BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.06.2016
CORAM :
THE HONOURABLE MR.JUSTICE T.RAJA
W.P(MD)No.9815 of 2013

S.Jenova Mary ... Petitioner

vs.

1)The Management of
Tamilnadu State Transport Corporation (Kumbakonam) Ltd.,
Trichy Region,
Rep. by its
The Managing Director,
Trichy.
2)The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai-2. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to pay pension to the petitioner under the TNTCEPFS Pension Rules every month from 01.05.2012 with all arrears together with 16% interest p.a.

For Petitioner : Mr.S.Arunachalam
For Respondents : Mr.K.Sathiyasingh

S.Jenova Mary, wife of Late S.S.Sebastian who was appointed as a Helper(Mazdoor) in the Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Trichy Region, by order dated 21.08.1998 of the 1st respondent and regularised on 09.11.2002, has come to this Court seeking issuance of a Writ of Mandamus, directing the respondents to pay her pension under the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, contending that she has rendered 13 years and 8 months of service in the transport corporation.

2.It has been pleaded by the learned counsel for the petitioner that the petitioner's husband Late S.S.Sebastian, while serving as a permanent driver in the 1st respondent corporation from 1979, died on 23.07.1992, leaving behind her, two sons and one daughter. Thereafter, the petitioner was appointed as Helper(Mazdoor) in the corporation on compassionate grounds, by order dated 21.08.1998 of the 1st respondent. Within four years from the date of her appointment, her services were regularised by order dated 09.11.2002 of the 1st respondent. After her appointment on 21.08.1998, she also became a member under the Employees Provident Fund Scheme from 01.09.1998. Therefore, when she has been making contribution towards Employees Provident Fund from September 1998 onwards, he pleaded, the respondents are bound to consider her qualifying service for pension, from the date of her contribution namely, September 1998 till her retirement namely, 30.04.2012, which comes to totally more than the pensionable service namely, 13 years 8 months.

3.Placing reliance on an order passed by this Court in W.P(MD) No.14718 of 2011, dated 01.09.2014 in the case of B.Chellammal vs. Management of Tamilnadu State Transport Corporation (Kumbakonam) Ltd., Trichy Region, Rep. by its The Managing Director, Trichy and another, wherein, a similarly placed person was held entitled for monthly pension under Rule 16 of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, on condition that the petitioner therein shall repay the provident fund amount of Rs.20,721/- and service gratuity amount of Rs.74,478/- which she had already received from the 2nd respondent, learned counsel for the petitioner has submitted that the said order shall be made applicable to the case on hand.

4.Again, relying upon another order passed by a Hon'ble Division Bench in W.A(MD)No.94 of 2010, dated 20.04.2010 in the case of The Managing Director, Tamilnadu State Transport Corporation (Kumbakonam) Ltd., Kumbakonam, vs. N.Jothi and another, learned counsel for the petitioner has submitted that when the date of enrollment as a member of the Employees Provident Fund Scheme, for the purpose of calculation of pension, has been accepted by this Court and based on that, the actual period of service also has been directed to be counted for the purpose of payment of pension, the very same respondent, knowing pretty well about the abovesaid order, ought to have taken into account the date from which the petitioner became the member of the Employees Provident Fund Scheme namely, 01.09.1998, for calculation of pension. It is also submitted that a sum of Rs.75,098/- was admittedly received by the petitioner towards her service gratuity.

5.Adding further, he would submit that if the direction issued by this Court in W.P(MD)No.14718 of 2011 dated 01.09.2014 and W.A (MD)No.94 of 2010 dated 20.04.2010, are applied to the case on hand, he pleaded, the case of the petitioner deserves to be allowed. Further, it is not in dispute that the petitioner was a member under the Employees Provident Fund Scheme of the 1st respondent corporation from 01.09.1998 till her date of retirement on 30.04.2012, therefore, the contention raised by the respondents that only from the date of regularisation namely, 09.11.2002, pensionable period of the petitioner should be counted, is liable to be rejected.

6.Per contra, learned counsel for the respondents transport corporation opposing the above prayer, would submit that the petitioner has not put in minimum pensionable service of 10 years, therefore, she is not entitled to pension. Adding further, he would submit that as argued by the learned counsel for the petitioner, the petitioner was appointed as a Helper(Mazdoor) purely on temporary basis, on compassionate grounds, by the 1st respondent on 21.08.1998 and she also joined duty only on 27.08.1998, however, her services were regularised with effect from 09.11.2002, therefore, from the date of her regularisation from 09.11.2002, till her date of retirement 30.04.2012, she has rendered 9 years 4 months and 8 days of service. Thus, by a communication dated 13.02.2013 indicating to the petitioner that she has not put in pensionable service, a sum of

Rs.78,098/- was sent to her towards service gratuity, hence, after receiving the same, he pleaded, the petitioner cannot come to this Court.

7.Again, continuing his arguments, it is contended that as per Part I read with Rule 2(p)(iii) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, while calculating the pensionable years of service, the date of regular employment or the date on which an employee is becoming the member of the Employee's Provident Fund in the STU whichever is later, shall be taken into account. Similarly, as per Part VI, Serial No.16(a)(i) of the abovesaid Rules, on completion of the minimum period of 10 years of qualifying service, an employee is eligible to get pension, therefore, the 2nd respondent has rightly addressed a communication dated 13.02.2013 to the petitioner sending a sum of Rs.75,098/- towards her service gratuity, hence, the petitioner, he pleaded, is not entitled to ask for pension.

