

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.523 of 2015
and
M.P.No.1 of 2015

The Secretary to Government,
Transport Department,
Secretariat,
Chennai-600 009. ... Appellant

Vs.

1.S.Kamachi
2.The Managing Director,
Metropolitan Transport Corporation,
Chennai-600 002. ... Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 11.09.2012 made in W.P.No.4071 of 2008.

Writ petition filed under Article 226 of the Constitution of India a writ of certiorarified mandamus to call for the records of the 1st respondent relating to the GO MS NO 42 transport RW department dated 27/5/2005 and to quash the condition of not counting the daily paid service while arriving not qualifying service for pension as arbitrary illegal and ultra vires and consequently direct the respondents to sanction pension and to pay arrears of pension from 1/1/1988.

For Appellant : Mr.N.Sakthivel, Government Advocate

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 11.09.2012 passed by the learned Single Judge in W.P.No.4071 of 2008.

2. The writ petitioner was appointed as driver on 28.1.1970 in the Tamil Nadu State Transport Department. After creation of the transport corporation, i.e., Pallavan Transport Corporation, now known as Metropolitan Transport Corporation, he was sent on

deputation on 1.1.1972 and thereafter, he was absorbed on 1.5.1975. The petitioner retired from service on 30.5.1998. Before that, the petitioner was placed under suspension due to involvement in an accident for the period from 23.8.1970 to 6.12.1973 and thereafter, he was removed from service by order dated 7.12.1973. The order of removal was challenged and it was set aside. This Court ordered reinstatement into service with continuity of service from 7.12.1973 to 8.4.1974 with backwages. The period of suspension was treated as loss of pay due to no leave to his credit.

3. The question that arose for consideration in the instant writ petition was as to whether the writ petitioner, according to the respondent, having completed 9 years 4 months 8 days, is entitled to pensionary benefits as per G.O.Ms.No.42, Transport (RW) Department, dated 27.5.2005 after excluding the daily wage service as the same was not pensionable service. The learned Single Judge, relying on Rule 11(2) of the Tamil Nadu Pension Rules, 1978, held that half of the service rendered by him as State Government employee under non pensionable establishment, shall be counted for pensionary benefits along with regular service under pensionable establishment. The grant of benefit of half of the service rendered as daily wager is subject to the service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.

4. It is not the case of the first respondent / appellant herein that the petitioner was absorbed with break. The learned Single Judge, having considered all aspects of the matter, held as under :

"10.The net qualifying service, even according to the second respondent, comes to 9 years 4 months 8 days. By adding 50% of daily wage service of petitioner, which comes to 4 months, the petitioner is having more than 9 years 8 months and 8 days. Rule 43 (3) of the Tamil Nadu Pension Rule, 1978, clearly states that if fraction of the service is within three months, it should be treated as half year service. In this case, the petitioner's service is more than 9 years and 6 months. Therefore, the petitioner's service should be taken as more than 10 years.

11.The Division Bench of this Court in W.P.No.22833 of 2010 considered similar issue in respect of sanction of pension under Section 49(3) of the Central Civil Services (Pension) Rules and held that if a person is having more than 9 years and 6 months of pensionable service, the said period should be treated as 10 years of service for the purpose of sanction of pension. The Division Bench ultimately by order dated 10.11.2010 allowed the writ petition filed by the Central Government Servant.

12. Even though the petitioner has prayed for quashing the portion of the G.O.Ms.No.42, Transport (RW) Department dated 27.05.2005, in the light of Rule 11(2) of the Tamil Nadu Pension Rules, 1978 extracted supra, which is a statutory rule, the same will prevail over the Government Order and hence, the Government Order need not be quashed.

