IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.34887 of 2007
and
M.P.No.2 of 2007

L.Marimuthu ...Petitioner

-Vs-

1.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund,
Pallavan Salai,
Chennai 600 002.

2.The Deputy Manager (Pension),
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai -2. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus after calling for the records relating to the order letter No.10184/pension/MTC/2006, dated 31.01.2007 and letter No.10184/pension-3 MTC/06, dated 16.04.2007 of the second respondent and quash the same and consequently direct the first respondent to restore pension to the petitioner from January 2007.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Mr.P.Paramasivadoss

O R D E R

The prayer in the writ petition is for a Certiorarified Mandamus calling for the records relating to the order letter No.10184//pension/MTC/2006, dated 31.01.2007 and letter No.10184/pension-3 MTC/06, dated 16.04.2007 of the second respondent and quash the same and consequently direct the first respondent to restore pension to the petitioner from January 2007.

2. The short facts leading to the filing of this writ petition is as follows:

2.1.The petitioner joined the service of the second respondent Corporation as a driver in 1968. In the year 1983, he was dismissed from service. After 18(1) settlement, he was reinstated in service in 1985. From 1985, he was employed continuously as driver and he had put in 5 years of continuous service. His entire service was without any blemish.

2.2.The petitioner attained superannuation on 30.04.2000 and all his terminal benefits were settled by the respondents as per the existing 1998 pension scheme. After payment of pension for six years, the second respondent by a letter dated 31.01.2007, which is impugned herein, stopped pension from January 2007. The said order was passed without any notice and without any opportunity to the petitioner and the pension was stopped abruptly. The reason stated in the said impugned order by the second respondent is that since the petitioner had not completed ten years of minimum qualifying service for paying pension, the pension was stopped. As against the said impugned order and also the consequential proceedings issued by the respondents, the petitioner has come out with the present writ petition.

3. The learned counsel for the petitioner would submit that the impugned order is palpably wrong for the simple reason that, for the purpose of calculation of pensionable service, the respondents have taken the date of absorption of the petitioner instead of the date of regularisation of service or from the date on which, the petitioner became a member of the Tamil Nadu State Transport Corporation Employees Provident Fund Scheme of the respondents.

4. According to the learned counsel for the petitioner, though the petitioner joined service long back, for the disciplinary action taken against him in the year 1983, he was dismissed from service and again he was reinstated in service in the year 1985. Thereafter, he became a member of the Tamil Nadu State Transport Corporation Employees Provident Fund Scheme on 11.10.1985. After having served for several years, he retired from service on attaining the age of superannuation on 30.04.2000.

5. The learned counsel for the petitioner further submitted that the respondents instead of taking the date of regularisation of service as 11.10.1985 have wrongly taken the date of absorption i.e. 01.09.1986, for the purpose of calculating pensionable service of the petitioner and they came to the conclusion that the petitioner had not completed

minimum qualifying service for pension and thereby stopped pension by issuing impugned order.

6. In support of his submission, the learned counsel for the petitioner relied on the decision of this Court in P.Krishnasamy Vs. Deputy Secretary to Government Transport Department, Fort St.George, Chennai, [2013 -IV-LLJ 139 (Mad)] in W.P.No.21085 of 2010 dated 30.08.2013.

7. The learned counsel for the petitioner also relied on yet another decision of this Court in A.Subramani Vs. Tamilnadu State Transport Employees Pension Trust, in W.P.No.5774 of 2002 dated 06.3.2014 in a batch of writ petitions. Hence, he prayed this Court to allow the writ petition by setting aside the order passed by the respondents.

8. The learned counsel for the respondent Corporation submitted that the Government issued letter No.11785/D/Tpt(D) 2003-2, dated 08.09.2003, wherein it has been clearly mentioned that the service of the employee will be counted from the date of regularisation or from the date on which he becomes a member of the Tamil Nadu State Transport Corporation Employees Provident Fund Scheme, whichever is later will only be taken for calculation of pensionable service. In this case, since the petitioner was absorbed only on 01.09.1986, the respondents have taken the date of absorption and that was done purely under Rule 2(p)(iii) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules and therefore, the impugned order passed by the second respondent is fully sustainable. In that view of the matter, the writ petitioner has not been considered for granting any relief. Therefore, the writ petition deserves to be dismissed.

9. I have considered the rival submission made by the learned counsel for the parties and also perused the materials available on record.

10. In so far as the fact of the present case is concerned, the date of absorption as well as the date on which, the petitioner became a member of the Tamil Nadu State Transport Corporation Employees Provident Fund Scheme has not been disputed. The issue raised in this writ petition is as to whether the pensionable service can be calculated from the date of absorption of an employee or from the date on which, the employee becomes a member of the Tamil Nadu State Transport Corporation Employees Provident Fund Scheme. As has been rightly pointed out by the learned counsel for the petitioner, this issue has already been raised in the above referred to judgments of this Court and has been concluded. In respect of

the decision of this Court in P.Krishnasamy Vs. Deputy Secretary to Government Transport Department, Fort St.George, Chennai, [2013 -IV-LLJ 139 (Mad)] is concerned, the learned Judge has considered the Tamil Nadu State Transport Corporation Employees' Pension Fund Rule 2(p)(iii), which reads as under:

"The actual service as defined below shall be reckoned for calculating pension service :

> i) In respect of employees taken over at the time of nationalisation during 1972, the date of the individual becoming regular employee with the taken over operators will be reckoned for calculation of pensionable service, provided they have been absorbed with continuity of service.
>
> ii)In respect of erstwhile ..... under this Scheme.
>
> 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."

