BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.02.2015

CORAM

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

W.P.(MD)No.13422 of 2011
and
M.P(MD)No.1 of 2011

B.Mohan ... Petitioner

Vs.

1.The Management of
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Region, Rep. by its,
The Managing Director,
Trichy.

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

3.The Management of Tamil Nadu
State Transport Corporation (Coimbatore) Ltd.,
Rep. by its,
The Managing Director,
Coimbatore. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent relating to the impugned order dated 20.10.2011 passed in Ref; TNSTC/TRY/DS/SM1/WP9541/2010, quash the same and consequently to direct the 1st and 2nd Respondents to take in to account the service periods of the petitioner from 01.06.75 to 03.04.76 in the Department of Transport, Government of Tamil Nadu and also from 01.05.78 to 31.01.79 in the 3rd Respondent Corporation in calculating his pensionable service and consequently direct the 1st and 2nd respondents to pay him full pension and also to pay him arrears of pension from 01.05.2008 with 18% interest p.a.

For Petitioner : Mr.S.Arunachalam
For R1 : Mr.B.Pugalenthi
For R2 & R3 : No appearance



ORDER

The petitioner has come up with this writ petition to call for the records from the 1st respondent relating to the impugned order dated 20.10.2011 passed in Ref; TNSTC/TRY/DS/SM1/WP9541/2010, quash the same and consequently to direct the 1st and 2nd Respondents to take into account the service periods of the petitioner from 01.06.75 to 03.04.76 in the Department of Transport, Government of Tamil Nadu and also from 01.05.78 to 31.01.79 in the 3rd Respondent Corporation in calculating his pensionable service and consequently direct the 1st and 2nd respondents to pay him full pension and also to pay him arrears of pension from 01.05.2008 with 18% interest p.a.

2. The petitioner was appointed as Fitter in the Transport Department on 16.10.1974. By the order, dated 29.06.1975, the petitioner was made as permanent employee and brought into time scale of pay from 01.06.1975. Subsequently, the petitioner was deputed/posted to work at the first respondent Corporation. By the order, dated 04.06.1976 the petitioner was retrenched from service along with other employees. All the employees filed a petition before the Industrial Tribunal. As per the award of the Industrial Tribunal, all the employees, who were retrenched, were reinstated.

3. The petitioner was also appointed by an order, dated 07.01.1978 in the Cheran Transport Corporation, Coimbatore, which is now called as Tamil Nadu State Transport Corporation (Coimbatore) Ltd. The petitioner joined duty on 19.01.1978 in the third respondent Corporation. The petitioner was regularized in service with effect from 01.02.1979. By the resolution of the Board of Directors of the first respondent, dated 19.07.1983, it was decided to give continuity of service to the employees like the petitioner, who were retrenched from service and reinstated subsequently. Therefore, his service was treated as part of his service period. The petitioner was transferred from third respondent to the first respondent from 01.08.1983 and continued to work up to 30.04.2008 on the date of his superannuation and retired on 30.04.2008.

4.According to the petitioner, he has rendered 33 years, 6 months and 13 days of service from the date of his appointment to the date of his superannuation in the first respondent Corporation. The first respondent also issued service details. The first respondent Corporation is covered under The Employees Provident Funds and Miscellaneous Provisions Act, 1952 and it is having a separate scheme to give the benefits under the Employee Provident Fund Act to the employees employed by it by establishing "Cholan Roadways Corporation Provident Fund Trust".

5. The settlement, dated 13.02.1999 U/S.12(3) of the I.D. Act was entered into and as per Rule 2(r) of the Tamil Nadu State Transport Employees Pension Fund Rules, every workman who was in service as on 01.09.1998 would automatically become a member of the pension scheme. Therefore, the petitioner was also a member of

the pension scheme. The petitioner's contributions were deducted from his wages right from the date on which he was made as permanent employee in the Department of Transport i.e., 01.06.1975 upto the date of his retrenchment on 03.04.1976. Thereafter, he became the member of Cheran Transport Corporation Ltd., Employees Provident Fund from 01.05.1978 after joining in the Corporation on 19.01.1978.

6. While, he was in service in the Department, the accumulated contributions in his PF account were transferred to his EPF account in the Cheran Transport Corporation Ltd., Employees Provident Fund after his appointment in the third respondent Corporation. Subsequently, it was transferred to the first respondent Corporation from the third respondent Corporation. As per the above Pension Scheme, the respondents should have calculated his pensionable service from 01.06.1975 the date on which contributions were deducted from his wages to the date of his retirement i.e., 30.04.2008, except the period for which no contribution was made to the E.P.F., Scheme i.e., from the date of his retrenchment from 04.04.1976 to 30.04.1978 i.e., the day up to which no contribution was deducted, after the petitioner joined the services of this respondent on 19.01.1978.

7. According to the petitioner, his entire service period of 33 years, 6 months and 13 days, he was a member of EPF scheme for a period of 30 years 10 months and 28 days, which has to be taken as pensionable service. As per the pension scheme, an employee who has rendered 30 years or above 30 years of pensionable service are entitled to get full pension. Therefore, he is also entitled to get full pension, for his entire pensionable service for a period of 30 years 10 months and 28 days.

