BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2015

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition (MD) No.15858 of 2013

Kaliyaperumal ... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its
Secretary to Government,
Transport Department,
Secretariat, Chennai 600 009.

2.The Tamil Nadu State Transport Corporation (Kumbakonam)
Ltd., represented by its Managing Director,
Railway Feeder Road, Kumbakonam.

3.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam)Ltd.,
Trichirappalli Region,
Periyamilaguparai,
Trichirappalli.

4.The Administrator,
Tamil Nadu State Transport Corporation Ltd.,
Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai 600 002. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to pay pension to the petitioner every month with effect from 01.12.2000 and to pay arrears of pension from 01.12.2000 to the petitioner with reasonable rate of interest payable to the petitioner with effect from 01.12.2000 to the date of actual payment.

For Petitioner : Mr.A.Rahul

For Respondents 2-4 : Mr.K.Sathyasingh,
Standing Counsel.

For 1st Respondent : Mr.R.Ananda Raj,
Government Advocate.

ORDER

The petitioner seeks for a Mandamus directing the respondents to pay pension to the petitioner every month with effect from 01.12.2000 and pay arrears of pension from 01.12.2000 with reasonable rate of interest.

2.The case of the petitioner is as follows:-

He joined as driver in the respondents Transport Corporation on 01.08.1979. He became a member of Provident Fund on 01.12.1979. His service was regularised with effect from 01.12.1980. A settlement was arrived at between the management and the employees in the year 1989 which provided a scheme for voluntary retirement. Though eligibility for voluntary retirement scheme is that the person should have 20 years of service or 15 years of service with 50 years of age, the petitioner was permitted to retire under Voluntary retirement scheme on 01.12.2000. The Tamil Nadu State Transport Corporation Pension Fund Rules was approved by the Government of Tamil Nadu by giving retrospective effect from 01.09.1998. Once the petitioner is permitted to retire under voluntary retirement scheme, the respondents cannot deny the benefit of retirement benefits.

3.Counter affidavit is filed by the respondents 2 to 4 wherein it is stated as follows:

The petitioner was initially appointed as temporary driver on 01.08.1979 and his service was regularised with effect from 01.12.1980. Even though the petitioner was a member of the provident fund with effect from 01.08.1979, his service was regularised only with effect from 0 1.12.1980 and therefore, he rendered a qualifying service of 18 years, 8 months and 10 days. As per the clause 64 of the 12 (3) settlement entered in the year 1989 and as per the scheme, a workman who had completed 20 years of service or who had completed 15 years of service and attained the age of 50 years alone can go on voluntary retirement. The petitioner after having retired received a sum of Rs.64,602/- being the employer's contribution and a sum of Rs.17,119/- being the balance available in the employee's contribution in his provident fund account and having received the said sum in full, the question of payment of pension does not arise at all. So the petitioner is not eligible to receive any pension.

4.Learned counsel appearing for the petitioner submitted that having allowed the petitioner to retire on voluntary retirement scheme, the respondents cannot insist upon 20 years of service as qualifying service for voluntary retirement scheme in order to deny the pension. He submitted that the said issue is already covered in favour of the petitioner in very many decisions rendered by this Court.

5.Learned counsel appearing for the petitioner also invited the attention of this Court to Rule 16(f) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules and contended that receipt of the amount as stated by the respondents will not disentitle him to get the benefits of pension in pursuant to voluntary retirement scheme.

6.Per contra, learned counsel appearing for the respondent Corporation reiterated the contentions raised in the counter affidavit and submitted that the petitioner is not entitled for pension.

7.Heard the learned counsel on either side and perused the entire materials placed on record.

8.The issue as to whether the respondents are entitled to deny the pension on the ground that the petitioner was not having 20 years of qualifying service, after having permitted him to retire from service on voluntary retirement scheme, has already been considered by this Court on very many occasions and I myself considered the said issue in W.P.No.11228 of 2010 dated 10.01.2012 wherein after following the decision of the Hon'ble Division Bench made in W.A.(MD)No.585 of 2007 dated 20.03.2007, the writ petition was allowed and a direction was issued to the respondents therein to pay pension to the petitioner therein. The relevant paragraphs of the said order are extracted hereunder:

6.It is contended by the learned Counsel for the petitioner that once the petitioner became the member of the Provident Fund Scheme as early as on 17.01.1977, i.e., the date of his appointment and the said facts also not denied by the respondents in their counter affidavit, his qualifying service has to be taken as 23 years and not 19 years as contended by the respondents and therefore, he is eligible to get the pension under the Rules. Alternatively, the learned Counsel for the petitioner argued that even assuming that only 19 years of service alone is to be taken as qualifying service as contended by the respondents, even then the petitioner is entitled to get pension, in view of the fact that the respondents had permitted the petitioner to go on voluntary retirement by presuming that he had put in 20 years of service with 50 years of the age as on the date the voluntary retirement. Therefore, the learned Counsel argued that the respondents cannot turn around and say that the petitioner is not entitled to get the pension.

