

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.8.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.1752 OF 2014

The Secretary,
Transport Department,
Secretariat, Chennai 9 ... Appellant

versus

1.KA.Padmavathi
2.The Managing Director,
Metropolitan Transport Corporation,
Chennai 600 002 ... Respondents

Appeal filed against the order passed by this Court dated 4.3.2014 passed in W.P.No.30820 of 2008. Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari Mandamus to call for the records of the first respondent relating to the impugned order G.O.Ms.No.42 Transport (RW) Department dated 27.5.2005 and to quash the condition that daily paid services should be excluded while arriving the net qualifying service in Para 5(a) of the Impugned Order and consequently directing the respondents to grant Pension to the Petitioners husband from 1-1-1998 up to 10-6-1993.

For appellant : Mr.P.S.Sivashanmugasundaram, Spl.G.P.

For Respondents : Mr.C.Manohar, for R-1
Mr.Paramasivadosh, for R-2

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

The appellant is aggrieved by the order passed by the learned Single Judge quashing sub clause (a) of Clause 5 of the Government Order in G.O.Ms.No.42, Transport, dated 27 May 2005, excluding the period of daily paid services, leave on loss of pay and suspension, while computing the total period of service for payment of pension.

2. The first respondent filed a Writ Petition in W.P.No.30820 of 2008 before the writ Court, challenging clause 5(a) of the Government Order in G.O.Ms.No.42, Transport Department, dated 27 May 2005, as it is opposed to the provisions of Tamil Nadu Pension Rules. The learned Single Judge allowed the Writ Petition and directed the respondents to grant pension to the 1st respondent. Feeling aggrieved, the appellant is before us.

3. We have heard the learned Government Pleader appearing on behalf of the appellant, learned counsel for the 1st respondent and the learned Standing Counsel for the 2nd respondent.

4. The first respondent is the widow of Thiru.R.Kannan, who was initially appointed as a driver in the erstwhile Tamil Nadu State Transport Corporation. His appointment initially was on daily wages and it commenced from 17 October 1971. Subsequent to the formation of Pallavan Transport Corporation on 1 January 1972, the husband of the first respondent was allowed to continue as a Government employee, on deputation in the newly formed Corporation. The said position continued up to 30 April 1975. He was absorbed in the Transport Corporation with effect from 1 May 1975 and continued to serve as driver till his superannuation on 31 July 1991.

5. The husband of the first respondent was not given pension on account of shortfall in the total service.

6. The matter relating to payment of pension to the erstwhile employees of the transport Department came up for consideration before the Supreme Court. The Supreme Court appears to have fixed the cut off date as 1 April 1982. The Supreme Court directed the Government to call for option from the employees of different transport Corporations and add the service rendered by them in transport Corporation up to 31 March 1982, for the purpose of computing the total service.

7. The husband of the first respondent died in the meantime. The request made by the first respondent for pension was rejected primarily on the ground that the period during which her husband was employed on daily wages cannot be counted for the purpose of calculating the total period of service. The 1st respondent therefore challenged 5(a) of G.O.Ms.No.42, Transport Department, dated 27 May 2005.

8. The Tamil Nadu Pension Rules contain provision for calculating the qualifying service for the purpose of fixing pension. Rule 11(1) provides that temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation. Sub rule (2) of Rule 11 provides for counting 50% of the service rendered on daily wages. Sub clause (a) of Clause 5 of the Government Order in

G.O.Ms.No.42 dated 27.5.2005, runs counter to Rule 11(2) of the Tamil Nadu Pension Rules. The learned Single Judge was therefore perfectly correct in quashing sub clause (a) of clause 5 of the Government Order in G.O.Ms.No.42 Transport Department dated 27 May 2005.

9. The appellant is primarily aggrieved on account of the direction given by the learned single Judge to grant pension to the first respondent taking into account the details of service furnished by her.

10. The Writ Petition was filed to quash the impugned Government Order. After quashing the Government Order, the learned Single Judge ought to have directed the appellant to consider the matter, taking into account the total service rendered by the husband of the first respondent. The learned Single Judge issued a direction to grant pension. We are therefore of the view that the order requires modification insofar as the positive direction is concerned.

11. In the result, the order passed by the learned single Judge quashing sub clause (a) of Clause 5 of the G.O.Ms.No.42 Transport Department dated 27 May 2005 is upheld. We modify the direction given by the learned single Judge to grant pension. The appellant and the second respondent are directed to consider the case of the first respondent for payment of pension, taking into account the service rendered by the deceased employee, including the service rendered by him on daily wages. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this judgment.

12. The writ appeal is disposed of with the above modification. No costs. Consequently, M.P.No.1/2014 and M.P.No.1/2015 are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Secretary,
Transport Department,
Secretariat, Chennai 9

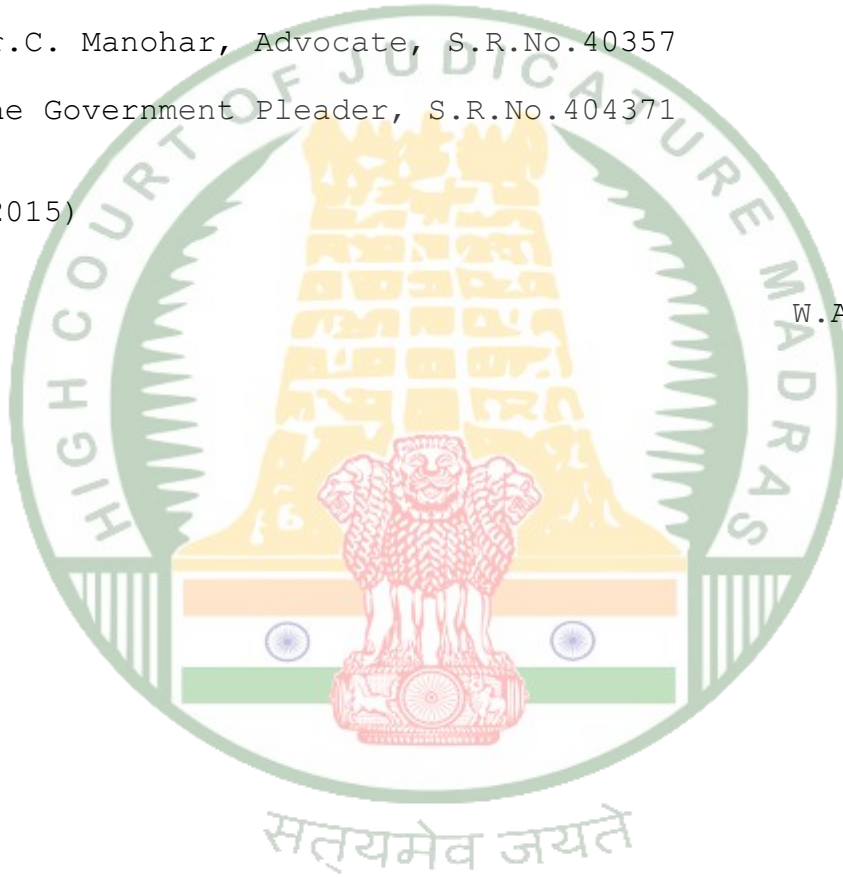
2.The Managing Director,
Metropolitan Transport Corporation,
Chennai 600 002

+1cc to Mr.C. Manohar, Advocate, S.R.No.40357

+1cc to the Government Pleader, S.R.No.404371

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