



W.P.(MD).No.12710 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.12710 of 2022

K.Kaliyaperumal

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Kumbakonam,
Thanjavur District.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Division, Periyamilaguparai,
Trichy.

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

... Respondents



W.P.(MD).No.12710 of 2022

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring action of the respondents in treating the petitioner's service from 05.09.2006 to 18.06.2016 as leave on loss of pay / non pensionable service as illegal, arbitrary and consequently direct the respondents to count his entire service from 03.10.1984 to 31.01.2018 including the period from 05.09.2006 to 18.06.2016 for the purpose of calculation of his monthly pension, gratuity and all other terminal benefits and further directing the respondents 1 and 2 to pay necessary Employer's Provident Fund Contribution for the said period from 05.09.2006 to 18.06.2016 to the 3rd respondent Trust and directing the respondents to pay the petitioner, the difference in pension, gratuity and all other terminal benefits with arrears along with interest at the rate of 6% per annum from the date of the petitioner's retirement to till the date of disbursement.

For Petitioner : Mr.A.Rahul

For R-1 & R-2 : Mr.K.Jegadeesh Balan,
Standing Counsel

For R-3 : Mr.S.C.Herold Singh,
Standing Counsel

ORDER

The present writ petition has been filed to declare the action of the respondents in treating the petitioner's service from 05.09.2006 to 18.06.2016



W.P.(MD).No.12710 of 2022

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as leave on loss of pay / non pensionable service as illegal, arbitrary and consequently direct the respondents to count his entire service from 03.10.1984 to 31.01.2018 including the period from 05.09.2006 to 18.06.2016 for the purpose of calculation of his monthly pension, gratuity and all other terminal benefits and further directing the respondents 1 and 2 to pay necessary Employer's Provident Fund Contribution for the said period from 05.09.2006 to 18.06.2016 to the 3rd respondent Trust and directing the respondents to pay the petitioner, the difference in pension, gratuity and all other terminal benefits with arrears along with interest at the rate of 6% per annum from the date of the petitioner's retirement to till the date of disbursement.

2. The brief facts which are necessary for the disposal of this Writ Petition is as follows:-

(i) The petitioner joined as Conductor in the 1st respondent Corporation with effect from 03.10.1984 and he was confirmed in service with effect from 01.09.1986. He was promoted as Senior Conductor with effect from 01.08.1991 and then as Selection Grade Conductor with effect from 24.08.2001. While so,



W.P.(MD).No.12710 of 2022

he suffered defective eye vision in both eyes. On his request, he was referred to Trichirappalli Region Medical Board by proceedings of the 2nd respondent dated 29.06.2006 to ascertain his physical fitness. The petitioner was examined by the Medical Board on 07.07.2006 and the Medical Board issued a Medical Report dated 08.07.2005 in which he was certified that he suffered defective vision in both eyes and his near vision could not be sufficient for doing Conductor duty.

(ii) In the meanwhile, the petitioner was issued with show cause notice dated 21.07.2006 by the 2nd respondent calling upon him to explain as to why he should not be discharged from service on medical grounds. The petitioner submitted his explanation on 21.08.2006, thereafter, an order was passed on 05.09.2006 by discharging the petitioner from service on medical grounds. Challenging the same, the petitioner filed W.P.(MD)No.4991 of 2009 seeking to direct the respondents to give suitable alternative employment in accordance with law before this Court. This Court passed an order dated 24.11.2015, favourably to the petitioner and the operative portion of the same is extracted as follows:



W.P.(MD).No.12710 of 2022

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“20. In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (appellant 1) with effect from 21 March 1997 must be held to be bad and illegal. In view of the provisions of S.47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc. till the date of his retirement. The amount of terminal benefits paid to him should be adjusted against the amount of his salary from 22 March 1997 till date. If any balance remains, that should be adjusted in easy monthly instalments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustments as directed, should be made to him within six weeks from the date of presentation of a copy of the judgment before the Secretary of the Board.”

8. In view of the discussions of the Apex Court, the respondent-Corporation is directed not to discharge any workman, who is found not suitable for the post due to the acquiring of disability, but to provide alternative employment with pay protection, as per Section 47 of the Act. Particularly in cases where workmen acquired disability during and out of employment and the same is very well known to the Corporation, the respondent Corporation has also moral responsibility besides the legal duty under Section 47 of the Act to provide alternative employment and the workmen shall be paid wages during the interregnum, if any.



W.P.(MD).No.12710 of 2022

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9. However, the learned counsel for the petitioner has prayed for counting the service from the date on which the petitioner was discharged till the petitioner was given alternative employment, for all purposes, except for actual payment of wages. Thus, according to the learned counsel for the petitioner, if the service after the accident is counted till the petitioner was given alternative employment, for the purpose of fixing of pay, promotion, review, increment, pension etc., the petitioner would be satisfied. Therefore, according to him, the petitioner is not claiming any actual monetary benefit for the said period.

