty to collect such interest amount from the pension arrears to be paid to the



W.P.No.6316 of 2024

petitioner. Consequently, connected Miscellaneous Petition is closed. No costs.

WEB COPY

24.10.2024

Index :Yes/No
Speaking order :Yes/No
Neutral citation :Yes/No
mps

To

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C. KUMARAPPAN, J.

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