

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 19.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.A.No.154 of 2013

R.Krishnamurthy

... Appellant

Vs.

1. The Secretary,
State of Tamil Nadu,
Transport Department,
Fort St. George, Chennai-9.

2. The Managing Director,
State Express Transport Corporation
Tamil Nadu Ltd.,
Pallavan Salai, Chennai-2.

... Respondents

Prayer: This Writ Appeal is filed under Clause 15 of the Letters Patent, against the order made in W.P.No.28196 of 2008, dated 17.07.2012.

W.P.No.28196 of 2008 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration declaring that the action of the Respondents in treating the period from 18.11.1973 to 04.04.1979 originally as eligible leave and later as leave on loss of pay and not counting the period from 05.09.1967 to 31.08.1968 as qualifying service for pension as arbitrary, illegal and unjust and consequently direct the first respondent to count the said period as duty and qualifying service for pension and to pay him monthly pension with effect from 01.01.1988 with arrears and all consequential benefits together with interest.

For Appellant : Mr.S.Ayyathurai

For 1st Respondent : Mr.I.Arokiasamy,
Government Advocate

For 2nd Respondent : Mr.P.Paramasivados

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this Writ Appeal is to the order made in W.P.No.28196 of 2008, dated 17.07.2012, by which, the writ Court refused to declare the action of the respondents, in treating the period from 18.11.1973 to 04.04.1979, as eligible leave and later, as leave on loss of pay and not counted the period from 05.09.1967 to 31.08.1968, as qualifying service for pension, as arbitrary, illegal and unjust. The writ Court also refused to direct the Secretary to the Government, Transport Department, 1st respondent herein, to count the said period as duty and qualify the same for pension and to pay the petitioner, monthly pension with effect from 01.01.1988, with all arrears and all consequential benefits, together with interest.

2. Material on record discloses that the petitioner joined the erstwhile Transport Department, as Driver on 5.9.67. He was made permanent, with effect from 1.9.68. He suffered paralytic attack and applied for leave from 18.11.73. Initially, he was granted medical leave for six months, without loss of pay. As he was under treatment for paralysis, he could not join duty and extended the leave. Thereafter, he submitted his resignation on 31.01.75 and that the same was accepted by the Department. In the meantime, the Government took a policy decision to transfer the transport employees to the newly formed State owned Transport Corporation. In order to persuade the employees to give up their status as Government servants, the Government have offered to pay pension. In case, the employees, who did accept the offer and get absorbed in the newly formed Transport Corporation, before their retirement, on attaining the age of superannuation, 1.5.1975 has been fixed as the date fixed for absorption of employees in the State owned Transport Corporations.

3. According to the appellant, realizing the mistake in submitting resignation, the petitioner has submitted a letter, dated 16.07.1976, withdrawing the earlier letter, dated 31.01.1975 and requested the Corporation to permit him to join duty, as he was fully recovered from Paralysis. His request was rejected, vide order, dated 07.03.1978. However, on appeal, his request was accepted and consequently, on 27.03.1979, the petitioner was allowed to rejoin duty. The period of absence was treated as leave, to which, the petitioner was entitled.

4. After his retirement in the year 1997, the appellant submitted a representation for grant of pension, by treating the date of joining service as 05.04.1979. In the year 2007, the

respondents rejected the request of the petitioner, on the grounds that the period spent by him, between the date of resignation and date of reinstatement in service, has been treated as leave, with loss of pay and therefore, the said period cannot be counted, for grant of pension and therefore, he had not completed ten years of service, with the State Government to be eligible for grant of pension.

5. In the said circumstances, the appellant has filed Writ Petition No.28196 of 2008, for a Writ of Declaration, declaring the action of the respondents, in treating the period from 18.11.1973 to 04.04.1979, originally as eligible leave and later, as leave on loss of pay and not counting the period from 05.09.1967 to 31.08.1968, as qualifying service for pension, as arbitrary, illegal and unjust and consequently, for a direction to the first respondent to count the said period as duty and qualifying service, for pension and to pay him, monthly pension with effect from 01.01.1988, with arrears and all consequential benefits, together with interest.

