



W.P.(MD)No.21913 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.10.2024

Pronounced on : 25.10.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.21913 of 2024

S.Murugesan

... Petitioner

Vs.

1.Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Rep. by its Managing Director,
New Railway Station Road,
Kumbakonam - 612 001.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Periyamilaguparai,
Tiruchirappalli - 620 001.

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

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondents herein i) to revise the wages of the petitioner from 01.09.2007 to 31.012.2009 by considering the period from 08.01.1997 to 26.09.2006 as duty period; ii) to revise the Gratuity,



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leave salary and pension based on such revised wages; iii) to pay Rs.1,33,576/- towards arrears of wages, Rs.81,025/- as arrears of Gratuity, Rs.3,624/- towards arrears of earned leave salary and Rs.6,99,840/- towards arrears of pension with interest at the rate of 12% per annum from the date of due till the date of payment within a time frame that may be fixed by this Court.

For Petitioner : Mr.D.Sivaraman

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

* * * * *

ORDER

The instant writ petition has been filed by a retired driver of the respondent transport corporation, seeking a mandamus to revise the wages and based upon the revised wages to pay gratuity leave salary and pension and for payment of arrears of the same along with 6% interest and continue to pay the revised pension.

A)The facts leading to the filing of the writ petition are as follows:

2.The petitioner herein was dismissed from service on 08.01.1997, pursuant to disciplinary proceedings. The petitioner had challenged the said dismissal order by filing I.D.No.24 of 1999 before the Labour Court, Trichy and



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an award was passed on 11.02.2004 setting aside the order of dismissal and to reinstate the petitioner with continuity of service with 50% of backwages.

3.This order of the Labour Court was challenged by the Management in W.P.No.3152 of 2005 and by the petitioner herein in W.P.No.6309 of 2005. This Court by a common order dated 24.06.2008 disposed of both the writ petitions, dismissing the appeal filed by the Management and confirming the order passed by the Labour Court for reinstatement with an observation that the period between the date of dismissal and the date of reinstatement shall be considered as duty period for all purposes. The appeal filed by the Management was allowed and the award relating to 50% of backwages was set aside.

4.Pending writ petition, the writ petitioner was reinstated on 26.09.2006 without prejudice to the pendency of the writ petition. After the writ petition was allowed on 24.06.2008, the petitioner was reinstated with continuity of service without backwages. The petitioner had attained superannuation on 31.12.2009. Seeking the above said benefits, the petitioner has sent a representation on 23.02.2024. Since there is no response, the present writ petition has been filed.



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B)Contentions of the learned Counsels appearing on either side:

5.It is the grievance of the writ petitioner that though the Labour Court as well as the High Court have confirmed the order of reinstatement with continuity of service, while the petitioner was reinstated on 26.09.2006, the salary of the writ petitioner was not fixed in terms of the said order. Lesser salary was paid on par with his colleagues who were appointed in the year 1986. When the salary is revised, automatically his leave salary and gratuity would get enhanced. It is further grievance of the writ petitioner that the period between 08.01.1997 and 26.09.2006 has not been considered to a pensionable service, despite the order of continuity of service. The petitioner has sought for revision of wages, arrears of wages, revision of pension, arrears of pension and other consequential monetary benefits in the present writ petition.

6.The learned standing Counsel appearing for the respondents relying upon the counter had contended that the salary of the writ petitioner was fixed in September 2006 and the petitioner has retired from service in the year 2009. The representation has been addressed only in the year 2024 and therefore, the writ petition has to be dismissed on the ground of laches. He further contended that without raising any objection, the petitioner has received all the terminal



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benefits in January 2009 itself and therefore, the petitioner is estopped from contending that he was paid lesser salary or lesser terminal benefits.

7.I have carefully considered the submission made on either side and perused the materials available on records.

C)Discussion:

8.The facts captured above will clearly indicate that the petitioner was dismissed from service on 08.01.1997 and he was reinstated on 26.09.2006. The Labour Court as well as the High Court have set aside the order of dismissal and has directed to reinstate the petitioner with continuity of service. Therefore, it is clear that the petitioner would be entitled to all notional benefits between 08.01.1997 to 26.09.2006. Though he is not eligible for receiving any backwages, the salary of the writ petitioner ought to have been fixed, taking into consideration the increments that would accrue to him had he been in service during the above said period.

9.When this Court has confirmed the order of reinstatement with continuity of service, certainly the dismissal period should be treated as pensionable service for the purposes of reckoning the pension. It could be seen



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that the petitioner having retired in the year 2009 has sent a representation only in February 2024 seeking revision of wages and the consequential benefits.

10.The respondent Management has not complied with the order of this Court granting reinstatement with continuity of service. The pension of the writ petitioner ought to have been calculated taking into consideration the dismissal period as a pensionable service. The Management ought to have calculated the increments for the said period and should have revised the payscale of the writ petitioner while he was reinstated on 26.09.2006. However, there is a huge delay on the part of the writ petitioner in sending the representation and thereafter, approaching this Court.

11.The Hon'ble Supreme Court in the case of ***Union of India and Others Vs. Tarsem Singh*** reported in ***2008 (8) SCC 648*** in paragraph No.7 has held as follows:-

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long



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*delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. **Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of the filing of the writ petition.***

12. In the present case, the rights of the writ petitioner got crystallised, when the High Court had confirmed the order of reinstatement with continuity of service on 24.06.2008. However, the representation has been sent only on 26.02.2024 and the writ petition has filed on 11.09.2024. Applying the judgment of the Hon'ble Supreme Court as cited above, this Court is of the



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considered opinion that revision of wages will have serious impact over the pension received by the writ petitioner and therefore, it is a continuing wrong. Hence, the relief sought for by the writ petitioner relating to arrears could very well be restricted to a period of three years prior to the filing of the writ petition.

13. In view of the above said facts, this Court is inclined to pass the following orders:-

a) the respondents herein are directed to reckon the period between 08.01.1997 to 26.09.2006 as pensionable service and pay the employer contribution to the pension trust for the said period;

b) on payment of employer's contribution for the dismissal period to the pension trust, the pension amount shall be revised and the revised pension shall be disbursed;

c) as far as the arrears arising out of revision of pension is concerned, the same shall be calculated and disbursed from 11.09.2021 onwards (three years prior to the date of the filing of the writ petition).

d) the respondents are further directed to revise the pay scale of the writ petitioner by granting increments for the period between 08.01.1997 to 26.09.2006 and revise the scale of pay of the writ petitioner as on 26.09.2006



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and proceed to grant further increments till the date of his superannuation;

e) as far as the arrears arising out of revision of pay scale is concerned, the petitioner shall not be entitled to the same;

f) based upon the revised pay scale, the respondent are directed to calculate the gratuity and leave salary and disburse the same; and

g) the entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

14. With the above said observations, this writ petition stands partly allowed to the extent as stated above. No costs.

25.10.2024

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

RJR



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To

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R.VIJAYAKUMAR, J.

RJR

Pre-delivery order made
in
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