8.But, the stand taken by the respondents in the counter affidavit is indeed favouring the petitioner. Paragraph 7 of the counter affidavit squarely clinches the issue, which reads that as per Rule 2(p)(iii) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, pensionable service has to be calculated from the date of regularisation of the service or from the date of provident fund membership. Admittedly, in the present case, after the petitioner was appointed on 21.08.1998, she became the member of the Transport Corporation Employees Provident Fund, by contributing some amount from her salary towards Employees Provident Fund, from September 1998 onwards. If the pensionable service is taken into account from September 1998 onwards, no doubt, the petitioner has comfortably put in 13 years and 8 months of service and entitled for grant of pension.

9.While considering a similar case in Writ Petition Nos.5774 of 2012, 19297 of 2008,19806 of 2009, 4800 of 2010, 18106 of 2010 and 26922 of 2008 dated 06.03.2014 (A.Subramani vs. The Tamilnadu State Transport Employees Pension Trust, Chennai, and two others), I have held that the petitioners therein are entitled to pension by calculating pension from the date on which they became members in the Employees' Provident Fund in S.T.U. It is useful to extract paragraphs 28 to 31 of the abovesaid order, which are given as under:-

> ''26. The two questions raised in the present batch of Writ Petitions are pertaining to mode of calculating the period of service for pension. 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 of the employee's 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 when 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.

29. With regard to the Government letter No.11785/D/2003-2, dated 08.09.2012 also the above said Judgment has answered the issue holding that the Government cannot amend the Rule 2(p)(iii) by way of a letter of clarification, in as much as, a letter of clarification cannot override the rule to take away the benefits granted to the employees. On these reasonings, this Court has declared the said letter dated 8.9.2012 as arbitrary, illegal and void and consequently directed the Respondents to grant pensionary benefits to the petitioner making it clear that after allowing the employee to go on voluntary retirement the Respondents are estopped from claiming that the employees not rendered minimum service for getting pension. Similarly, in the case on hand also some of the petitioners were allowed to go on voluntary retirement accepting their applications therefor, subsequently, thereafter the pensions paid were stopped on their calculation that some of them have not rendered minimum service for getting pension. As mentioned above, if any of the petitioners failed to render minimum pensionable service, the same should have been informed while scrutinising their applications then and there itself. Having allowed them to go on VRS, the respondents are estopped from claiming that the petitioners not rendered the minimum pensionable service. For better appreciations, it is useful to extract paras 14 and 15 of the said judgment as follows:

> 14.It has been further stated that the petitioner would be entitled to the payment of pension, as per the Rule (2)(p)(iii), as it exists, until it is amended in accordance with the procedures prescribed for the said purpose. The Government cannot amend the said rule, by way of a letter of clarification. The impugned letter of clarification cannot override the rule to take away the benefits granted to the employees. Even otherwise, the rule could be amended only prospectively. Unless such

amendment is beneficial to the employees concerned, the benefit which had already accrued to the petitioner cannot be taken away, by way of a letter of clarification. The letter of clarification cannot restrict the qualifying service by counting it only from the date of the regularization of the service of the employees, when contributions have been received from the employees concerned, from the date of their enrollment to the provident fund.

15.In such circumstances, this Court may be pleased to declare that the clarification issued by the first respondent,in his letter dated 08.09.2003, is arbitrary, illegal and void and consequently direct the respondents to grant pensionary benefits to the petitioner, from 01.12.2003, along with interest.

30. A close reading of the above ratio clearly shows that the case of the petitioners are squarely covered by the said decision.

31. In such view of the matter, the impugned orders are set aside. All the petitioners are entitled to pension by calculating the pension from the date they became member in the employee's provident fund in the S.T.U. With regard to the other claims made by the employees seeking Voluntary Pension, as this Court has held that for the purpose of getting net qualifying service to get the pension, the services should be calculated only from the date of becoming member in the E.P.F., the respondents are directed to calculate the twenty years of service also only by adopting the same method of calculation indicated as above.

With the above directions, all the Writ Petitions are allowed. No costs.''

10.In the light of the above decision, the writ petition is allowed and the respondents are directed to calculate pension of the petitioner from September 1998 till her retirement namely, 30.04.2012, and pay pension every month without any default. The arrears of pension from 01.05.2012 shall be paid to the petitioner within a period of three months from the date of receipt of a copy of this order. Needless to mention, a sum of Rs.75,098/- admittedly received by the petitioner towards her service gratuity shall be refunded to the respondents with interest as per the Payment of Gratuity Act, so as to enable them to pay pension. No costs.

Sd/-
Assistant Registrar(AE)

/TRUE COPY/

Sub Assistant Registrar

To

1)The Managing Director,
Management of
Tamilnadu State Transport Corporation (Kumbakonam) Ltd.,
Trichy Region,
Trichy.

2)The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai-2.

+1cc to M/S.S.ARUNCHALAM, ADVOCATE IN SR.NO. 30055
+1cc to MR.K.SATHIYA SINGH,ADVOCATE, SR NO: 30106

nbi
JA--SKS-RR-19.7.2016/6P:5C

W.P(MD)No.9815 of 2013
13.06.2016