6. It is the contention of the appellant before the Writ Court that the order of reinstatement did not indicate, as to how, the period between the date of resignation and date of reinstatement, should be treated and also the period of absence, on medical grounds. In the abovesaid order, the Corporation has only stated that the period of out of duty, viz., from the date of absence, till he rejoined duty shall be treated as leave, to which, he is entitled and that it did not state that the said period would be treated as leave, on loss of pay.

7. The appellant has further contended that he could not attend duty from 18.11.1973 to 15.07.1976, only due to medical reasons and therefore, the respondents ought to have treated the said period as extraordinary leave, enabling him to count this period, atleast for terminal benefits. He has also contended that the respondents have calculated his net qualifying service as 8 years, 2 months and 16 days, by counting his service only from 01.09.1968, the date on which, he was made permanent and that the respondents have failed to take into account, his initial service from 05.09.1967 to 31.08.1968, which is contrary to Rules 2(o) and 11 of the Tamil Nadu Pension Rules.

8. Considering the abovesaid submissions, in W.P.No.28196 of 2008, dated 17.07.2012, the Writ Court, while rejecting the same, has passed the following order,

"10. However, on consideration, I find no force in this writ petition. Admittedly, if the benefit of service from the initial date of appointment is given to the petitioner, the total service rendered by the

petitioner with the Government till 1982 comes to 9 years 2 months and 10 days. The petitioner therefore does not qualify for grant of pension. The contention of the learned counsel for the petitioner that the leave period should also be counted as service cannot be accepted, as the leave with loss of pay was granted to the petitioner by way of concession, to cover the period between the date of resignation and subsequent acceptance of request to withdraw the resignation. The respondents are right in treating the period as one spent on leave without pay.

11. For the reasons stated, no fault can be found with the impugned order, in rejecting the request of the petitioner for grant of pension."

9. Though Mr.S.Ayyathurai, learned counsel for the appellant assailed the correctness of the order, made by the Writ Court, on the grounds, inter alia that the appellant could not attend duty from 04.04.1979, due to medical grounds and therefore, the respondents ought to have treated the period as extraordinary leave and accordingly, counted the same, atleast for terminal benefits and further contended that the period from 18.11.1973 to 04.04.1979 ought to have been treated as duty and placed reliance on the decisions in Government of Tamil Nadu v. M.Ananchu Asari reported in 2003 (10) SCC 503 and Government of Tamil Nadu v. M.Ananchu Asari reported in 2005 (1) LLN 1104, this Court is not inclined to accept the said contentions.

10. Material on record discloses that G.O.Ms.No.257, Transport Department, dated 02.03.1979, has been issued, based on the petition of the appellant, dated 09.02.1978. Reading of the same shows tht the appellant, driver in the Tamil Nadu State Transport Corporation, went on leave on medical grounds from 18.11.1973. He did not turn up for duty and therefore, was directed to report before the District Medical Officer, Coimbatore. He tendered his resignation on 31.01.1975. Thereafter, his case was referred to the Special Officer, Residuary Work, Transport Department, as he had not opted for Pallavan Transport Corporation (Express). In the mean while, he had submitted a letter, dated 16.07.1976, requesting permission to join duty, withdrawing his resignation. The Special Officer did not accept his resignation and passed orders on 07.03.1978, accepting the resignation tendered by the appellant. Being aggrieved, he has sent a petition to the Government for reconsideration of his for re-appointment. The Government have set aside the order of the Special Officer and directed the appellant to rejoin duty in Pallavan Transport Corporation (Express) Ltd.

11. Subsequently, the Managing Director, Pallavan Transport Corporation has issued orders on 27.03.1979, ordering reinstatement of the appellant in Pallavan Transport Corporation (Express) Ltd. He was directed to report for duty on or before 05.04.1979. The said order makes it clear that the period out of duty, from the date of absence, till he rejoins duty, shall be treated as leave, to which, he is entitled.

12. The appellant retired in the year 1997. When he made a request for monthly pension, the Secretary, Tamil Nadu State Express Transport Corporation, by order, dated 03.08.2007, has rejected his request on the grounds that his permanent service is less than 10 years and hence, not entitled to pension, under G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005.

