

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.41659 of 2016

T.Kabali

... Petitioner

vs.

1. The State of Tamil Nadu
rep. by its Secretary,
Transport Department,
Secretariat, Chennai-9.
2. Metropolitan Transport Corporation (Chennai)
Limited (Old Pallavan Transport Corporation
Limited) rep. by its Managing Director,
Pallavan Salai, Chennai-2. ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, directing the 1st respondent to sanction and pay pension to the petitioner w.e.f. 01.01.1988 as per the G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 as the petitioner had put in 16 years 7 months and 23 days of service between 08.08.1965 to 01.04.1982 by following the provisions of the Tamil Nadu Pension Rules, after deducting the amount paid to the petitioner as OSSR Gratuity in pursuance of G.O.Ms.No.212 (Transport) dated 28.03.1974 with interest thereon.

For Petitioner : Mr.V.S.Jagadeesan

For Respondents : Mr.O.Selvam,
Government Advocate for R1
Mr.V.Udayakumar for R2

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ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The Writ Petition has been filed to issue a Writ of mandamus, directing the 1st respondent to sanction and pay pension to the petitioner w.e.f. 01.01.1988 as per the

G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 as the petitioner had put in 16 years 7 months and 23 days of service between 08.08.1965 and 01.04.1982 by following the provisions of the Tamil Nadu Pension Rules, after deducting the amount paid to the petitioner as OSSR Gratuity in pursuance of G.O.Ms.No.212 (Transport) dated 28.03.1974 with interest thereon.

3. The case of the petitioner is as follows:

(a) The petitioner had been selected for appointment to the post of Tinker Grade III on 08.08.1965 and was allotted a Staff Number E/3151/65 in the erstwhile State Transport Department and accordingly, he joined the said service. Subsequently, on formation of various new Transport Corporations on 01.01.1972, he was transferred and absorbed in the newly formed Pallavan Transport Corporation Limited as a Tinker on 01.05.1975. Thereafter, he was promoted as a Senior Tradesman and was allotted Staff No.3022 and he retired from service on attaining the age of superannuation on 30.09.1997 after putting 32 years of unblemished service.

(b) According to the petitioner, after the Tamil Nadu State Transport Department was wound up w.e.f. 14.09.1975, all its employees like the petitioner were absorbed in various transport Corporations. As per G.O.Ms.No.378, Finance (FR.II) Department dated 18.04.1975, an optee is entitled to receive pension/gratuity earned by him in the Government Service, prior to such absorption in addition to pay in the Public Undertaking. This was followed by other Government Orders in G.O.Ms.No.284, Finance Department, dated 31.03.1980 and in G.O.Ms.No.1028, Transport Department, dated 23.09.1985 by which the crucial date for permanent absorption in the Transport Corporation was fixed as 01.05.1975/15.09.1975. Thus, the cut off date was fixed for absorption in various Transport Corporations as 01.05.1975/15.09.1975. Accordingly, the employees, who had put in 10 years of net qualifying Government Service as on 01.05.1975/15.09.1975 are entitled to get pension w.e.f. the date of their absorption in the Transport Corporation in addition to their salaries in the Corporations even while in service.

(c) On formation of various Transport Corporations from 01.01.1972, the Tamil Nadu State Transport Corporation was wound up w.e.f. 14.09.1975 and the Government issued a Government Order in G.O.Ms.No.212 (Transport) Department, dated 28.03.1974. The Drivers, Conductors and the Technical Employees (excluding supervisory staff) of the Tamil Nadu State Transport Department were governed by the above said Government Order. According to the said G.O. Clause 5, Employees, who had joined Tamil Nadu State Transport Department, on or after 11.01.1974 will be

governed by the Madras Liberalized Pension Rules, 1960 for retirement benefits. Thereafter, the employees of the Tamil Nadu State Transport Department were asked to give their option either to remain in the existing OSSR Scheme or to opt for the Liberalized Pension Rules on or before 30.06.1974. As per Clause 6 of the said G.O., any employee who did not exercise the option as instructed shall automatically come under the Liberalized Pension Rules, 1960.

(d) Further, according to the petitioner, a large number of employees of the erstwhile Tamil Nadu State Transport Department, who were absorbed in the various Transport Corporations, could not get pension for their services rendered in the Transport Department for the simple reason that they had not completed 10 years of service before the cut off date i.e. 01.05.1975/15.09.1975 fixed by the Government as per G.O.1028, Transport Department, dated 23.09.1985. In this regard, the Writ Petitions filed by various Trade Unions went up to Supreme Court and at last, in the related Civil Appeal Nos.1444 and 1445 and 1446 and 1452 of 1999, by order dated 29.10.2003, the Supreme Court fixed the cut off date as 01.04.1982 and directed the Government to extend the pensionary benefits to the eligible employees and to pay arrears of pension from 01.01.1988 within a period of 4 months from the date of that order.

