



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH  
and  
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.(MD) No.1006 of 2014  
and  
M.P.(MD).No.3 of 2014  
in  
WP(MD)No.5830 of 2008  
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- 1.The Managing Director,  
Tamil Nadu State Transport Corporation,  
Madurai Zone-III, now the Managing Director,  
Tamil Nadu State Transport Corporation,  
Tirunelveli Limited.
- 2.The General Manager,  
Tamil Nadu State Transport Corporation,  
Nagercoil.
- 3.The Selection Grade Asst.Manager (pension),  
Tamil Nadu State Transport Corporation,  
Nagercoil  
...Appellants / Respondents 1 to 3

Vs

M.Thangaiyan  
.... Respondent/Writ Petitioner

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 03.04.2013 made in W.P.(MD).No.5830 of 2008 on the file of this Court.

**Prayer in WP(MD). 5830/ 2008 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders in Letter No. Special /Pension/TNSTC(Madurai zone)/nager/06 dated 17/12/2007 on the file of the third respondent, to quash the same and to direct the respondents 1 to 3 herein to forthwith pay the petitioner, the arrears pension till this day and to continue to pay the pension taking into account the service of the petitioner from the date of original appointment in the Tamil nadu State Transport Corporation, Zone III, nagercoil, i.e from 31/12/1986



For Appellants :Mr.K.Sathiya Singh  
For Respondent :Mr.G.Ramanathan

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JUDGMENT

[Judgment of the Court was delivered by  
R.SUBBIAH, J.]

The present Writ Appeal has been filed against the order dated 03.04.2013 made in W.P.(MD).No.5830 of 2008, whereby, the respondent herein prayed to quash the impugned order of the third respondent therein dated 17.12.2007 and consequently prayed for a direction to the appellants herein to pay the pension taking into the service of the appellant from his original appointment rendered in the Tamil Nadu State Transport Corporation, Zone III, Nagercoil. i.e. from 31.12.1986. The said Writ Petition was allowed by the learned Single Judge, vide his order dated 03.04.2013. Aggrieved over the same, the respondents are before this Court.

2. For the sake of convenience, the parties are referred to as per the rank mentioned in the Writ Petition for the purpose of deciding this Writ Appeal.

3. The short facts, leading to filing of this Writ Appeal, in a nutshell, are as follows:-

The case of the petitioner is that he was appointed by the Tamil Nadu State Transport Corporation, (for short 'the Corporation') Zone-3, Nagercoil on 31.12.1986. Before joining the Corporation, way back in the year 1965, he worked as driver in the Military service, wherein, he had put in fifteen years of service. Subsequently, he joined the Corporation in the year 1986 as a driver against the ex-servicemen quota and after joining, he was given training for three months, after which, he was also paid daily wages for 242 days, during which period itself, the second respondent collected provident fund from the petitioner and thereafter, he retired from service on 31.03.1999. Since the date of retirement, for a period of five and half years, the petitioner was receiving pension and thereafter, the second respondent abruptly stopped the payment of pension from 01.11.2004 as if he had not put in ten years of minimum service for getting pension. In this regard, he gave a number of representations clarifying the tenure of his service rendered by him stating that the service rendered by him was more than 12 years and three months in the Corporation. The last such representation was made on 13.12.2007, to which, the impugned order dated 17.12.2007 had been passed by the respondents, whereby, it was declared that the petitioner was ineligible for pension, since he did not have ten years of minimum service. <https://hcservices.cemts.gov.in/hcservices/> Actually, on the following grounds, the claim of the petitioner for getting pension was negatived, which was stated by the petitioner in paragraph No.5 of the affidavit filed in support



of the Writ Petition, which is reproduced hereunder:-

"a) The respondents herein have failed to consider the fact that my original date of appointment in the Transport Corporation is on 31.12.1986.

b) The respondents herein have failed to consider the fact that when my service in the Corporation was to be approved/confirmed, it should be done only with effect from actual date of appointment and not ignoring the probation period, during which period itself provident fund contribution has been deducted.

c) The respondents have also failed to consider the fact that I have been appointed in the ex-service men quota and that my tenure of service as military man also had been included in the service records;

d) The respondents have failed to consider the fact even in the military, I was working as a driver, that too for some time as Heavy Duty Driver.

e) The respondents act of refusing to pay me pension, after paying me the same for over 5 ½ years, is illegal, arbitrary and against the principles of established service jurisprudence.

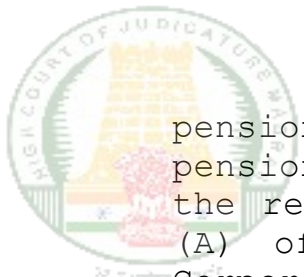
f) The respondents have failed to consider the latest position of law, in that it has been repeatedly held that the date of confirmation of probation should be effect from actual date of appointment and not the date of confirmation of probation.

g) The impugned order is liable to be quashed and the pension should be paid to me, including the arrears, as hitherto done by the respondents and also the future enhancements, allowances, then there announced by the Government as per the price index, etc."

