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W.A.Nos.3188 & 3579 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.3188 & 3579 of 2023

and

C.M.P.Nos.26095 & 29314 of 2023

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Illam, Anna Salai,
Chennai - 600 102.

... Appellant in
both W.Ps'

Vs.

1.K.Ramamurthy
2.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai - 6000 002.

... Respondents in
both W.Ps'

Writ Appeals filed under Clause 15 of the Letters Patent, against the order
dated 09.09.2022 made in W.P.Nos.6009 & 6010 of 2022.

For Appellant in
both W.Ps'

: Mr.A.Vinothraj

For Respondents in
both W.Ps'

: Mr.P.M.Subramaniam
Senior Counsel for R1
For Mr.K.Malaikannu



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COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

The present writ appeals are filed by the appellant Transport Corporation challenging the common order dated 09.09.2022 passed by the learned Judge in W.P.Nos.6009 and 6010 of 2020.

2. The brief facts leading to the filing of the present appeals are as follows:

2.1. The first respondent workman was initially appointed as a Conductor by the appellant Corporation on 03.06.1985. He was subsequently removed from service on 16.06.1990, pursuant to the disciplinary proceedings. He was reappointed on 24.10.1990 as a fresh entrant, which was accepted by the respondent. In 1991, his name was struck off from the rolls due to his unauthorized absence. Feeling aggrieved, the first respondent approached the Labour Court by filing I.D.No. 507 of 2002. After due contest, the Labour Court passed an award on 08.02.2008 directing the appellant Transport Corporation to reinstate the first respondent in service with continuity of service and other attendant benefits, but without backwages. Challenging the order so passed by the Labour Court, the appellant Transport Corporation filed Writ Petition No.24197 of 2009, which was dismissed by the learned Judge on 14.07.2011. Thereafter, the first respondent was reinstated in service in the year 2012 and he



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retired from service on 28.02.2014. However, the first respondent was not paid any benefits including pension. Therefore, he preferred the following writ petitions:

'W.P.No.6009 of 2020 - for a mandamus directing the appellant Transport Corporation to reckon the first respondent's service from the date of entry into service till his retirement and pay pension and gratuity; and

W.P.No.6010 of 2020 - for a mandamus directing the appellant Transport Corporation to regulate the first respondent's pay notionally on par with his immediate junior from 17.01.1991 granting increments and benefits of intervening wage settlements and fix his basic pay in the time scale of pay prevailing on the date of Labour Court award and pay arrears of wages from 08.02.2008 after adjusting the 17B wages and also to pay his retiral benefits including pension.

2.2. By order dated 09.09.2022, the learned Judge allowed both the writ petitions. The operative portion of the same is usefully extracted below:

"15....There shall be a direction to the respondents Corporation to extend all attendant benefits to the petitioner from 24.10.1990 till 28.02.2014, the date of his reinstatement and out of this period, from 17.01.1991 till 08.02.2008, the petitioner is not entitled for any backwages and after the subsequent period till his reinstatement, he is entitled to get backwages. The petitioner also would be entitled to get the pay revision by taking into account of his continuity of service right from the date of reappointment in the year 1990 till his superannuation and accordingly such revision also shall be made. After calculating the revised pay, the pensionary benefits also shall be calculated by taking into account of the total service from 1990 till 2014 and all these benefits with arrears as indicated above shall be calculated and be paid to the petitioner within a period of twelve(12) weeks from the date of receipt of a copy of this order."

2.3. Challenging the above order passed by the learned Judge, the appellant Transport Corporation has filed these appeals before this court.