11. In P.Krishnasamy's case (cited supra) in W.P.No.21085 of 2010 wherein, paragraph 31 reads as follows:

> "It is noted, from a reading of Rules relating to the Tamil Nadu Transport Corporation Employees' Pension Fund, especially, Rule 2(p)(iii), which states that the date of regular employment or the date on which the employee concerned had become a member of the Employee's Provident Fund, in the State Transport Undertaking, would be reckoned for the calculation of the pensionable service of the employee. According to the said Rule, the petitioner had completed more than 20 years of pensionable service, as he had become a member of the Provident Fund Scheme, with effect from 1.11.1981."

12. Thereafter, in yet another decision in A.Subramani Vs. Tamilnadu State Transport Employees Pension Trust, in W.P.No.5774 of 2002 as referred to above along with batch of cases came to be considered by this Court by a common judgment dated 06.03.2014, wherein also the learned Judge has framed the issue with regard to the applicability of the said rule for calculating the period of service for pension. In the said decision of A.Subramani's case, wherein paragraph Nos. 26, 27 and 28 held thus:

> "26. The two questions which are raised in the present batch of Writ Petitions are pertaining to mode of calculating the period of service. Firstly, the first question needs adjudication as to whether the services of the petitioners rendered in the Transport Department should be calculated from the date they became permanent employee of the Corporation or the date they became member in the employee of the Provident Fund in the STU for the purpose of calculating the Net Qualifying services to get the superannuation pension and the voluntary retirement pension.
>
> 27. The second question is whether the respondent is entitled to issue any clarification letter dated 8.9.2003 stating that the period of service put in by the employee on daily paid wages or on consolidated wages cannot be construed as pensionable service when Rule 2(p)(iii) of the Tamilnadu State Transport Corporation Employees' Pension Fund Rules makes it clear as to how the services of the individual should be calculated for the purpose of pension.
>
> 28. The two issues are directly covered by a Judgement of this Court reported in P.Krishnasamy vs. Deputy Secretary to Government Transport Department, Fort St.George, Chennai, 2013-IV-LLJ 139 (Mad) wherein in a similar and identical issue as to how to calculate the pensionable service of an employee under Rule 2(p)(iii) of the Tamilnadu Transport Corporation Employee's Pension Fund came up for consideration, this Court has ruled that as per Rule 2(p)(iii), the date of regular employment on the date on which the employee concerned had become a member of the employee's provident Fund, would be reckoned for the calculation of the pensionable service of the employee."

13. Ultimately, the learned Judge allowed the batch cases by setting aside the respective impugned order passed by the Transport Corporation in those writ petitions. These decisions cannot be disputed.

14. Since the applicability and the implementation of Rule 2 (p)(iii) of the respondent's Employees Provident Fund Rules have been interpreted and a quietus has been made as to how the rule has to be implemented as per two decisions of this Court and the same have become final and thereafter, no further proceedings have been initiated by the respondents, as has been rightly argued by the learned counsel for the petitioner, this Court has no hesitation to follow the two judgments as the facts of the present case and the issue raised herein are squarely covered by the said two decisions.

15. In view of the above, this Court finds that the impugned order is unsustainable and therefore, liable to be quashed. Accordingly, it is quashed. Resultantly, the respondents are directed to calculate the pensionable service of the petitioner from the date on which namely, 11.10.1985, the petitioner becoming a member of the Tamil Nadu State Transport Corporation Employees Provident Fund Scheme for the purpose of granting retirement/terminal benefits. The respondent is further directed to disburse the pension, which was stopped from the year 2007 by virtue of the impugned order. The petitioner shall also be entitled for arrears of pension for all these period.

16. It is needless to mention that the respondents shall pay the pension continuously to the petitioner till his entitlement. By virtue of the calculation of pensionable service wrongly made by the respondents, the petitioner has suffered a lot. Hence, he would be entitled for a nominal interest of 6% p.a. for the dues payable to him.

17.Accordingly, the impugned order passed by the respondent is quashed. The writ petition is allowed to the extent indicated above. The needful shall be made by the respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cla

To

1.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund,
Pallavan Salai,
Chennai 600 002.

2.The Deputy Manager (Pension),
Metropolitan Transport Corporation Ltd.,
Pallavan Salai,
Chennai -2.

+1cc to Mr.S.T.Varadarajulu, Advocate Sr.61948

W.P.No. 34887 of 2007

mg[co]
srg 20/12/2016