(e) Since the petitioner was appointed in the Tamil Nadu State Transport Department on 08.08.1965 and was also regularised in the said post from the date of joining and if the above said date is taken into account as on 01.04.1982, he would have been deemed to have put in a service of 16 years 7 months and 23 days between 08.08.1965 and 01.04.1982. Therefore, he should have been treated as entitled to get pension from 01.01.1988 as per the above said Government Orders. Further, when the G.O.Ms.No.212 dated 28.03.1974 was issued with regard to exercise the option either to continue under the OSSR Scheme or to go under the Madras Liberalized Pension Rules and during such period new Transport Corporations were getting formed and the petitioner and others were posted in those Corporations w.e.f. 01.05.1975, due to confusion that the Government was going to privatize the entire Transport System, they were made to sign in some printed formats by the Trade Union and the Management without knowing the contents of the said printed formats. Further, the petitioner, at no point of time, exercised any option under G.O.Ms.No.212, Transport Department, dated 28.03.1974 and therefore, he is entitled to get pension benefits as per G.O.Ms.No.42 which was not paid to him till date. But, the 1st respondent, taking advantage of the ignorance of the petitioner, had wrongly applied the OSSR scheme, paid the Contributory Provident Fund and the

Compassionate Gratuity as per the OSSR Non-Pensionable Scheme.

(f) Further, one Mr.Ponnusamy, Conductor, Staff No.0866 has submitted a representation to the Hon'ble Chief Minister praying for the benefit under the new scheme by reimbursing the benefits received under the old scheme and the same was considered by directing the respondents to pay the pension to the said person and similarly placed persons like the petitioner have filed a Writ Petition in W.P.(MD) No.138 of 2009 seeking the same relief and the same was disposed of by order dated 24.06.2009 directing the petitioners therein to submit a representation to the respondents by citing the case of Ponnusamy within a period of two weeks and on receipt of the same, the respondents are directed to consider and pass orders on the same within a period of 12 weeks thereafter.

(g) Though, in this regard, the petitioner has sent several representations to the respondents including his last representation dated 19.10.2016, till date his case has not been considered. Hence, the present Writ Petition.

4. I have heard the learned counsel appearing for the petitioner and the learned Government Advocate, who has taken notice on behalf of the respondent No.1 and the learned Counsel , who has taken notice on behalf of the respondent No.2.

5. Considering the facts and circumstances of the matter, without going into the merits of the claim made by the petitioner, this Court directs the petitioner to give a copy of the representation dated 19.10.2016 along with a copy of this Order to the respondents within a period of two weeks from the date of receipt of a copy of this Order and on receipt of the same, the respondents are directed to consider and pass orders on the same on merits and in accordance with law, within a period of twelve weeks thereafter.

6. The Writ Petition is disposed of accordingly. No costs.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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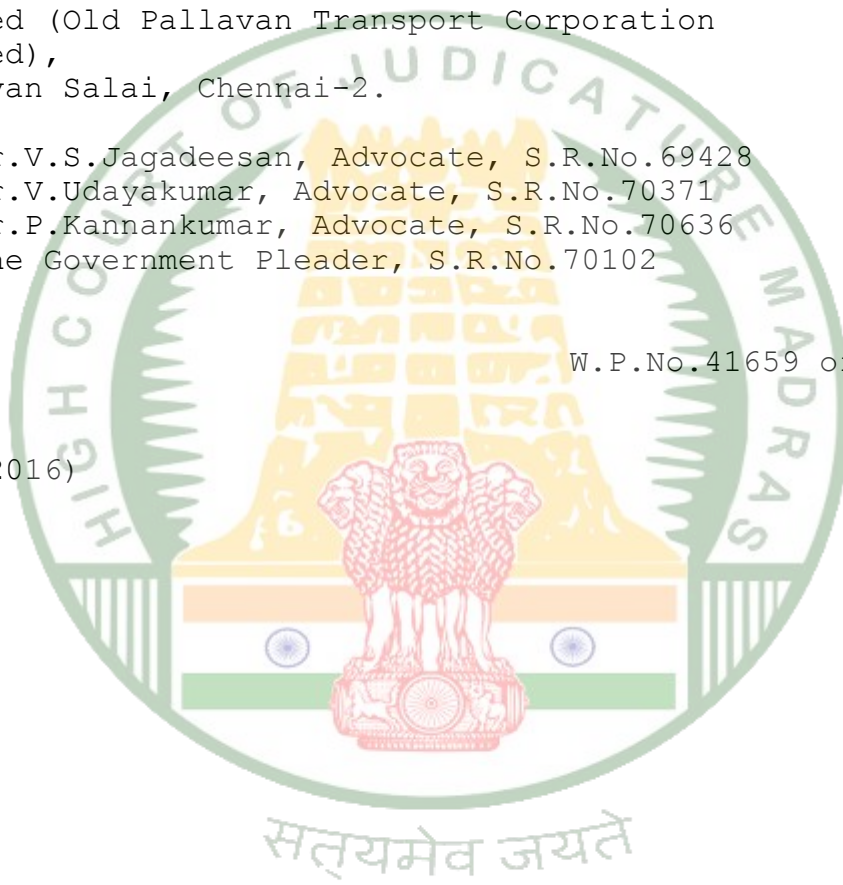
To

1. The Secretary,
State of Tamil Nadu,
Transport Department,
Secretariat, Chennai-9.
2. Managing Director,
Metropolitan Transport Corporation (Chennai)
Limited (Old Pallavan Transport Corporation
Limited),
Pallavan Salai, Chennai-2.

+1cc to Mr.V.S.Jagadeesan, Advocate, S.R.No.69428
+1cc to Mr.V.Udayakumar, Advocate, S.R.No.70371
+4cc to Mr.P.Kannankumar, Advocate, S.R.No.70636
+1cc to the Government Pleader, S.R.No.70102

W.P.No.41659 of 2016

ssk (CO)
MA (28/12/2016)



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