13. Applying the Tamil Nadu Pension Rules, 1978 and also the Division Bench judgment referred above to the facts of the present case, the writ petition is disposed of giving direction to the first respondent to sanction pension to the petitioner treating him as a Transport Department driver from 01.01.1988 by counting 50% of the daily wage service i.e. from 28.01.1970 to 31.03.1982 along with regular service of 9 years 4 months and 8 days as on 31.03.1982. Necessary order is directed to be passed by the first respondent sanctioning the pension and arrears of pension within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed."

5. The learned Government Advocate appearing for the appellant submits that even after treating the half year of service, the writ petitioner has completed only 9 years 8 months and as such, the writ petitioner is not entitled to pensionary benefits as he is not having the minimum qualifying years of service of 10 years.

6. We have heard the learned Government Advocate and have carefully examined the pleadings and documents appended thereto.

7. Rule 43(3) of the Tamil Nadu Pension Rules, 1978 clearly prescribes that if fraction of service is within three months, it should be treated as half year of service. In that event, after treating the half of the service spent as daily wages, the total service of the writ petitioner is computed to be more than 9 years and 6 months. Applying the provision of Rule 43(3) of the Tamil Nadu Pension Rules, the remaining period has to be treated as half year service. We do not find any infirmity or illegality in the order rendered by the learned Single Judge, warranting interference.

8. Accordingly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

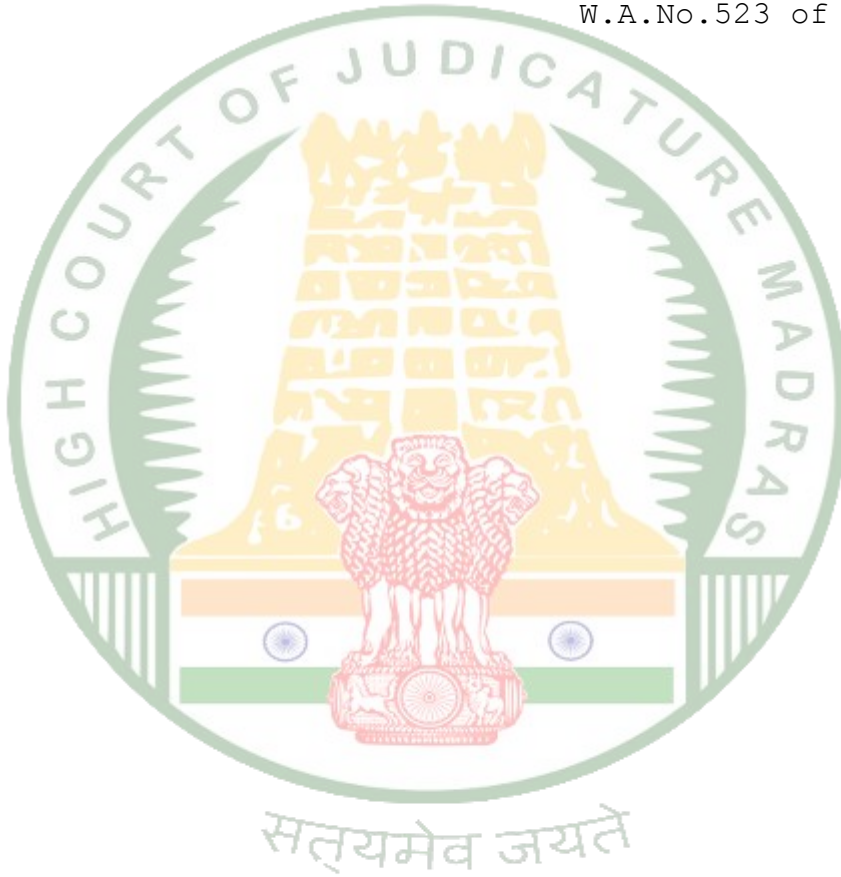
To

The Managing Director,
Metropolitan Transport Corporation,
Chennai-600 002.

+1 cc to M/s.Government Pleader,SR.19763.

cnr (co)
krd 21/4

W.A.No.523 of 2015



WEB COPY