



W.P.(MD)No.6930 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2025

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.(MD)No.6930 of 2017

1. S.K.Rajamanickam (deceased)

2. R.Malarkodi

...Petitioner

(Petitioner impleaded vide Court order dated 17.12.2024 in W.M.P.
(MD)No.25101 of 2024 in W.P.(MD)No.6930 of 2017)

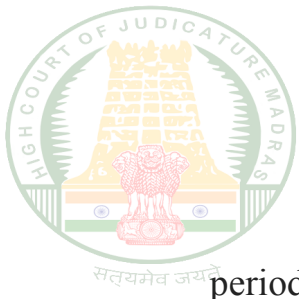
vs.

1.The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam) Ltd.,
Kumbakonam Region,
Kumbakonam.

2.The Administrator,
Tamilnadu State Transport Employees Pension
Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai-2.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a writ of declaration declaring that the action of the
respondents in not taking into account the petitioner's service period
from 01.11.1980 to 31.01.1989 for calculating his pensionable service



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period as illegal and consequently to direct the respondents to pay him pension under the Tamil Nadu State Transport Employees Pension Fund Rules along with arrears of the same from March 2002, together with interest at the rate of 18% per annum.

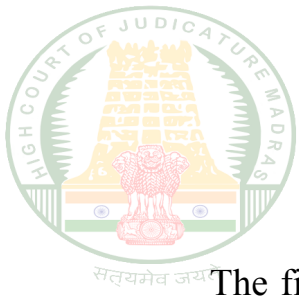
For Petitioner : Mr.S.Arunachalam

For Respondents : Mr.S.C.Herold Singh for R1

ORDER

This writ petition was filed to declare the action of the respondents in not taking into account the first petitioner's service period from 01.11.1980 to 31.01.1989 for calculating his pensionable service period as illegal and consequently to direct the respondents to pay him pension under the Tamilnadu State Transport Employees Pension Fund Rules along with arrears of the same.

2. The first petitioner was appointed as a Driver with the first respondent Corporation with effect from 01.11.1980. He became a member of the Employees Provident Fund and contribution towards the same was also made with effect from 01.11.1980. While so, he came to be dismissed from service on 31.01.1989 on certain alleged irregularities.



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The first respondent filed an Approval Petition in No.21 of 1989 before the Industrial Tribunal for approval of the petitioner's dismissal and the Tribunal vide order dated 30.05.1991 rejected the same. The said order was not at all challenged and the same is still in force as on date.

3. While so, on 23.10.1991, the petitioner and the first respondent entered into a Settlement under Section 18 (1) of Industrial Disputes Act, wherein, the first respondent agreed to reinstate the petitioner in service with continuity of service but without back wages and on the same day, the petitioner was reinstated. On 31.03.2002, the petitioner had retired from service. Thereafter, the petitioner had been making repeated representations to the first respondent to release his pension subsequent to his retirement. However, the first respondent has not responded properly. Ultimately, on 20.02.2017, the petitioner had made a representation to the first respondent to provide pensionary benefits to him along with interest at the rate of 18% per annum. Even then, the first respondent has not taken any action. Hence, the present writ petition.

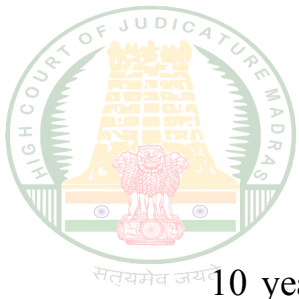


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4. The learned counsel appearing for the petitioner would submit that though the petitioner is entitled for pension as per the Pension Fund Rules, his legitimate right was deprived by the first respondent for the past 23 years. Hence, he prayed for appropriate directions and prayed for allowing the writ petition.

5. *Per contra*, the learned standing counsel appearing for the first respondent would submit that there is no dispute on the aspect that the petitioner was appointed as a Driver with the first respondent on 01.11.1980 and EPF contribution was made with effect from 01.11.1980. The dismissal of the petitioner from service on 31.01.1989 and his reinstatement on 23.10.1991 are also not disputed. He specifically referred to Clauses (1) to (4) of the Settlement under Section 18 (1) of Industrial Disputes Act dated 23.10.1991 and submitted that in terms of the Settlement, continuity of service will be provided from the date of dismissal without any back wages. To avail pensionary benefits, minimum service period of 10 years is required for an employee. Since continuity of service will be provided from the date of dismissal, the petitioner is ineligible for pensionary benefits, as he has not worked for



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10 years. He submitted that the petitioner was originally appointed on 01.11.1980 and dismissed from service on 31.01.1989. The petitioner was thereafter reinstated on 23.10.1991. After reinstatement, the petitioner was unauthorizedly absent for 639 days. Therefore, he petitioner has not completed 10 years service period as required for the grant of pensionary benefits. According to the respondent, the petitioner has contributed service only for a period of 8 years and 7 months and hence he is not entitled for release of pension. Therefore, he submitted that the present petition is liable to be dismissed.

