

**S. Shanmugam v Government of Tamil Nadu Represented by Chairman and Principal Secretary to Government Transport Department, Chennai and others**

Madras High Court

27 January 2015

W. P. No. 29467 of 2013

The Order of the Court was as follows:

The facts:

1. The petitioner was initially appointed as Trainee Conductor in Tamil Nadu State Transport Corporation (Coimbatore) Limited. The services of the petitioner was regularised with effect from 1 November 1986.
2. The petitioner met with an accident and as a result he was declared unfit to perform the duty of conductor. The third respondent v zide proceedings dated 28 September 1994 decided to discharge the petitioner from service. Thereafter, he was provided with alternative employment as Office Attender. The said appointment was treated as a fresh one. The order of appointment was issued on 17 January 1995. The petitioner was later dismissed from service on account of unauthorised absence. The Labour Court passed an award in his favour in I.D.No.267 of 2004 and thereafter he was re-instated as Helper.

The petitioner on attaining the age of superannuation retired on 31 August 2011. The petitioner wanted the respondents to pay him pension and other benefits taking into account his earlier services. The Tamil Nadu State Transport Corporation Employees Pension Fund Trust issued a clarification relating to clubbing of service. The said clarification and the related letter issued by the Secretary to Government, Transport Department are challenged in this writ petition.

3. Heard the learned counsel for the petitioner, the learned Additional Government Pleader appearing on behalf of the first respondent and the learned Standing Counsel for respondents 2 and 3.

Discussion:

4. The petitioner was appointed as Conductor on regular basis. The petitioner met with an accident and on account of the injuries sustained by him, the medical officer has opined that he is not medically fit to discharge the function of conductor. The petitioner was medically discharged and thereafter appointed as office attender by proceedings dated 17 January 1995. It was only after his retirement the petitioner has come up with a claim to count his past service and to grant him pay protection.
5. It is true that alternative employment was given to the petitioner even before the commencement of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as "the Disabilities Act"). The petitioner sustained injury during the course of his employment. The Corporation was therefore bound to provide him alternative employment. The

Corporation was expected to give him pay protection. Subsequent employment in a different post should not cause prejudice to a medically invalidated person.

6. S. 47 of the Act very clearly provides that the establishment shall not dispense with or reduce in rank an employee, who acquires disability during the course of his service. The term "reduce in rank" would include the service benefits.

7. The core question is whether the petitioner should be given the benefits notwithstanding the fact that he has taken up the claim after his retirement.

8. The petitioner has not challenged the order dated 17 January 1995 appointing him as Office Attender as a fresh candidate. Therefore, there is no question of giving him mandatory benefits at this point of time. The petitioner is justified in his claim that his earlier service as Conductor should be taken into account for the purpose of fixing pension and other benefits.

9. The discharge on medical grounds and the subsequent appointment as fresh employment were all acts performed by the Corporation.

Though the Corporation would be justified in their contention that the petitioner is not entitled for monetary benefits meaning thereby, the differential pay, they cannot be heard to say that he should not be given the benefits notionally and the earlier pay drawn by him would not be taken note of for the purpose of fixing pension and other benefits.

10. I am therefore of the view that the petitioner is entitled to count the earlier service and pay protection for the purpose of fixing pension and other retirement benefits.

Disposition:

11. The respondents are directed to consider the case of the case of the petitioner for pension and other retirement benefits taking into account his earlier service and pass appropriate order. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

12. The writ petition is allowed to the extent indicated above. No costs.

Petition allowed