IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.29414 of 2007

A.S.Hakeem ... Petitioner

vs.

The General Manager
Tamil Nadu State Transport Corporation
(Villupuram Division-II) Ltd.,
(Vellore Region), Villupuram ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records relating to the impugned order letter No.8755/Sa.1/The.Aa.Po.Ka/(V)/Vea.Ma/07, dated 27.07.2007, as illegal and to direct the respondent to pay pension from 01.09.1998 to the petitioner for his service in the transport corporation from 01.04.1982 to 31.08.1998 within a time frame.

For Petitioner : Mr.C.Manohar

For Respondent : Mr.P.Paramasivadoss

O R D E R

Reserved on : 08.09.2014

Pronounced on : 21.12.2015

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus to quash the impugned order, dated 27.07.2007, whereby and whereunder the respondent has rejected the petitioner's claim for implementation of new pension scheme, which came into effect from 01.09.1998, and to direct the respondent to pay pension based on the new pension scheme from 01.09.1998 within a time frame.

2. The short facts of the case are as follows:

According to the petitioner, he was one of the employees in the erstwhile Tamil Nadu State Transport Department and he could not complete ten years of qualifying service as on 01.05.1975 fixed by the Government for absorption in the Transport Corporation. The validity of the cut-off date was challenged by the aggrieved employees before this Court and this Court, both in the writ petitions and the writ appeals, has held the cut-off date fixed by the Government as illegal. The same was challenged by the Government, by filing special leave petition, before the Supreme Court and the Supreme Court has also held the cut-off date fixed by the Government as illegal and fixed a new cut-off date, namely, 01.04.1982 so as to add the requisite period of service of the employees in the Transport Corporation to become eligible for pension. Further, the Apex Court has held that the arrears of pension should be calculated only from 01.01.1988 and it should be paid within four months. Consequently, the Government had issued G.O.Ms.No.42, dated 27.05.2005, as per the directions of the Supreme Court.

3. Further, the petitioner has submitted that his service in the Transport Department upto 31.03.1982 was added with service in the Transport Corporation and he was sanctioned pension of Rs.2,553/- from 01.01.1988. But, his service in the Transport Corporation from 01.04.1982 upto 31.08.1998 A.N., the date on which he was retired from service in the Transport Corporation, has not been taken into account for sanctioning pension from 01.09.1998, in view of the new pension scheme, which came into effect from 01.09.1998, vide G.O.Ms.No.135, Transport Department, dated 15.12.2000. When he approached the respondent, he was informed that he is not eligible for the new pension scheme as he was not on roll as on 01.09.1998, the date from which the new pension scheme was introduced.

4. He has further submitted that the Supreme Court in 2006 (2) ALT 354 has referred to the decision in S.Banerjee v. Union of India, wherein the Apex Court has held that when the employee has retired on the last date of the month, his date of retirement has to be treated as the first of the succeeding month. Explaining all these points, he sent a legal notice, dated 29.05.2007, to the respondent. Since there was no response, he filed a writ petition in W.P.No.21439 of 2007 to direct the respondent to grant pension for him from 01.09.1998 within a time frame and this Court, by Order, dated 25.06.2007, had directed him to send a fresh representation to the respondent and on receipt of the fresh representation, the

respondent was directed to consider the same and pass orders on merits and in accordance with law, within a period of eight weeks thereafter.

5. Further, he has submitted that in view of the said Order, dated 25.06.2007, he submitted a fresh application, dated 02.07.2007, along with a copy of the Order, dated 25.06.2007, passed by this Court as well as a copy of the citation in 2006 (2) ALT 354, with the respondent. However, the respondent has passed the impugned order, dated 27.07.2007, stating that the new pension scheme is applicable only to those employees, who were on duty on 01.09.1998 and he is not eligible for the new pension scheme, since he was retired from service on 31.08.1998. Challenging the impugned order passed by the respondent, he has filed this writ petition.