13. Subsequently, when the appellant made a request to count his service from 18.11.1973 to 05.04.1979, the date on which, the appellant rejoined the service, orders have been issued in Letter No.44005/TNSETC/2007, dated 07.12.2007, stating that upon verification of the service register of the appellant, it was found that the period from 18.11.1973 to 05.04.1979 had been treated as leave on loss of pay. Translated version of the letter, dated 07.12.2007, reads as follows:

"When your service register was verified on receipt of your application, it was found that you were permitted to join duty again since you had resigned your job in this Transport Corporation, as per G.O.Ms.No.257, Tpt. Dept., dated 02.03.1979, the period of your absence from 18.11.73 to the date of joining 05.04.1979 were treated as eligible leave in your account.

But, on verification of your Government Service Register, as there was no leave on your account for the period from 18.11.1973 to 05.04.1979, salary was not given for that period. Hence, the above period was treated as leave on loss of pay.

Hence, it is informed that the period of leave on loss of pay (from 18.11.1973 to 05.04.1979) cannot be counted and pension cannot be sanctioned as per G.O.Ms.No.42, Tpt. Dept. (RW), dated 27.05.2005. It is informed that regarding this, a reply has been sent to you in the reference second cited."

14. Admittedly, the appellant had not worked during the abovesaid period. From 18.11.1973, he had gone on leave on medical grounds and he did not turn up for duty. The abovesaid order, dated 07.12.2007, has not been challenged. Once again, the appellant had sent a representation, seeking for monthly

pension. Vide letter, dated 27.09.2008, the General Manager, Tamil Nadu State Transport Corporation Ltd., Chennai, has passed the following orders,

"Your request in the reference first cited was forwarded to Government in Transport Department. I am to inform you that in the Government Letter 3rd cited, pension was not permitted as per G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005. Since your service upto 31.03.1982 is less than 10 years (ie., 8 years 2 months and 15 days), excluding the leave on loss of pay."

15. State Express Transport Corporation Tamil Nadu Ltd., Chennai, in its letter No.44005/C4/SETC/05, dated 29.08.2008, has stated hereunder:

"With ref to the representation (copy enclosed) cited we have to inform that Thiru.R.Krishnamurthy Driver 4172 was appointed as regular Driver in TNSTD on 01.09.1968 and on long leave from 18.11.1973 on Medical grounds and then tendered his resignation on 31.01.1975. Thereafter, he was re-instated into service with ref to GO MS No.257, TPT Dept. dated 24.03.1979, and the date of absence ie., from 18.11.1973 to till his rejoining duty upto 04.04.1979 was treated as leave which he is eligible. The period of out of employment was treated as LLP, as he was no leave at his credit as on 18.11.1973.

Now he has requested for sanction of Govt. monthly pension with ref to GO MS No.42, TPT (RW) Dept. Dt. 27.05.2005, taking into a/c the LLP period from 18.11.1973 to 04.04.1979, treating as extraordinary leave.

We therefore request that necessary reply may please be given to the above individual at Government level in this regard as he is frequently requesting for sanction of Govt monthly pension with reference to above GO.

The Govt Service Book of the above individual is also sent herewith and the receipt of the same may please be acknowledged."

Copy of the abovesaid letter, dated 18.09.2008, was marked to the appellant

16. The Under Secretary to the Government, Transport (TBC) Department, Secretariat, Chennai, has sent a letter in No.16833/Trpt/TBC-2/2008, dated 18.09.2008, to the Managing Director, State Express Transport Corporation Ltd., copy of which, has been marked to the appellant. The said letter reads as follows:

"I am directed to invite attention to your letter cited and to state that the net qualifying service as on 31.03.1982 in respect of Thiru.R.Krisnamurthy, Driver, St.No.4172 retired on 31.07.1997 is 8 years and 2 months and 15 days from the date of Regular appointment in erstwhile Tamil Nadu State Transport Department excluding the LLP. From this, it is found out that he has rendered less than 10 years of Net qualifying service, he is not eligible for Government monthly pension in terms of G.O.Ms.No.42, Transport, dated 27.05.2005.

2. I am therefore to state that the request of Thiru.R.Krishnamurthy, Driver, St. No.4172 retired on 31.07.1997 can't be complied with, as the individual has rendered less than 10 years of Net qualifying service as on 31.03.1982 in erstwhile Tamil Nadu State Transport Department."