8.But, the respondents have paid pension only for 29 years of his service and not paid full pension. The respondents excluded his earlier pensionable service periods from 01.06.1975 to 03.04.1976 in the Transport Department and also from 01.05.1978 to 31.01.1979 in the third respondent in calculating his pensionable service. Therefore, the petitioner approached the first respondent and gave a representation to the respondents. The respondents did not pass any order.

9. Therefore, the petitioner filed a writ petition in W.P.No.9541 of 2010 before this Court, seeking a direction, to direct the first and second respondents therein to take into account the service periods of the petitioner from 01.06.1975 to 03.04.1976 in the Department of Transport, Government of Tamil Nadu and also from 01.05.1978 to 31.01.1979 in the third respondent Corporation in calculating his pensionable service and consequently, direct the first and second respondents to pay him full pension and also to pay him arrears of pension from 01.05.2008 with 18% interest p.a.

10. This Court, by the order, dated 26.07.2011, made in W.P.No.9541 of 2010, directed the first respondent therein to consider the petitioner's representation dated 02.06.2010 on merits and in accordance with law. The first respondent by the impugned order, dated 20.10.2011 rejected the petitioner's claim. Therefore, the petitioner has filed the present writ petition for the relief stated supra. In support of his contentions, the learned counsel for the petitioner relied on the following Orders:-

i)W.P(MD)No.14718 of 2011, dated 01.09.2014 (R.Chellammal v. The Management of Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., and another) wherein in paragraph 10 it has been held as follows:-

*" 10.Applying the same, if we look into the facts of the present case, for counting the qualifying service of the petitioner, the crucial date must be 26.08.1998, because the petitioner has become a member of the Employee Provident Fund in the STC from 26.08.1998. In page No.2 of the typed set of papers, the petitioner has produced the wage bill to show that she had become a member from the said date. Therefore, if her service is counted from 26.08.1998, it goes without any doubt that the petitioner is entitled for monthly members pension under the Tamil Nadu State Transport Corporation Employees Pension Fund Rules. In view of all the above, the writ petition deserves to be allowed."*

ii) W.P(MD)No.6216 of 2008, dated 28.11.2008 (N.Jothi v. The Managing Director, Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Kumbakonam) wherein in paragraphs 4,5 & 6 it has been held as follows:-

*"4. Further, as per the directions of this Court, after getting instructions from the first respondent, today, the learned counsel for the respondents would fairly concede that though the petitioner joined service on 11.12.1980, he became a member of the said scheme with effect from 01.06.1981, and therefore, his qualifying service period should be counted from 01.06.1981. The method of reckoned the actual service is defined in clause (p) Sub clause (iii) of the Tamil Nadu State Transport Corporation Employees' Pension Fund, which reads as follows:-*

*"In respect of all other employees, the date of regular employment or becoming the member of the Employees' Provident Fund in the STU will be reckoned for the calculation of pensionable service".*

*5. A reading of the said provision would make it manifestly clear that the crucial date for counting the actual service is either the date of regular employment or the date on which an employee becomes a member of the scheme. In this case, the petitioner became a member of the said scheme on 01.06.1981. Therefore, his actual period of service should be calculated from 01.06.1981. There is no controversy that after deducting the period spent on leave on loss of pay, if the actual period of service is calculated, then it comes to 19 years, 7 months and 18 days.*

*6. As rightly pointed out by the learned counsel for the petitioner, in an identical situation, a Division Bench of this Court in the Management of State Express Transport Corporation, (Tamil Nadu) Ltd, Chennai 2 vs. P.Rajarathinam rendered in W.A.No.663 of 2007, by Judgment dated 04.07.2008, in paragraph 6, has held as follows:-*

*"The respondent has become a member of the provident fund scheme on 01.10.1981 and he had been retired on voluntary retirement on 30.06.2002. As such, the respondent's qualifying service, relying on that line, come to 19 years and 7 months as actual service and as per Rule 13 (a) of the said Rules, fraction of service for six months or more has to be treated as one year. As such, the respondent had completed 20 years and thus, he is eligible for pension".*

*The view expressed by the Division Bench of this Court squarely applies to the facts of the present case. Applying the same, the actual service of the petitioner viz, 19 years, 7 months and 18 days should be counted as 20 years of actual service, and so, the petitioner is entitled for pension under the scheme. Thus, the impugned order is not sustainable under law, and therefore, the same is liable to be set aside.*

iii) W.A(MD)No.94 of 2010, dated 20.04.2010 (The Managing Director, Tamil Nadu State Transport Corporation, (Kumbakonam) Ltd., Kumbakonam vs. N.Jothi and another) wherein in paragraph 4, it has been held as follows:-

*"4.The learned Judge has held that once the first respondent's service came to be regularised his service would count from the date of his original appointment. In any event, the learned Judge took the date of the respondent's enrolment as a member of the Provident Fund from 01.06.1981 for the purpose of calculation. Based on that, it was found that the actual period of service was 19 years 7 months and 18 days. With that*

