



W.A.(MD)No.542 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2024

CORAM

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.542 of 2024
and
C.M.P.(MD)No.4140 of 2024**

1.The Administrator,
Tamil Nadu State Transport Corporation
Employee's Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai, Chennai – 2.

2.The Management of Tamil Nadu State
Transport Corporation,
(Kumbakonam Division-III),
Head Office, Karaikudi.

... Appellants

VS

S.Krishnamoorthy

...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of this Court dated 01.08.2022 passed in W.P(MD)No.24440 of 2018.

For Appellants : Mr.S.C.Herold Singh
For Respondent : Mr.S.M.Mohan Gandhi



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JUDGMENT

(Judgment of this Court was delivered by **G.ARUL MURUGAN, J.**)

The Writ Appeal is filed challenging the order, dated 01.08.2022 in W.P.(MD)No.24440 of 2018, wherein, the order passed by the first appellant was quashed and the appellants were directed to include the period of service of the Writ Petitioner between 15.11.1997 and 15.04.2008, as pensionable service and consequently, revise the pension and disburse the arrears of pension.

2.The Writ Petitioner had joined the services of the appellant Transport Corporation, as Conductor, on 11.08.1990. While he was in service, based on the charge memo issued on 23.07.1996, an enquiry was conducted, pursuant to which, his services were terminated on 15.11.1997. Against which, the employee raised an industrial dispute before the Labour Court, Madurai in I.D.No.138 of 1999. An award was passed on 15.04.2008, whereby, the order of termination was set aside and the Transport Corporation was directed to reinstate the employee into service



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with continuity of service without back wages for the relevant period. The award was challenged by both the workman and also the Transport Corporation in W.P.(MD)No.2150 of 2010 and W.P.(MD)No.5246 of 2010, respectively. The employee had challenged the award in respect of denial of back wages and the Transport Corporation had challenged the award in respect of setting aside the order of termination and reinstatement into service. Both the Writ Petitions came to be dismissed on 16.03.2016 and thereby, the award of the Labour Court, dated 15.04.2008, was confirmed.

3. Thereafter, the employee got superannuated from service on 30.04.2016 and while calculating the pensionable service, the service of the employee from 11.08.1990 till 15.11.1997 and further, from 15.04.2008, ie., the date of award till 30.04.2016, which is the date of retirement, has been taken into account. In effect, the period between 15.11.1997 till 15.04.2008, ie., when he was terminated from service and till the date of award, has not been counted, while calculating the pensionable service. Challenging the same, the employee has preferred a Writ Petition.



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4.The learned Single Judge, while considering the Writ Petition, had come to the conclusion that when the order of termination has been set aside by the award of the Labour Court, naturally, the reinstatement of the workman into service would revert back to the date of dismissal and while calculating the pensionary service, the period between termination and till the date of award has to be necessarily taken into account, particularly, when the reinstatement has been ordered with continuity of service. Challenging the order of the Writ Court, the Transport Corporation is before this Court.

5.The learned Standing Counsel appearing for the appellant/Transport Corporation argued that when the Writ Petitioner was discharging his duties, he got involved in misappropriation for which, charges were framed and he was terminated from service. Only pursuant to the award, dated 15.04.2008, he has been reinstated into service and thereby, the period from 15.11.1997 and 15.04.2008 cannot be taken into account, when admittedly, he had not been in employment. The learned Standing Counsel further contended that the appellant Corporation is following Tamil Nadu State Transport Corporation Employee's Pension Fund Trust Rules and the Rules



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clearly specify that the pensionable service means the service rendered by a member for which, the contribution has been received. Further, relying on Rule 13(c), the learned Standing Counsel contended that the Rule clearly stipulates that if there is any non contributory period in service, it shall not be counted for arriving the actual service. Further, as the service rendered by the workman between 15.11.1997 and 15.04.2008 was directed to be treated only for continuity of service and since there was no direction for payment of back wages, the question of contribution during such period does not arise and therefore, the order impugned in this appeal is not in consonance with the Rules and therefore, sought for interference in this appeal.

