IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

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THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.9529 of 2024

J.Sekar ... Petitioner

Vs.

1. Metropolitan Transport Corporation
Rep.by its Managing Director
Pallavan House, Anna Salai
Chennai – 600 002.

2. The Joint Managing Director
Metropolitan Transport Corporation
Pallavan House, Anna Salai
Chennai – 600 002.

3. The Administrator
Tamil Nadu State Transport Corporation Employees'
Pension Trust
Thiruvallur Illam
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 in Letter No.066/papi (nir) 4/MTC/2024 dated

29.02.2024, passed by the 2nd respondent, quash the same and consequently direct the respondents to pay the petitioner revised monthly pension w.e.f. 01.12.2016 by counting the petitioner's past service from 01.10.1989, the date of enrollment to provident fund to the date of his medical discharge on 15.09.1996 along with his new service as Non-ITI Helper from 05.12.1996 to 30.11.2016, with arrears of difference in pension and other consequential benefits, together with interest at the rate of 12 % per annum, award costs.

For the petitioner : Mr.V.Ajay Khose

For the respondents: Mr.C.Gowthamaraj for RR1 & 2
Mr.C.S.K.Sathish for R3

ORDER

Challenging the order dated 29.02.2024, the petitioner has filed the present Writ Petition.

2. The petitioner was appointed in the respondent – Corporation as a Conductor with effect from 18.05.1989. Since the petitioner suffered from acute asthma, he was referred to the medical board and was discharged from service, upon being medically invalidated by an order dated 11.09.1996.

Thereafter, by an order dated 05.12.1996, the petitioner was given an appointment as a Non-ITI Helper. In the order, it was specifically stated that the appointment would be 'fresh entrant' and the petitioner would not be entitled to claim any of the service benefits in respect of his previous service. The petitioner thereafter retired from service upon superannuation with effect from 30.11.2016. While calculating the petitioner's pension as per the scheme of the Corporation, the said earlier service was not considered and therefore, the petitioner made a representation that his earlier period of service should also be taken into account and considered to be paid appropriate pension. Since there was no positive response, the petitioner filed W.P.No.17694 of 2020 in which an order was passed on 12.10.2023 to consider the representation of the petitioner. Accordingly, the representation of the petitioner has been considered and the claim of the petitioner was rejected on 29.02.2024. Challenging the same, the present Writ Petition is filed.

3. *Mr.V.Ajay Khose*, the learned counsel for the petitioner would

submit that when the petitioner was medically invalidated from service and given re-employment, the same cannot be considered as fresh employment, merely because the respondent – Corporation chooses to say so in the order. According to him, the Persons with Disabilities Act, 1995 had already come into force and therefore, the respondents had no right to non-employ the petitioner on the grounds of medical invalidation. Therefore, at best, it is only the in-between period, which can be treated as a non-contributory period under Rule 2 (t) of the Tamil Nadu State Transport Corporations Pension Rules (Hereinafter referred to as 'the Rules'). However, the entire period has to be taken into consideration. Reading of the Section 19 (1) of the Rules would also fortify the said fact. If a person is medically invalidated, he has to be sanctioned pension at the time of medical invalidation or under 19(c) of the Rules, upon re-employment, he is entitled to pension by calculating the entire period. Therefore, the actions of the respondents are incorrect.

4. He would further submit that in the earlier round itself, a co-

ordinate Bench of this Court has categorically considered the earlier orders and after analyzing the case, directed the respondents to consider the representation of the petitioner. In that event, it is not open for the respondents to reject the application. Therefore, he pleads that the Writ Petition should be allowed.

5. Per contra, *Mr.C.Gowthamaraj,* the learned counsel appearing on behalf of the respondents 1 and 2 would submit that the petitioner's claim is belated. In the year 1996 itself, the petitioner was medically invalidated and was given fresh employment as a fresh entrant. The petitioner accepted the same and continued his service all along. When the said appointment clearly categorizes that the petitioner is a fresh entrant and it has been expressly mentioned that he cannot ask for any of the benefits of the earlier service, the petitioner cannot now belatedly after superannuation only for the purpose of pension, challenge the same and claim that it should be treated as continuous service.

6. *Mr.C.S.K.Sathish*, the learned counsel appearing on behalf of the 3rd respondent would submit that if only the service is provided continuously and contribution is being paid both by the employee and the employer, the Pension Fund Trust can calculate the pension and pay the same. In the absence of any contribution especially during the interregnum period, no pension can be paid for the entire period.

7. I have considered the rival submissions made on either side and perused the material records of the case.

8. There is no dispute about the fact that the petitioner was originally appointed by an order dated 18.05.1989 and that he was discharged from service, upon being medically invalidated with effect from 19.07.1996. However, the petitioner was thereafter appointed as a Non-ITI Helper in the scale of pay of Rs.1690-20-2170/- by the order dated 05.12.1996. It is true that the said order mentions that the petitioner will be a fresh entrant and

that no continuity of service whatsoever has been granted in the said order. However, in a *catena* of Judgments, (one such Judgment in W.A.No.1242 of 2014 dated 15.10.2014) this Court has been holding that such an order treating the re-employment of the medically invalidated as 'fresh entrant' cannot be countenanced in law, especially in view of the Persons With Disabilities Act, 1995, whereunder the respondent – Corporation is under an obligation, to provide employment for medically disabled persons. Therefore, the entire service of the petitioner is liable to be counted.

9. As a matter of fact, as far as the period of non-employment is concerned, if any contribution is due from the petitioner, the same can be adjusted from the arrears that may be payable from the petitioner. Otherwise, following the dictum of the Division Bench in W.A.No.1242 of 2014 dated 15.10.2014 and several other Judgments, I am of the view that the petitioner's appointment as Non-ITI Helper is only re-employment and not a fresh employment. Once it is treated to be re-employment, the petitioner's service from 18.05.1989 has to be calculated for the purpose of

grant of pension.

10. In view thereof, the Writ Petition is allowed on the following terms,

(i) The impugned order dated 29.02.2024 is quashed;

(ii) The respondents are directed to consider the services of the petitioner with effect from the date of his initial appointment i.e., from 18.05.1989 till the date of superannuation as a single service, for the purpose of calculation of pension and accordingly, calculate the pension and pay the same to the petitioner;

(iii) As far as the period of non-employment is concerned, where there is no contribution, the respondents are entitled to deduct the same from the arrears payable to the petitioner;

(iv) The entire exercise shall be carried out within a period of three months from the date of receipt of a copy of this order and the arrears be paid to the petitioner;

(v) If the said exercise is carried out and completed within three months, then the petitioner will not be entitled to any interest for the arrears amount;

(vi) If the respondents do not carry out the said exercise within the stipulated time, then the arrears amount shall carry interest at the rate of 6 % per annum from the date on which it became due till the date of realization;

(vii) No costs.

16.04.2024

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Index: Yes
Speaking order
Neutral citation : Yes

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D.BHARATHA CHAKRAVARTHY, J.,

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