6. The respondent has filed a counter affidavit stating that as per the directions of this Court, vide Order, dated 25.06.2007, in W.P.No.21439 of 2007, he has considered the petitioner's fresh application and rejected the same by the impugned order, dated 27.07.2007 on the ground that the petitioner has attained the age of superannuation on 31.08.1998 and he was sanctioned pension for the services rendered in Tamil Nadu State Transport Department. Further, the new pension scheme is enforceable only to the employees, who were on roll on 01.09.1998. Since the petitioner was retired from service on 31.08.1998, he is not eligible for the new pension scheme. The Government of Tamil Nadu formed Tamil Nadu State Transport Corporation Employees Pension Fund Trust, by G.O.Ms.No.135 (Transport Department), dated 16.12.2000, wherein it has been stated that the funds shall be deemed to have come into operation as on and from 01.09.1998, notwithstanding the date of the Trust Deed. Therefore, as per the rules, which are in force, there is no possibility of entitlement of pension to the petitioner. For all these reasons, he has prayed for dismissal of the writ petition.

7. The learned counsel appearing for the petitioner has submitted that the petitioner was one of the erstwhile employees in the respondent Transport Corporation and he could not complete ten years of qualifying service as on 01.05.1975 fixed by the Government for absorption in the Transport Corporation. The same was challenged before this Court and subsequently before the Supreme Court. The Supreme Court quashed the said cut-off date and fixed a new cut-off date, namely, 01.04.1982. As such, the petitioner had become eligible for pension. Besides, the Supreme Court held that the arrears of pension shall be calculated from 01.01.1988 and it should be paid within four months. As per the directions of the Apex Court, the service of the petitioner in the Transport Corporation upto 31.03.1982 was added with service

in the Transport Department and pension of Rs.2,553/- was sanctioned from 01.01.1988.

8. Further, the learned counsel has submitted that the service of the petitioner in the Transport Corporation from 01.04.1982 till 31.08.1998 afternoon has to be taken into account for sanctioning of pension from 01.09.1998 in view of the new pension scheme introduced by the Government with effect from 01.09.1998 vide G.O.Ms.No.135, Transport Department, dated 15.12.2000. Therefore, he had approached the respondent seeking pension under new pension scheme. But, the respondent had informed him that he is not eligible for the new pension scheme since he was not on roll as on 01.09.1998. Aggrieved by the same, he filed a writ petition before this Court and this Court had directed him to submit a fresh application to the respondent and directed the respondent to consider the the petitioner's fresh application on merits and in accordance with law. But, the respondent has rejected the petitioner's claim by way of the impugned order, dated 27.07.2007. Hence, he has filed this writ petition seeking the relief as stated above.

9. The learned counsel appearing for the respondent Transport Corporation has submitted that the petitioner had initially filed a writ petition and sought for similar relief to grant pension under new pension scheme and this Court directed the petitioner to submit a fresh representation to the respondent. The respondent, on receipt of the fresh application, considered the claim of the petitioner on merits and in accordance with law and rejected the same by the impugned order. Since the petitioner has attained the age of superannuation on 31.08.1998, he is not eligible for new pension scheme. Further, the Government in G.O.Ms.No.135, dated 16.12.2000, has clearly stated that the funds shall be deemed to have come into operation with effect from 01.09.1998 and notwithstanding the date of the Trust Deed. Therefore, the learned counsel has prayed for dismissal of the writ petition.

10. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the new pension scheme has been introduced by the Tamil Nadu Government vide G.O.Ms.No.135, dated 16.12.2000, wherein it has been clearly stated that the new pension scheme is enforceable only to the employees, who were on role on 01.09.1998. But, in the instant case, the petitioner was retired from service on 31.08.1998. Therefore, the new pension scheme cannot be operated with retrospective effect. In such circumstances, the writ petition is liable to be dismissed.

11. In the result, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:
The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram Division-II) Ltd.,
(Vellore Region), Villupuram.

W.P.No.29414 of 2007

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