6.*Per contra*, the learned Counsel for the respondent contended that when the respondent was terminated from service on 15.11.1997 and admittedly, the order of termination was set aside by the Labour Court and an award was passed directing for reinstatement into service with continuity of service, naturally, the Transport Corporation ought to have counted the period from 15.11.1997 to 15.04.2008 for the pensionable service and the exclusion of this period is erroneous, which has rightly been allowed by the



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Writ Court and as such sought for dismissal of the Writ Appeal.

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7.Considered the rival submissions on either side and perused the materials available on record.

8.The respondent herein had originally joined in the service of the appellant Transport Corporation on 11.08.1990 and while in service, based on certain charges, he has been terminated from service on 15.11.1997. The order of termination was challenged by the employee before the Labour Court, Madurai in I.D.No.138 of 1999. By an award passed on 15.04.2008, the Labour Court set aside the order of termination and ordered for reinstatement of workman into service with continuity of service without back wages. The appellant Corporation had challenged the award in W.P.(MD)No.5246 of 2010 and also the workman had challenged the award in respect of denial of back wages in W.P.(MD)No.2150 of 2010. Both the Writ Petitions came to be dismissed by an order, dated 16.03.2016, whereby, the award passed by the Labour Court was confirmed.



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9. Thereafter, the respondent had attained the age of superannuation on 30.04.2016 and pursuant to his retirement, the appellant Corporation, while calculating his service in respect of pension, had taken into account the date of initial appointment from 11.08.1990 to 15.11.1997, the date on which, the employee was terminated from service and also the period from 15.04.2008 till 30.04.2016, ie., the date on which, the award was passed by the Labour Court till the date of retirement. In effect, the Transport Corporation has not counted the period between 15.11.1997 till 15.04.2008 for the pensionary benefits, as the employee had not been in employment. When admittedly, the order of termination had been set aside by the award of the Labour Court with continuity of service and the workman was reinstated into service, such reinstatement relates back to the date of termination and the employee will be entitled to the benefits of the period between the date of termination and reinstatement for his pensionary benefits, as the reinstatement has been ordered with continuity of service.

10. It is the vehement contention of the learned Standing Counsel appearing for the appellant Corporation that since the Corporation is following the Tamil Nadu State Transport Corporation Employee's Pension



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Fund Trust Rules and according to the Rules, the pensionable service means, the service rendered by a member, for which contribution has been received and in view of Rule 13(c), the non-contributory period during the service shall not be counted for arriving the actual service. Therefore, it is the contention of the appellant Corporation that the employee had not contributed towards pension funds for the period from 15.11.1997 to 15.04.2008, as he was not in employment. As per Rule 13(c), the Transport Corporation cannot include this period for counting the pensionable service and therefore, the order impugned cannot be sustained.

11.As it has been held earlier that when the order of termination has been set aside and the workman was directed to be reinstated into service with continuity of service, the reinstatement would relate back to the date of termination and the intervening period has to be calculated for the pensionary service. As far as the contention of the learned Standing Counsel appearing for the appellant Corporation that in view of Rule 13(c), since the workman has not contributed to the pensionary fund, that period cannot be counted into pensionable service, cannot be sustained and accordingly, rejected. The appellant Corporation can pay the contribution



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both on the part of the Management and on the part of the workman for the period between 15.11.1997 and 15.04.2008 and the contribution made on the part of the workman for this period could be adjusted from the arrears of pension to be calculated and paid to the workman.

12.The appellant Corporation by making contribution both on the part of the workman and on the part of the Management for the period between 15.11.1997 and 15.04.2008, can include this period and consider the entire service of the workman from 11.08.1990 till the date of retirement, ie., on 30.04.2016, for the pensionable service and while calculating and paying the arrears of pension, the contribution made by the Management for the workman for the period between 15.11.1997 and 15.04.2008 can be adjusted and the balance can be paid.

13.With the above observation, the order passed by the learned Single Judge is sustained and accordingly, the Writ Appeal stands disposed of. The appellant Corporation shall revise the respondent's pension and disburse the arrears of pension together with consequential revised monthly pension, as indicated above, within a period of six weeks from the date of



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receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
03.04.2024

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

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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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