*actual details, by applying the Division Bench decision of this Court, in respect of the State Express Transport Corporation rendered in W.A.No.663 of 2007 dated 04.07.2008, the learned Judge held that 19 years 7 months and 18 days should be construed as 20 years of actual service."*

iv) W.A.No.663 of 2007 dated 04.07.2008 (The Management of State Express Transport Corporation (Tamil Nadu) Ltd., rep. by its Managing Director Pallavan Salai, Chennai-2 and another vs. P.Rajarathinam), wherein in paragraphs 5 & 6 it has been held as follows:-

> " 5.According to the respondent, the employees of the corporation are entitled for pension being they are covered by the Employees Pension Fund Scheme framed by the respondent corporation. For calculating the qualifying service as per clause (iii) of Sub Rule (p) of 2, of the Tamil Nadu Transport Corporation Employees' Pension Fund, the date of regular employment or the date on which, the concerned employee becoming a member of the Employees' Provident Fund will be reckoned.
>
> 6. The respondent has become a member of the provident fund scheme on 1.10.1981 and he had been retired on voluntary retirement on 30.06.2002. As such, the respondent's qualifying service, relying on that line, comes to 19 years and 7 months as actual service and as per Rule 13(a) of the said rules, fraction of service for six months or more has to be treated as one year. As such, the respondent had completed 20 years and thus, he is eligible for pension."

11. The first respondent has filed counter affidavit denying the various averments made in the affidavit. In the counter affidavit, it is stated that the petitioner was originally appointed in Tamil Nadu State Transport Department on 17.10.1974. He was retrenched from service w.e.f. 03.04.1976 and therefore, there was a break in service. Again, he was appointed in third respondent Corporation as daily wages on 19.01.1978 and his services were regularized only on 01.02.1979 in third respondent Corporation. As per Part-I and Section 2(q)(iii) of TNSTC EPF Rules read with Govt. Lr.No.11785/D/2003-2, Transport Department, dated 08.09.2003, the period of daily wages or on consolidated wages period shall not count for pension even though Provident Fund recovery has been made from the employee during that period. The services of regular employee from which he be comes a member of Provident Fund shall only be construed as pensionable service.



12. According to the respondents, the petitioner's pensionable service is only from 01.02.1979 to the date of retirement i.e.,

30.04.2008 ie., 29 years, 2 months and 19 days, after deducting LLP days (10 days). Therefore, the petitioner is not eligible for full pension and prayed for dismissal of the writ petition.

13.Heard Mr.S.Arunachalam, learned counsel appearing for the petitioner and Mr.B.Pugalendhi, learned counsel appearing for the first respondent.

14.I have carefully perused all the materials on record and considered the arguments of the learned counsel for the petitioner and respondents.

15.The issue to be decided is the date from which the pensionable service of petitioner is to be reckoned. This issue is no longer *res integra.* This Court has considered this issue and held that for calculating the service for pension as per Clause (iii) of (q) of(2) of Tamil Nadu State Transport Corporation Employees Pension Rules, the date of regular employment or the date on which the concerned employee becoming member of the Employee's Provident Fund will be reckoned. In all the cases referred to above, this Court held that date of becoming the member of the Employee's Provident Fund must be taken as starting point of service of an employee for calculating pension payable.

16. Rule (iii) of Sub Rule (q) of 2 Tamil Nadu State Transport Corporation Employees Pension Rules reads as follows:-

> 2(q)(iii) In respect of all other employees, the date of regular employment or becoming the member of the Employee's Provident Fund in the STU will be reckoned for the calculation of pensionable service."

17.The petitioner became member of Employee's Provident Fund Scheme in the State Transport Corporation on 01.06.1975. In view of the Judgments of this Court referred to above, the pensionable service of petitioner has to be reckoned from 01.06.1975 when he became a permanent employee in Transport Corporation and Provident Fund Contributions were deducted from his salary and he became a member of Employee's Provident Fund Scheme. In view of the above judgments the contentions of respondents that the pensionable service of the petitioner has to be reckoned from 01.02.1979 is untenable. Petitioner's service from 01.06.1975 to 03.04.1976 and 01.05.1976 to 31.01.1979 when Provident Fund contributions were deducted from his salary must also be taken into his salary account which calculating the quantum compensation payable to the petitioner.

18. The writ petition is allowed by setting aside the impugned order of the first respondent, dated 20.10.2011 and the respondents are directed to calculate the petitioner's service for pension from the date on which he became the member of the

Employees Provident Fund Scheme i.e., 01.06.1975. No costs. Consequently, connected M.P.(MD)No.1 of 2011 is also closed.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

1.The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Region,Trichy.

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

3.The Managing Director,
The Management of Tamil Nadu
State Transport Corporation (Coimbatore) Ltd.,
Coimbatore.

+One cc to Mr.S.Arunachalam, Advocate, SR.No.8816

+One cc to Mr.B.Pugalendhi, Advocate, SR.No.9311

am
RL/6 c- 21/5/2015

W.P.(MD)No.13422 of 2011

25.02.2015