10. In these circumstances, the following directions are given:

(a) The respondent is directed to provide alternative employment to the petitioner forthwith.

(b) The writ petitioner shall be continued in the alternative employment without any interruption and his pay as Conductor shall be protected as if he continued in service without any interruption in service.

(c) It is reiterated that the petitioner shall be continued in the alternative employment as stated above, and the pay shall be protected and the service from the date on which he was discharged till he was provided alternative employment shall be counted for all purposes, except for making actual monetary benefits.”



W.P.(MD).No.12710 of 2022

WEB COPY

(iii) Thereafter, the petitioner was reinstated as Helper with pay protection and continuity of service vide order dated 08.06.2016 by the 2nd respondent and the petitioner joined as Helper with effect from 18.06.2016. Till the date of his retirement on 31.01.2018, the petitioner served as Helper at Reconditioning Unit, Thuvakudi. Further, he was sanctioned with pension at the rate of Rs.9595/- (Rupees Nine Thousand Five Hundred and Ninety Five only) per month. However, the service of the petitioner from the date of medical discharge to the date of reinstatement i.e., from 05.09.2006 to 18.06.2016 was not taken into account for the purpose of the petitioner's terminal benefits including gratuity and pension. Following which, the petitioner made a representation under RTI Act on 09.09.2021, seeking information whether the said period was taken as pensionable service. Accordingly, the petitioner received a reply from the 2nd respondent on 29.09.2021 to the effect that the period from 05.09.2006 to 18.06.2016 was treated as leave on loss of pay and hence, the same was not taken for the calculation of the petitioner's pension.



W.P.(MD).No.12710 of 2022

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(iv) Aggrieved over the same, the petitioner made a detailed representation dated 31.01.2022 to the respondents to take into account the period of service from 05.09.2006 to 18.06.2016 for calculation of gratuity, monthly pension, review benefit etc., along with 6% interest per annum for the difference amount of the petitioner's terminal benefits. However, the said representation has not been considered. Challenging the same, the present Writ Petition came to be filed to declare the action of the respondents in treating the petitioner's service from 05.09.2006 to 18.06.2016 as leave on loss of pay / non pensionable service as illegal.

3. The learned Counsel appearing for the petitioner has submitted that the action on the part of the respondents in treating the petitioner's service from 05.09.2006 to 18.06.2016 as leave on loss of pay is clearly contrary to the order passed by this Court in W.P.(MD)No.4991 of 2009 dated 24.11.2015 and the information received by the petitioner through RTI Act dated 09.09.2021 would reveal that the attitude of the respondents on considering the period from 05.09.2006 to 18.06.2016 as leave on loss of pay is perse illegal. Hence, he pressed for allowing the Writ Petition.



W.P.(MD).No.12710 of 2022

WEB COPY

4. Per contra, the learned Standing Counsel appearing for the respondents 1 and 2 has submitted that the same could be considered only as leave on loss of pay. Hence, the petitioner cannot insist for allowing the Writ Petition and pressed for dismissal of the Writ Petition. He further vehemently submitted that the petitioner is not at all entitled for interest as well.

5. Heard the learned Counsel appearing for the petitioner and the learned Standing Counsels appearing for the respondents and perused the materials available on record.

6. On perusing the information furnished by the 3rd respondent dated 02.12.2021, it could be appreciated that for the purpose of sanctioning the gratuity amount to the petitioner the entire period between 03.10.1984 to 31.01.2018 has been considered. However, only for the purpose of calculating the pensionable benefits, the period between 05.09.2006 to 18.06.2016 has been categorized as leave on loss of pay. It is pertinent to follow the order passed by this Court in W.P.(MD)No.4991 of 2009 dated 24.11.2015 wherein



W.P.(MD).No.12710 of 2022

the petitioner's pay has been protected from the date of discharge till he was provided with alternative employment and the same shall be counted for the period except for making actual monetary benefits. Hence, except of backwages, the petitioner is entitled to get all the benefits.

7. In view of the same, I have no hesitation to allow this Writ Petition by declaring the petitioner's service considered from 05.09.2006 to 18.06.2016 as leave on loss of pay / non pensionable service is illegal and arbitrary. Consequently, I direct the respondents to count his entire service from 03.10.1984 to 31.01.2018 including the period from 05.09.2006 to 18.06.2016 for the purpose of calculation of his monthly pension, gratuity and all other terminal benefits. I further direct the respondents 1 and 2 to pay necessary Employer's Provident Fund Contribution for the said period from 05.09.2006 to 18.06.2016 to the 3rd respondent Trust and directing the respondents to pay the petitioner, the difference in pension, gratuity and all other terminal benefits with arrears along with interest at the rate of 6% per annum from the date of the petitioner's retirement to till the date of disbursement.



W.P.(MD).No.12710 of 2022

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8. Accordingly, this Writ Petition stands allowed. No costs.

29.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml

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W.P.(MD).No.12710 of 2022

L.VICTORIA GOWRI, J.

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W.P.(MD).No.12710 of 2022

29.01.2024