



W.P.No.9323 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.9323 of 2021
and W.M.P.No.9911 of 2021

R.Mani

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Petitioner

/vs/

1. Tamil Nadu State Transport
Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem.

2. The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Bharathipuram, Dharmapuri Region,
Dharmapuri.

3. Tamil Nadu State Transport Corporations
Employees Pension Fund Trust,
Rep. by its Administrator,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 2.

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the Order No.Pa Ni2/Papi/TNSTC/Dharmapuri/2020, dated 17.10.2020 issued by the first respondent, treating the period from 25.09.2004 to 04.05.2007 as leave on loss of pay and refusing to count the said period as qualifying service for terminal benefits, quash the same and consequently direct the respondents to count the said period as pensionable service and qualifying service for pension and gratuity and to pay and sanction the petitioner pension for 29 years of service with arrears of difference in pension from 01.07.2016 and also to pay the petitioner a sum of Rs.98,268/- towards difference in gratuity and a sum of Rs.50,100/- towards difference in commuted value of pension, together with interest at the rate of 12% per annum, award costs.

For Petitioner ... Ms.V.Porkodi

For Respondents ... Mr.R.Babu
Standing Counsel for the respondents

ORDER

Heard Ms.V.Porkodi, the learned counsel for the petitioner and Mr.Mr.R.Babu, the learned Standing Counsel for the respondents



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2. The petitioner has filed this writ petition challenging the order passed by the first respondent in No. Pa Ni2/ Papi /TNSTC /Dharmapuri /2020, dated 17.10.2020 and to direct the respondents to count the said period as pensionable service and qualifying service for pension and gratuity and to sanction pension for 29 years of service with arrears and also to pay a sum of Rs.98,268/- towards difference in gratuity and a sum of Rs.50,100/- towards difference in commuted value of pension, together with interest.

3. The petitioner had earlier filed a writ petition in W.P.No.4702/2009 for seeking the following relief:

“ Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the respondent in Se.Mu.Aa.No.PA3/5048/TNSTC/Dha puri/ 07 dated 04.05.2007, quash the same in so far as treating the period from 25.09.2004 to 04.05.2007 as leave on loss of pay and not paying wages and other benefits for the said period and consequently direct the respondent to treat the said period as duty for all purposes and pay the petitioner wages and all other consequential benefits for the said period.”



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4. The said writ petition was allowed on 28.04.2010 and certain directions have been given. Subsequently, the arrears of salary between the impugned period from 25.09.2004 to 04.05.2007 was paid to the petitioner. Now the petitioner's grievance is that the said period has not been taken into account for the purpose of calculating his terminal benefits including pension. Though a direction has been given to consider the said period in pursuant to the earlier direction given by this Court in the above writ petition W.P.No.4702 of 2009, the respondents did not pay the entire service benefits as per the order dated 04.07.2009. This prompted the petitioner to file another writ petition in W.P.No.28148 of 2011 by seeking the following prayer:

“ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondent to give the petitioner the benefit of annual increment, review benefits, etc., given to the petitioner for the period from 25.09.2004 to 04.05.2007 for the period from 05.05.2007 also and to re-fix his basic pay and salary and other allowances on par with his colleagues and immediate juniors in the post of Conductor with effect from 04.05.2007 with arrears of difference in wages, award costs.”



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5. In the said writ petition the following order has been passed:

“ 6. Considering the aforesaid submissions made by the learned counsel appearing for the parties and after having gone through the aforesaid factual matrix and the records placed before this Court, this Court is inclined to dispose of this writ petition with the following orders:

- 1. the respondent is hereby directed to consider the representation of the petitioner dated 17.03.2011, 20.06.2011 and 08.10.2011 and pass orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order.*
- 2. Along with the copy of this order, let the copy of the said representations be also forwarded by the petitioners to the respondent and on receipt of the same, the needful, as indicated above, shall be undertaken by the respondent.”*

6. It seems that that the respondents have misconstrued the above order and passed the impugned order by excluding the service period between 25.09.2004 and 04.05.2007. The order dated 09.02.2021 made in W.P.No.28148/2011 ought to have been understood in consequent to the earlier order passed in W.P.No.4702 of 2009. In the impugned order the first respondent had conveniently chosen not to refer the order made in



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W.P.No.4702 of 2009 and referred some other writ petition in the reference which is not relevant to the relief claimed by the petitioner either in W.P.No.4702 of 2009 or W.P.No.28148 of 2011.

7. In fact, the first respondent himself has admitted in his order that the order passed in W.P.No.4702 of 2009 has not been implemented fully and only because of that the petitioner had filed another writ petition in W.P.No.28148 of 2011. Even though the subsequent writ petition in W.P.No.28148 of 2011 is unnecessary and the petitioner could have proceeded against the first respondent by way of filing a contempt proceedings for having implemented the order in W.P.No.4702 of 2009 in a partial manner, he preferred to file a fresh writ petition. Even in W.P.No.28148 of 2011, the orders have been passed to consider the claim of the petitioner in accordance with law which would imply not to ignore the earlier orders passed by this Court. However, the respondents have ignored the earlier orders of this Court and had chosen to disallow the period between 25.09.2004 and 04.05.2007 while calculating the pensionary benefits / retiral benefits due to the petitioner.



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8. Since the above order has been passed by overlooking, the earlier order, the impugned order is liable to be quashed and the respondents should be directed to pass a fresh order including the services between 25.09.2004 and 04.05.2007 for the pensionary benefits of the petitioner.

9. Accordingly, this writ petition is allowed and the order passed by the first respondent in No. Pa Ni2/ Papi /TNSTC /Dharmapuri /2020, dated 17.10.2020 is hereby quashed and respondents are directed to pass a fresh order by including the services of the petitioner between 25.09.2004 and 04.05.2007 for calculating his pensionary benefits in accordance with the earlier order in W.P.No.4702/2009 dated 28.04.2010, within a period of four weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

21.03.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No

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R.N.MANJULA ,J.

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To:

1. Tamil Nadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem.
2. The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Bharathipuram, Dharmapuri Region,
Dharmapuri.
3. The Administrator,
Tamil Nadu State Transport Corporations
Employees Pension Fund Trust,
Thiruvalluvar Illam,
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