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3. The learned counsel for the appellant Transport Corporation submitted that good conduct is an implied condition for grant of pension and its continuance, whereas the first respondent was subjected to criminal as well as disciplinary proceedings. Adding further, the learned counsel submitted that the first respondent was convicted by the trial court for a grievous offence under section 302 IPC, though he was acquitted by the appellate court. That apart, the disciplinary proceedings was initiated against the first respondent on the ground that he had suppressed the fact of his arrest between 27.01.1989 and 21.02.1989 and submitted a letter for medical leave as if he was sick. Therefore, the first respondent is not entitled for any pension. It is also submitted that the first respondent worked only for lesser period after reappointment in 1990 and hence, there was no contribution by him towards pension scheme. Without considering all these aspects, the learned Judge erred in disposing the writ petitions filed by the first respondent in his favour. The learned counsel further submitted that the learned Judge erred in holding that the first respondent workman is entitled for backwages from the date of the award of the Labour Court till his reinstatement ignoring the fact that for the said period, he was paid his last drawn salary under section 17(b) of the Industrial Disputes Act. With these submissions, the learned counsel sought to set aside the order of the learned Judge and allow these writ appeals.



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4. Per contra, the learned counsel for the respondent submitted that after analysing the facts and circumstances of the case, the learned Judge has rightly disposed of the writ petitions filed by the first respondent by the order impugned herein, which does not call for any interference by this court.

5. Heard the rival submissions and perused the materials available on record.

6. It is an admitted fact that in the Industrial Dispute filed by the first respondent workman, the Labour Court by its award dated 08.02.2008, directed the appellant Transport Corporation to reinstate him in service, with continuity of service, but without backwages. The writ petition filed by the appellant Transport Corporation challenging the said award of the Labour Court, was dismissed by the writ court, by order dated 14.07.2011. As against the same, the appellant Transport Corporation has not preferred any appeal. Thus, the award of the Labour Court, has attained finality and the same is binding on the parties. At this belated stage, the appellant cannot be allowed to indirectly challenge the said award by disputing the grant of pensionary benefits.

7. It is the specific contention of the learned counsel for the appellant Transport Corporation that good conduct is an implied condition for grant of



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pension and its continuance, whereas the first respondent was subjected to criminal as well as disciplinary proceedings. This court cannot accept the said contention. Though the criminal case was ended in conviction by the order of the trial court, but on appeal, the first respondent was acquitted from the same. Likewise, the disciplinary proceedings initiated against the first respondent came to an end in 1990 and thereafter, he was reappointed as a fresh entrant on 24.10.1990. Once past misconduct has been condoned and the employee was reappointed, the concluded disciplinary proceedings cannot be raked up years later to his detriment. Hence, the appellant Transport Corporation is estopped from resurrecting the long dead disciplinary proceedings to discontinue pensionary benefits due to the first respondent. Similarly, the factum of respondent's conviction by the trial court, which did not sustain in the appeal, cannot be relied upon to deny him the pension.

8. Regarding backwages, it is to be noted that the respondent was reinstated in service in the year 2012 and he retired from service on reaching the age of superannuation on 28.02.2014. As already stated above, the Labour Court, in its order dated 08.02.2008, held that the respondent is entitled for reinstatement with continuity of service with all attendant benefits, without backwages and the same was also affirmed by order dated 14.07.2011 passed in W.P.No.24197 of 2009, which attained finality as there was no appeal filed by the



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appellant Transport Corporation. In view of the same, the learned Judge has rightly observed that from the award of the Labour court, the first respondent is entitled for backwages because the reinstatement was belatedly made by the appellant Transport Corporation only after knowing the decision made by the writ court in the year 2011. It was also correctly observed by the learned Judge that since the Labour court has extended the benefit of continuity of service with all attendant benefits like revision of pay and other corresponding pay revisions on par with his juniors, notionally, without backwages, for the said period from 1991 till 2008, after 2008, the first respondent would be entitled for such backwages on the revised pay scale. In the light of the same, the plea of the appellant Transport Corporation that only from 2012 to 2014 the first respondent worked in the Transport Corporation and hence, he is not entitled to get any benefits, cannot be countenanced by this court.

9. Thus, we do not find any reason to interfere with the order of the learned Judge, warranting interference. Accordingly, both the writ appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes / No.

Speaking order/ Non-speaking order

Neutral Citation: Yes / No.

[R.M.D,J.] [M.S.Q, J.]
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R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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To

1. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Illam, Anna Salai,
Chennai - 600 102.
2. The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai - 6000 002.

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