7.The learned counsel for the petitioner has relied on a decision of the Division Bench of this Court passed in W.A.(MD)No.585 of 2007, dated 20.03.2007, wherein in identical circumstances, the Hon'ble Division Bench has observed at paragraph 7 as follows:-

“7.In the peculiar facts and circumstances of the present case, we do not feel that it is necessary to delve into this question, as, in our opinion, if the present first respondent had not completed 20 years of service, he was not eligible for seeking voluntary retirement under the scheme provided by the Transport Corporation and therefore at that stage, the Transport Corporation should not have accepted such voluntary retirement. Having accepted such voluntary retirement on the assumption that the employees had completed 20 years of service, now the appellant Corporation cannot turn back and contend that because of non-completion of 20 years of service, the present first respondent was not eligible to pension. Therefore, in our considered opinion, the order passed by the learned Single Judge does not require any interference.”

8.In that case, the employee therein had only completed 19 years, 8 months and 27 days of service, which the corporation was taken into as qualifying service and denied the pension. However, the Hon'ble Division Bench of this Court has categorically observed that the Transport Corporation having accepted such voluntary retirement on the assumption that the employee had completed 20 years of service, it cannot turn back and contend otherwise by stating that by non completion of 20 years of service, the employee was not eligible for pension.

9.The learned Counsel for the petitioner has also brought my attention to several decisions rendered by this Court, which are as follows:- 1) in W.P.No.9644 of 2007, dated 10.04.2008, 2) Division Bench Judgment in W.A.No.154 of 2009, dated 24.07.2009, 3) W.P.No.7118 of 2009, dated 30.04.2010 and 4) W.P.Nos.10046 to 10048 of 2006, dated 25.02.2011. In all those decisions, the decision rendered in W.A.No.585 of 2007, dated 20.03.2008, was followed and in fact as against the decision made in W.A.No.154 of 2009, dated 24.07.2009, an SLP filed before the Hon'ble Supreme Court came to be dismissed on 05.04.2010 on the ground of limitation as well as on merits. Similarly, as against the order passed in W.P.No.7118 of 2009, dated 30.04.2010, a writ appeal was filed and the order in writ petition was confirmed by the Hon'ble first Bench, by an order, dated 20.04.2011. Therefore, the learned counsel for the petitioner prays that the relief sought for in this writ petition has to be allowed taking note of the all the similar cases decided supporting the case of the petitioner as stated supra.

10.Per contra, the learned Counsel appearing for the respondents contended that the petitioner joined the service only as a Helper on 17.01.1977 and the service was regularized on 17.01.1980 and therefore, excluding the period from 1977 to 1980, he had put in only 19 years, one month and 22 days of service, which is not a qualifying service as contemplated in Rule 16(a)(ii) of the TNSTC Employees Pension Fund Trust. According to the respondents, one should have put in a qualifying service of 20 years or more and attained the age of 50 years in order to get pension as per the said rules. Therefore, the learned Counsel for the respondents submitted that the petition is liable to be dismissed.

11.I have considered the rival submissions.

12.It is an admitted fact that the petitioner had joined the service on 17.01.1977 and also became the member of the Provident Fund Scheme on the very same date. If his service is taken into account from the date of his joining i.e., 17.01.1977, the petitioner was having 22 years, 7 months as qualifying service. Assuming that the same cannot be taken into account and that the petitioner was having only 19 years of qualifying service then the respondents should not have allowed the petitioner to go on voluntary retirement as contemplated under Rule 16(a)(ii)of the TNSTC Employees Pension Fund Trust. On the other hand, the fact remains that they have allowed the petitioner to go on voluntary retirement on 31.08.1999 by presuming that the petitioner is having the requisite qualifying service of 20 years as well as the age of 50 years at the time of voluntary retirement. Once the respondents have chosen to permit the petitioner to go on voluntary retirement, they cannot subsequently reject his claim for pension by stating that he was not having the 20 years of service. The respondents cannot take double stand in respect of qualifying service one for permitting the petitioner to go on voluntary retirement, and another for considering the claim for pension. The Hon'ble Division Bench in W.A(MD)No.585 of 2007, dated 20.03.2008, considered the identical circumstances and categorically found that having accepted such voluntary retirement on the assumption that the employee had completed 20 years of service, they cannot turn back and contend that because of non-completion of 20 years of service, the employee was not eligible for pension. The case of the petitioner is also similarly situated and covered by the said division Bench decision, which has been followed in several decisions of this Court both by single Bench as well as Division Bench, out of which in one case the Hon'ble Supreme Court has also dismissed an SLP as stated above”

9.Similarly, this Court passed an order in another writ petition in W.P.(MD)No.6701 of 2011 dated 07.03.2012. The said order was challenged before the Division Bench in W.A.(MD)No.629 of 2012 and the Division Bench by order dated 17.09.2012 disposed of the writ appeal by observing at 8 paragraph as follows:-

“8.After going through the writ appeal order, which is annexed in the typed set of papers, it could be seen that the said judgment squarely applies to the facts of the present case. Under these circumstances, the learned single Judge following the Division bench Judgment, allowed the writ petition, which is in conformity with law. While confirming the order passed by the learned single Judge, we direct the appellant Corporation to pass necessary orders regarding payment of pension to the first respondent in accordance with law and in the light of the observations made by the learned single Judge, within a period of four weeks from the date of receipt of a copy of this judgment”.