6. I have given due consideration to the submissions made on either side and perused the materials available on record.

7. According to the first respondent, the petitioner is not eligible to avail the pension as he has rendered service only for about 8 years 7 months. To avail the pension, minimum 10 years of service is required. However, according to the learned counsel for the petitioner, the petitioner has almost contributed 17 years 10 months of service for which period, EPF contribution was made as well.



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8. Clauses (1) to (4) of the Settlement under Section 18 (1) of Industrial Disputes Act, dated 23.10.1991, is extracted hereunder.

"(1) The Management agrees to reinstate Thiru S.K.Rajamanickam as Driver with continuity of service from the date of dismissal and without back wages.

(2) His pay is fixed at Rs.960/- in the scale of pay of Rs. 780-15-900-20-1020 as applicable to drivers from the date of his joining duty.

(3) He is not eligible for any monetary benefits both for past service and non-employment period and the non-employment period will not be taken into account for review and any other purpose. The non-employment period will be treated as leave on loss of pay.

(4) He will not have any claim for benefits both for the period of non-employment and for the past services."

9. By referring to Clause(1), the learned standing counsel for the first respondent would submit that the Management agreed to reinstate the petitioner from the date of dismissal and without back wages. Therefore, he interpreted that the continuity of service will be provided from the date of dismissal without back wages.



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10. Even assuming the contention of the first respondent counsel is accepted that continuity of service will be provided from the date of dismissal without any back wages, the petitioner was dismissed from service on 31.01.1989 and thereafter, he retired on 31.03.2002. According to the first respondent, the petitioner was unauthorizedly absent for 1 year 10 months. Even assuming that the period of 1 year 10 months is deducted, then, the service period of the petitioner would be 11 years 4 months and thereby, the petitioner becomes eligible for pension since he has rendered pensionable service i.e., a period of 11 years 4 months.

11. While interpreting the terms of Clause (1) of the Settlement, it provides that the Management at least should reinstate the petitioner with continuity of service from the date of dismissal and without back wages, which means, they intend to provide continuity of service during the dismissal period i.e., the benefit of continuity of service is available to the petitioner even during the dismissal period. Here, 'continuity' refers to continuity of past services with the dismissal period. In view of the above, this Court is of the considered view that 'continuity of service'



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refers to 'continuity of past services' along with the dismissal period, and the same has to be taken into consideration for the purpose of calculation of pension of the petitioner.

12. The learned standing counsel for the first respondent further referred to Clause (3) of the Settlement, extracted above, and submitted that the petitioner is not eligible to any monetary benefits both for past services and non-employment period. He particularly submitted that the petitioner had relinquished his right over the monetary benefits for the past services and therefore, past service period will not be taken into consideration for the purpose of grant of pension and when calculating the pensionary benefits as well. However, this Court is not inclined to accept the said contention of the respondent counsel for the simple reason that, monetary benefits referred to in the said Clause, would mean that, in the event if there are any monetary benefits due and payable for the past services (dismissal period) rendered, as on the date of Settlement arrived at between the parties concerned, the petitioner had relinquished the same. It is not the amount that is crystallized in the form of right and pension amount cannot be considered as due as on the date of the



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Settlement. Thus, by virtue of the Clause (3) of Settlement, the right of the petitioner to consider his past service as pensionable service cannot be taken away.

13. As a whole, by considering all the facts into consideration, the petitioner's service period, in total, comes around 17 years 10 months. Therefore, certainly, in terms of the provisions of the Pension Fund Rules, the petitioner is eligible for pension. Thus, the petitioner is eligible to get the relief as sought for in the writ petition.

14. The first respondent is directed to release the eligible pension to the petitioner along with interest at the rate of 6% per annum. Since the claim for pension was originally made on 15.11.2014, the interest is directed to be calculated from 15.11.2014 till the date of payment. The said exercise shall be completed within a period of 4 months from the date of receipt of a copy of this order. The petitioner is directed to provide all assistance to the first respondent in signing the relevant papers for grant of pension. If any dispute arises in respect of the pension amount to be quantified by the first respondent, then, the



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petitioner shall, at first, sign and accept the amount granted by the first respondent and thereafter, the petitioner is at liberty to approach the appropriate Court and workout his remedy in the manner known to law. Accordingly, the writ petition is allowed to the extent stated about. No costs.

28.01.2025

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

The Administrator,
Tamilnadu State Transport Employees Pension
Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai-2.



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KRISHNAN RAMASAMY, J.

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