



W.P.No.12379 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.03.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.12379 of 2019

P.Chelladurai

...Petitioner

vs

1.The Managing Director,
State Express Transport Corporation,
(Tamilnadu) Ltd.,
Pallavan Salai,
Chennai-600 002.

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

....Respondents

Writ petition is filed under Article 226 of the Constitution of India

praying for issuance of a Writ of Mandamus to direct the respondents to revise the pension of the petitioner taking note of his entire service and also to pay leave salary for 75.5 days of medical leave which was in credit prior to September 1998.



W.P.No.123/9 of 2019

For Petitioner : Mr.Varadarajalu S.T

For Respondents : Mr.Hasan Faizal

Standing Counsel for R1

Mr.C.S.K.Sathish

Standing Counsel for R2

ORDER

Writ petition is filed for a writ of mandamus to direct the respondents to revise the petitioner's pension taking note of his entire service and also for payment of leave salary for 75.5 days of medical leave which was in credit prior to September 1998.

2. At the time of hearing, learned counsel for the petitioner would submit that he is not pressing the writ petition for the relief of payment of leave salary for 75.5 days of medical leave which was in his credit prior to September 1998. The learned counsel submits that the prayer is confined to the relief of revision of pension taking note of his entire service.

3. The petitioner was employed as Conductor in the respondent corporation on 03.02.1986. Whiles, the petitioner was issued with a charge memo on 17.12.1990 for the misconduct of ticket irregularity. The



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petitioner gave his explanation on 12.01.1991 and as the explanation was found to be unsatisfactory, enquiry was conducted. The enquiry officer held that all the charges were proved. Based on the enquiry report, the petitioner was dismissed from service on 10.09.1992. The petitioner challenged the dismissal order before the Labour Court in I.D.No.160 of 1993 and the same was allowed by the Labour Court vide Award dated 11.08.1994, directing the respondents to reinstate the petitioner with continuity of service but without backwages. Against the Award of the Labour Court, the respondent filed the writ petition in W.P.No.2345 of 1996 and vide order dated 19.04.2002 this Court dismissed the writ petition thereby confirming the Award of the Labour Court. The respondent in pursuance of the order of this Court in the aforesaid writ petition reinstated the petitioner in service on 08.11.2002. The respondent further erroneously revised the salary of the petitioner from 4665/- to 3870/- as basis pay with effect from December 2004 and recovered Rs.27,303/- from the petitioner's salary. The petitioner hence filed writ petition in W.P.No.27931 of 2010 challenging the recovery and wrong fixation of pay which is pending before this Court. The petitioner attained superannuation on 31.03.2018 and pension was granted to him. While calculating the



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pension of the petitioner instead of taking 32 years of continuous service, the respondent calculated only 21 years of service. Due to the erroneous calculation of service, the petitioner's pension was reduced by Rs.10,000/. The petitioner gave representation on 08.02.2019 to correct the anomaly in the pension, but the same was not replied by the respondent. The petitioner therefore was constrained to file the above writ petition for the aforesaid relief.

4. The 1st respondent filed counter, but no explanation was given for the calculation of pensionable service at 21 years instead of 32 years.

5. The learned counsel for the petitioner relied on the Division Bench Judgment of this Court in W.A.No.2302 of 2021 dated 03.02.2022 and submitted that when the termination was illegal, the period during the workman remained out of the employment had to be counted towards pensionable service. The relevant para '8' of the Division Bench Judgment reads as follows:

“Even with the aid of stipulation 10 e as quoted above, permitting the Management or the Pension Trust to exclude the said period as



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non pensionable service would result in acceptance of the said termination to be valid for limited purpose which is already held to be illegal. No one can be permitted to take advantage of / benefited from his own wrong. The workman can not be asked to suffer, for not being in the employment for the fault of his employer. Keeping this in view, we find that, harmonious reading of all the decisions relied by learned advocate for the Pension Trust would lead to this conclusion only. So far financial constraints are concerned, it is a matter to be reconciled by the Pension Trust and the Management of the respective Transport Corporations. Such administrative difficulties can not be permitted to be stretched to the extent of reduction of pension for no fault on the part of the workman."

6. In view of the fact that the petitioner's dismissal was held to be illegal, I am of the view that the Judgment squarely applies to this case. In the light of the above, the Mandamus prayed for is allowed directing the 1st respondent to revise the petitioner's pension taking note of his entire service of 32 years. It is also made clear that the 1st respondent shall deposit its contribution to the pension fund along with interest as per rules within a period of twelve (12) weeks from the date of receipt of a copy of this order and on receipt of the contribution from the 1st respondent along with the interest as per rules, the 2nd respondent shall pass orders in



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accordance with the Rules on the petitioner's pension within a period of eight (8) weeks thereafter.

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The writ petition is allowed with the aforesaid direction. No costs.

12.03.2024

dsn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

To

1.The Managing Director,
State Express Transport Corporation,
(Tamilnadu) Ltd.,
Pallavan Salai,
Chennai-600 002.

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

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