



WP.No.15390 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

WP.No.15390 of 2023

and

WMP.No.14934 of 2023

The Management
Tamil Nadu State Transport Corporation
(Villupuram District) Div Ltd., Vellore Region, Rangapuram
Vellore-632 009

... Petitioner

Vs.

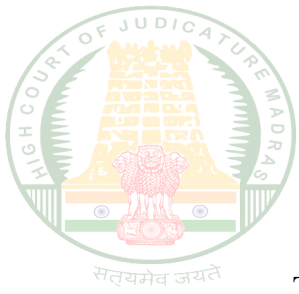
V.Prem Kumar

...Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records of order passed by the Presiding Officer Labour Court, Vellore in C.P. No.01 of 2021 dated 19.10.2022 and quash the same as illegal.

For Petitioner : Mr.S.Pavithra

For Respondents :
: M/s.S.T.Varadarajulu



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ORDER

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The petitioner management seeks to challenge the order passed by the Principal Labour Court, Vellore in CP.No.1 of 2022.

2. Brief facts which have led to the filing of the Writ Petition is here in below set out:-

3. The respondent had joined the services of the petitioner management as a Driver. While on duty, on 14.08.1993, there was an accident as a result of which a pedestrian had suffered fatal injuries. Though the petitioner was not responsible for the accident and it was only the pedestrian whose negligence had caused the accident, the respondent management had initiated a disciplinary proceedings against the respondent and terminated him from service. Challenging the termination order, the respondent had filed ID.No.407 of 1995 on the file of the Principal Labour Court, Vellore. The Labour Court had set aside the termination order and reinstated the petitioner with full backwages and other attendant benefits.

4. Challenging the order of the Labour Court, the management had filed WP.No.41143/2006 on the file of this Court. This Court had



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confirmed the order passed by the Labour Court and had altered only the

backwages from 100% to 90%. This order was further challenged in

WA.No.712/2016 and by order dated 23.06.2016, the Division Bench had

dismissed the Writ Appeal. In the meantime, the respondent had attained

the age of superannuation and therefore this Court had ordered payment of

retirement benefits within a period of 2 months. The petitioner

management had paid 90% of the backwages but had not paid the proper

retirement benefits. While calculating the pension, the petitioner

management had not taken into consideration the total period of service

rendered by the respondent and had only taken a period of 19 years as the

service period and left out 7 years of service. That apart, the surrender pay

and earned leave allowance along with 10 days of wages for the period

from 21.06.2013 to 30.06.2013 was also not paid. The respondent had

therefore filed CP.No.1/2021 on the file of the Principal Labour Court,

Vellore claiming a sum of Rs.5,00,798/-.

5. The petitioner had resisted the above claim by contending that the respondent workman was not entitled for pension for the period that he had not worked. The fact that the respondent had not received 100% of the backwages would clearly substantiate the same. They had further



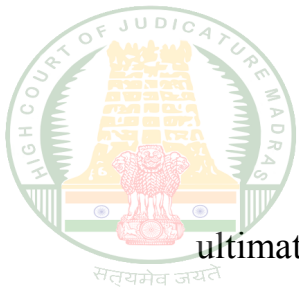
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contended that the claim petition has been filed after a period of 5 years and that since the Pension Trust (competent authority to decide pension) has not been made a party in the Claim Petition, the Claim Petition had to be dismissed.

6. The Labour Court on considering the evidence on record and taking into consideration the judgements passed by the High Court of Jammu and Kashmir and Gujarat held that the respondent is entitled to the difference of pension and 10 days of salary amounting to Rs.3,19,390/. Challenging the same, the petitioner management has come forward with this Writ Petition.

7. M/s.S.Pavithra, the learned counsel for the petitioner management would submit that the period spent in litigating the case is the period of "No work, No pay" and therefore the respondent cannot demand payment for the said period. She would submit that the petitioner has rightly calculated the retirement benefits.

8. Per contra, M/s.S.T.Varadarajulu, the learned counsel for the respondent would submit that the reason for not working is the termination order passed by the petitioner management which has been set aside



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ultimately and in the meanwhile the petitioner had also superannuated.

Despite orders directing reinstatement, the petitioner management neither reinstated the respondent nor granted backwages and the reinstatement remains only on paper.

9. He would also rely upon the judgement of the Hon'ble Division Bench of this Court in WA.No.2302 of 2021 whereby the Bench has held that once the termination is found to be erroneous and the workman is directed to be reinstated, the period from which the termination has been given effect till the date of reinstatement has to be considered as if the workman was deemed to be in service. Therefore, he would submit that the Writ Petition deserves to be dismissed.

10. Heard the counsel on either side and perused the records.

11. It is an admitted case that the petitioner management had terminated the services of the respondent which was challenged by the respondent before Labour Court in ID.No.407/1995. The Labour Court had set aside the termination order and had reinstated the petitioner with full backwages and other benefits. Once, such an order has been passed the respondent is deemed to be in continuity of service. The petitioner



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management had challenged the Labour Court award by filing

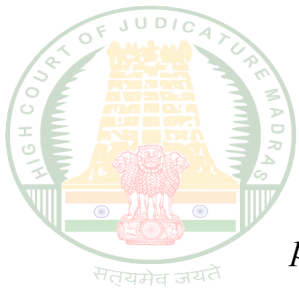
WP.No.41143/2006 which was dismissed. Aggrieved by the said dismissal,

the management had filed WA.No.712/2016 which was also dismissed.

Therefore, the respondent workman is deemed to be in employment from the date of his dismissal.

12. The Division Bench, in the judgement cited by the learned counsel for the respondent workman, had observed as follows:-

" 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,



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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."

13. The dicta laid down in the above judgement are squarely applicable to the facts of the present case.

14. In view of the above, the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.07.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The Presiding Officer Labour Court, Vellore.



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P.T. ASHA. J.,

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