4. By raising the above grounds, the petitioner had filed W.P(MD).No.5830 of 2008 challenging the impugned order dated 13.12.2007 and the learned Single Judge, by considering the submissions made on either side had allowed the said Writ Petition. The operative portion of the said order made in W.P (MD).No.5830 of 2008 dated 03.04.2013 is usefully extracted below:-

"8. On perusal of records, it is seen that the the Transport Corporation Employees' Provident Fund was created as an Employees' Provident Fund exclusively for the Transport Employees, in accordance with the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. By virtue of the amended provisions of the Employees' Provident Fund Act, the employer was entitled to formulate a separate Scheme for its employees.

9. By virtue of insertion of Section 6(A) in the Employees' Provident Fund Act with effect from 1.6.1995, the Central Government by notification has framed the scheme to be called as Employees' Pension Scheme for the purpose of providing superannuation



pension, retiring pension or permanent total disablement pension to the employees of any establishment or class by the respondent Corporation is the scheme under Section 6 (A) of the Act. As per the Scheme, the respondent Corporation shall create a fund and the said fund shall be deemed to be committed and operational and from 01.09.1998 for the purpose of operating the said fund, the Rules were framed by the respondent Corporation. Rule 2(p) defines the actual service and for the purpose of this case, sub clause (iii) of Rule 2(p) of the said Rules would be relevant and the same is reads as follows:

"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."

Rule 2(v) of the said Rules which defines the pensionable service reads as follows:-

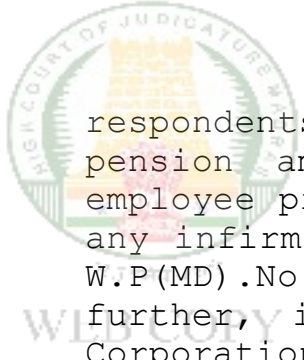
"Pensionable service" means the service rendered by the member for which the contributions have been received."

10. Therefore, for the purpose of calculating the actual service of the employee to be entitled to the benefit under the Pension Funds Scheme, the date of regular appointment or becoming a member of the Employees' Provident Fund, in the State Transport Corporation undertaking will be reckoned for the calculation of pension service. Therefore, if that said clause is applied to the petitioner's case, then as admitted by the respondent in their counter affidavit, the date of the petitioner becoming the member in the Employee's Provident Fund is 01.12.1987. That apart as per the definition of Pensionable Service, service rendered by the member for which the contribution is received shall be deemed to be pensionable service."

5. On the afore-said reasoning, the learned Single Judge directed the Transport Corporation to calculate the service rendered by the petitioner with effect from 01.12.1987 for the purpose of computing the pensionable service to enable him to receive pension, but the transport Corporation has come forward with the present Writ Appeal.

6. Heard the submissions of the learned Counsel for the appellants as well as the respondent.

7. The issue involved in this Writ Appeal is no more res integra. Similar issue involved in this Writ Appeal was already dealt with by another Division Bench of this Court in the case of *Managing Director, Kumbakonam Vs. N.Jothi and another*, W.A.(MD).No.94 of 2010 and in the said judgment, by order, dated, 20.04.2010, this Court by negating the contention raised by the



respondents directed the Transport Corporation to calculate the pension amount from the date on which the contribution for employee provident fund was deducted and therefore, we do not find any infirmity or illegality in the order dated 03.04.2013 made in W.P(MD).No.5830 of 2008 passed by the learned Single Judge. Added further, initially, the petitioner was granted pension by the Corporation for a period of five and half years and for the best reasons known to them, it was abruptly stopped, which is only an after-thought of the Corporation. Therefore, we do not find any compelling reasons warranting any interference with the reasoned order passed by the learned Single Judge. Hence, this Writ Appeal is liable to be dismissed and accordingly, it is dismissed. Since the petitioner is in the evenings of his life even at the time of filing the Writ Petition and the matter has been pending for more than seven years before this Court, the respondents/Transport Corporation are directed to comply with the order of the learned single Judge made in W.P(MD).No.5830 of 2008 dated 03.04.2013 and grant pension, including the arrears of amount so far to be payable to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/  
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar.

To

- 1.The Managing Director,  
Tamil Nadu State Transport Corporation,  
Madurai Zone-III, now the Managing Director,  
Tamil Nadu State Transport Corporation,  
Tirunelveli Limited.
  - 2.The General Manager,  
Tamil Nadu State Transport Corporation,  
Nagercoil.
  - 3.The Selection Grade Asst.Manager (pension),  
Tamil Nadu State Transport Corporation,  
Nagercoil
- +1CC to M/S.K.Sathiya Singh, Advocate, SR.No. 83126  
+1CC to M/S.G.Ramanathan, Advocate, SR.No. 83020

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against  
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