17. Reading of the above makes it clear that though the Government Order in G.O.Ms.No.257, Transport Department, dated 02.03.1979, did not specify, as to how, the period of duty, from 18.11.1973, has to be settled, order of reinstatement, dated 27.03.1979 of the Managing Director, Pallavan Transport Corporation, makes it clear that the period out of duty, from the date of absence, till he rejoins duty, shall be treated as leave, to which, he is entitled.

18. Letter, dated 07.12.2007 of the Tamil Nadu State Transport Corporation Ltd., extracted supra, makes it clear that for the abovesaid period, salary was not given. Further, reading of the letter, dated 27.09.2008, also makes it clear that the said period has been treated as leave on loss of pay and that there was no leave on his credit, as on 18.11.1973 and thus, the Transport Corporation, having found that the appellant had rendered service, less than 10 years, rejected his request for pension, in terms of G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005.

19. When the appellant had no leave to his credit, he cannot seek for a direction against the respondents to treat the period from 18.11.1973 to 05.04.1979, as extraordinary leave. Granting of leave is not a matter of right. Going through the materials on record, this Court is of the view that the respondents have counted the total service, rendered by the appellant, as nine years, two months and ten days, which does not qualify for grant of pension. There is no infirmity in the order impugned in this appeal. The decisions relied on by the learned counsel for the appellant are not applicable to the facts of this case.

20. In the result, the Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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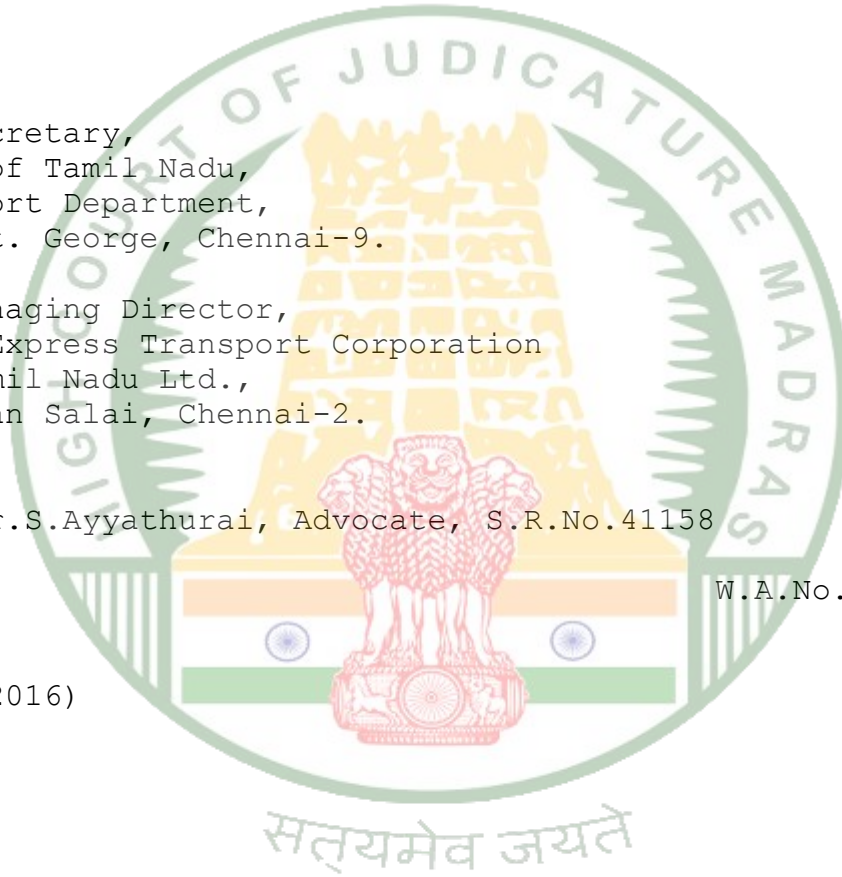
To

1. The Secretary,
State of Tamil Nadu,
Transport Department,
Fort St. George, Chennai-9.
2. The Managing Director,
State Express Transport Corporation
Tamil Nadu Ltd.,
Pallavan Salai, Chennai-2.

+1cc to Mr.S.Ayyathurai, Advocate, S.R.No.41158

W.A.No.154 of 2013

KJI (CO)
CA(03/08/2016)



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