10.The said order was challenged before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) No.16446 of 2013 and the Hon'ble Supreme Court by an order dated 08.05.2013 dismissed the Special Leave Petition by imposing a cost of Rs.1 lakh on the respondent Corporation. The relevant portion of the order passed by the Hon'ble Supreme Court is as follows:

“We have heard learned counsel for the petitioner and carefully perused the record.

In our considered view, after having accepted the prayer of respondent No.1 for voluntary retirement w.e.f 01.04.2000, it was not open to the officers of the Corporation to deny him pension and other retiral benefits. If the concerned authority felt that on account of his age, respondent No.1 was not entitled to seek voluntary retirement then there was no occasion for that authority to pass order dated 20.03.2000. Once the application for voluntary retirement was accepted, the Corporation and its officers were estopped from questioning the entitlement of respondent No.1 to receive pensionary benefits.

We may mention that in an identical matter, the special leave petition filed by the General Manager of the Corporation and another was dismissed by this court on 21.02.2012 on the ground of delay and also on merits.

The end result of the above enumeration is that the special leave petition is wholly meritless and deserves to be dismissed, which we hereby do.

For dragging respondent No.1 in frivolous and totally unwarranted litigation, which forced him to spend his hard earned money, the Corporation is saddled with cost of Rs.1,00,000/-. The Managing Director of the Corporation is directed to ensure that the amount of pension etc., due to respondent No.1 including the arrears and cost are paid within a period of two months from today by getting prepared demand draft in his name from a nationalised bank.

A report showing compliance of the above direction be filed in the Registry of Madras High Court (Madurai Bench) by 31.07.2013. The Registry of the Court shall place the matter before the Division Bench of the High Court.

If it is found that the Managing Director has not complied with the direction given by this Court for payment of pension and cost then the High Court shall initiate proceedings against the concerned officer under the Contempt of Courts Act, 1971 and pass appropriate order.

The Registry is directed to send a copy of this order to respondent No.1 by registered post at the address mentioned in the memo of special leave petition".

11.From the above order passed by the Hon'ble Supreme Court, it is clear that the respondents are not entitled to canvass the very same ground once again before this Court by contending that the petitioner is not having the qualifying service of 20 years for grant of pension after having permitted him to retire on voluntary retirement scheme. Therefore, I reject the above said contention raised by the respondent Corporation.

12.Insofar as the other contention raised by the respondent Corporation with regard to the receipt of a sum of Rs.64,602/- being the employer's contribution and a sum of Rs.17,119/- being the balance amount available in the employees contribution, the petitioner's provident fund account is concerned, as rightly pointed out by the learned counsel for the petitioner that the scheme which got approval in the year 2000 and given retrospective effect from 01.09.1998 protects petitioner like persons under Rule 16(f) which reads as follows:

"16(f)In the case of existing members who have drawn non refundable advance before the implementation of this scheme, out of the employer contribution, shall repay along with interest at the rate of 12% compounded annually for the credit balances available in the Provident Fund Trust for the members from time to time. Only after such remittance, the member shall be entitled for the pensionary benefits admissible under this Scheme. Otherwise, the pensionary benefits will be proportionately reduced".

13.A perusal of the above said Rule would show that the same was inserted to protect the persons who already received the contribution before giving effect to the above said scheme. Therefore, I am of the view that mere receipt of the contribution by the petitioner as stated by the respondents will not disentitle him from receiving retirement benefits under the above said scheme. As it is stated that the petitioner is bound to refund the said contribution with 12% percent interest, the respondents are directed to deduct the said sum with 12% interest from the arrears payable to the petitioner under the above said scheme.

14.Accordingly, the writ petition is allowed with the following directions:-

"a)The respondents are directed to pay the retirement benefits and pension to the petitioner from the date of his retirement.

b)The arrears of retirement benefits shall be paid to the petitioner within a period of 12 weeks from the date of receipt of copy of this order after deducting the sum payable by the petitioner with interest as contemplated under Rule 16(f) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules to the Corporation".

No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

1. The Secretary to Government,
Government of Tamil Nadu,
Transport Department,
Secretariat, Chennai 600 009.

2.The Managing Director, The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Railway Feeder Road, Kumbakonam.

3.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam)Ltd.,
Trichirappalli Region,
Periyamilaguparai,
Trichirappalli.

4.The Administrator,
Tamil Nadu State Transport Corporation Ltd.,
Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai 600 002.

+1cc to M/S.A.Rahul Advocate in SR.No. 8148

+1cc to M/S. K.Sathiya Singh Advocate in SR.No. 8747

TS/02.03.2015/7P-7C

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