



W.P.(MD)No.20295 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 09.08.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.20295 of 2022

N.Vittal Raj

... Petitioner

VS

1.The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Rep. by its Managing Director,
Kumbakonam – 612 001.

2.The General Manager,
The Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Nagapattinam Region,
Nagapattinam District.

3.The Administrator,
The Tamil Nadu State Corporation Employees Pension
Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai, Chennai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Declaration, declaring the action of the respondents in treating the petitioner's service from 11.10.1996 to 25.05.2004 as non-pensionable service as illegal, arbitrary and consequently direct the respondents to count entire service of the petitioner from 16.07.1984 to 30.04.2018 including the period from 11.10.1996 to 25.05.2004 for the purpose of calculation of monthly pension, commuted value of pension and other terminal benefits and further directing the respondents to pay the necessary Employer's Provident Fund



W.P.(MD)No.20295 of 2022

Contribution for the said period from 11.10.1996 to 25.05.2004 to the 3rd respondent trust and directing the respondents to pay the petitioner, the difference in pension and commuted value of pension and all other terminal benefits with arrears along with interest at the rate of 6% per annum from the date of his retirement to till the date of disbursement.

For Petitioner : Mr.A.Rahul

For Respondents : Mr.K.Jagadees Balan
Standing Counsel for R1 and R2
Mr.S.C.Herold Singh
Standing Counsel for R3

* * * * *

ORDER

The instant writ petition has been filed by a retired Senior Driver of the respondents transport corporation seeking a declaration that the exclusion period between the date of dismissal and date of the award as non-pensionable service is illegal, arbitrary. The petitioner has further sought for a direction to the respondents to count to the said period for the purpose of calculation of monthly pension, commuted value of pension and other terminal benefits. The petitioner has further prayed for a direction to the respondents to pay the necessary Employer's Provident Contribution for the said period to the third respondent trust and pay the difference in pension and commuted value of pension along with 6% interest per annum.



W.P.(MD)No.20295 of 2022

WEB COPY

2.The petitioner was dismissed from service on 11.10.1996. The petitioner has challenged the said order of the dismissal in I.D.No.14 of 1997 before the Labour Court, Cuddalore. The Labour Court, Cuddalore was pleased to pass an award on 23.03.2004, declaring the termination as invalid and directed the respondent transport corporation to reinstate the petitioner with continuity of service. However, the back wages for the period from 11.10.1996 till 23.03.2004 was rejected to the petitioner.

3.Even though, the award was passed on 23.03.2004, the petitioner was not reinstated. On 19.03.2013, a settlement was arrived at under Section 18(1) of the Industrial Disputes Act, 1947. As per the terms of said settlement, the Management agreed to reinstate the petitioner with continuity of service and without back wages from 11.10.1996 to 23.03.2004 and with 70% of the back wages from 24.03.2004 till the date of joining duty as driver by virtue of the settlement.

4.The petitioner had attained superannuation on 30.04.2018. At the time of fixing the terminal benefits, the respondent corporation had excluded the period between 11.10.1996 and 23.03.2004 for calculating pensionable service



W.P.(MD)No.20295 of 2022

on the ground that during the said period, no wages were paid to the writ petitioner. This action on the part of the respondent corporation has forced the writ petitioner to file the present writ petition seeking a declaration.

5.The learned Counsel appearing for the writ petitioner had relied upon the Judgement of the Hon'ble Division Bench of our High Court in ***The Management of Tamil Nadu State Transport Corporation Limited Vs. The Special Duty Commissioner of Labour and others in W.A.(MD)No.2302 of 2021 dated 03.02.2022*** and contend that in all cases, where back wages are denied, the said concession cannot be stretched to the extent that the said period is to be counted as non-pensionable service. Even the period during which the petitioner was not receiving the back wages, either due to the Court orders or due to the concession given by the concerned workmen, the said period cannot be excluded from pensionable service, unless there is a specific Court order.

6.The respondent corporation has filed a counter, paragraph No.6 is extracted as follows:-

6. "It is submitted that now petitioner file this petition to include the No Back wages period for pensionable service. As per the terms of continuity service that past service period from the date of appointment to dismissal is taken into account for



W.P.(MD)No.20295 of 2022

pension calculation and for the course of No Back wages period that employee's wages settlement benefits were provided to the petitioner and the respective basic pay was re-fixed.

Here that No Back wages period is not consider to calculate the pensionable service. Since for that period this petitioner have no employee provident fund contribution and so that respective employer contribution also not arises automatically.

1. In this condition for No Back wages period that employer contribution was not remitted to the Pension Trust from Transport Corporation. Based on the technical reason only that period not taken into the amount of pension calculation.

2. Based on this technical reason only that period not taken into the account for pension calculation. The above matter clearly mentioned in the Pension Trust Rules 13(c) and mentioned below.

"13. DETERMINATION OF ELIGIBLE SERVICE

c) If there is any non-contributory period during the service, it shall not be counted for arriving the actual service."

7. I have carefully considered the submissions made on either side and perused the materials available on record.



W.P.(MD)No.20295 of 2022

8.The issue is no longer remains *res integra*, the Hon'ble Division Bench in Judgment in ***The Management of Tamil Nadu State Transport Corporation Limited Vs. The Special Duty Commissioner of Labour and others in W.A. (MD)No.2302 of 2021 dated 03.02.2022***, the Paragraph (8) as held as follows:

“On conjoint consideration of the above leads to the conclusion that, on the face of the approval petition of the appellant Management qua the termination of service of the respondent workman having been rejected by the competent authority by a speaking order and further the said order having been confirmed by this Court in writ petition and this writ appeal, the next question is, what would be the consequence thereof. Since learned Single Judge attempted to balance the equities between the parties and for that purpose concession was given on behalf of the workman that he forgoes the actual payment of arrears towards back wages for the said period, We find that, the said concession can not be stretched to the extent that the said period is to be counted as non pensionable service. The Management can not be heard contending that, in absence of any actual payment of arrears, there will not be any payment to Pension Trust Fund and that is how that period has to be excluded as non-pensionable service. We are of the view that the concession on behalf of the workman can not be understood to that extent. As noted in order dated 01 December 2021, at one stage, we had also thought of relieving the workman from that concession, however it would result in additional liability on the public exchequer, therefore we have thought it proper not to do so. This is because, even if it



would not have been on the basis of concession, but on the basis of adjudication by the competent court, it can not be said that the period during which the workman was not in actual employment will automatically be excluded from consideration as non-pensionable service. Once the action of the Management is held to be illegal, the said action is illegal for all purposes and for all consequences. In a given case, either Labour Court or the Writ Court, in the facts of the case may exercise discretion, on permissible parameters, of granting/ not granting back wages but exercise of that power under no circumstances can be read as exclusion of that service as non-pensionable service as sought to be canvassed on behalf of the appellant Management. We make it clear that even in those cases, where back wages is not granted for valid reason, the very fact that the termination was held to be illegal, the period during which the workman had remained out of employment for no fault attributable to him, has to be counted as pensionable service unless it is so specifically ordered / provided by the Court. Even with the aid of stipulation 10 e as quoted above, permitting the Management or the Pension Trust to exclude the said period as 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



W.P.(MD)No.20295 of 2022

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.”

9.In view of the Judgment of the Hon'ble Division Bench, it is clear that in all cases, where the back wages are denied to the workmen either by the Court orders or by way of concession, the same cannot be stretched into such an extent that the said period can be excluded from calculating the pensionable service.

10.In the present case, the award of the Labour Court clearly reveals that the petitioner has been conferred with continuity of service which has been accepted by the Management under 18(1) settlement of the Industrial Disputes Act.

11.In the said circumstances, if the said period is treated as a non-pensionable service, then it would amount to legalising the illegal orders of termination passed by the Management.



W.P.(MD)No.20295 of 2022

WEB COPY

12. Therefore, this Court is of the considered opinion that the writ petitioner is entitled to calculate the period between 11.10.1996 and 23.03.2004 as pensionable service. The respondent transport corporation is directed to reckon the said period also, even though the petitioner has been denied the back wages. The transport Corporation is also directed to remit their share of the contribution to the petitioner trust and thereafter, disburse all the consequential benefits to the writ petitioner within a period of eight weeks from the date of receipt of a copy of this order. The arrears of pensionary benefits and the gratuity benefits will carry interest at the rate of 6% from the date of superannuation till the date of realization.

11. With the above said observations, this writ petition stands allowed. No costs.

09.08.2024

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

To



W.P.(MD)No.20295 of 2022

- 1.The Managing Director,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam – 612 001.
- 2.The General Manager,
The Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
Nagapattinam Region,
Nagapattinam District.
- 3.The Administrator,
The Tamil Nadu State Corporation Employees Pension
Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai, Chennai.



WEB COPY



W.P.(MD)No.20295 of 2022

R.VIJAYAKUMAR, J.

RJR

W.P.(MD)No.20295 of 2022

09.08.2024