

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

CORAM

THE HON'BLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

W.A.Nos.28 and 29 of 2017

The Managing Director
Metropolitan Transport Corporation (Chennai) Ltd.
Pallavan Illam, Anna Salai
Chennai - 600 002.

.. Appellant
in both appeals

Vs.

1. P.G.Venugopal .. 1st respondent
in WA.28/2017
2. V.Raju .. 1st respondent
in WA.No.29/2017
3. The Secretary to Government
Transport Department
Fort St. George
Chennai - 600 009. .. 2nd respondent
in both appeals
4. The President Officer
III Additional Labour Court
City Civil Court Annex Buildings
High Court Compound
Chennai - 600 104. .. 3rd respondent
in both appeals.

PRAYER: Appeals under Clause 15 of the Letters Patent against the order dated 13.6.2014 passed by the learned Single Judge in W.P.Nos.14330 and 14422 of 2014 respectively.

Prayer in WP.14330/14:For issuance of Writ of Certiorari calling for the records pertaining to the order dated:27/09/2013 made in C.P. 59/2009 on the file of the 3rd responent of quash the same.

Prayer in WP.14422/14:For issuance of Writ of certiorari calling for the records pertaining to the order dated 27/09/2013 made in

C.P.58/09 on the file of the 3rd Respondent of quash the same.

For Appellant : Mr.P.Paramasiva Doss
in both appeals Standing Counsel

For Respondents : Mr.K.Malaikannu
for 1st respondent
in both appeals

Mr.V.Jayaprakash Narayanan
Addl. Government Pleader
for 2nd respondent
in W.A.No.28 of 2017

Mr.R.Prathap Kumar
Addl. Government Pleader
for 2nd respondent
in W.A.No.29 of 2017

JUDGMENT

(Delivered by HULUVADI G. RAMESH, J.)

Aggrieved by the order dated 13.6.2014 passed by the learned Single Judge in W.P.Nos.14330 and 14422 of 2014, the unsuccessful petitioner therein has preferred these appeals.

2.1. The facts in a nutshell are as under: The first respondent in W.A.No.28 of 2017 was appointed as Conductor in the erstwhile Tamil Nadu State Transport Department vide proceedings dated 22.12.1971 and he joined duty on 29.12.1971. On 1.1.1972, he was deputed to Pallavan Transport Corporation, a Government of Tamil Nadu undertaking. He was absorbed into monthly cadre with effect from 1.11.1972 and his probation was declared on 1.1.1973. He opted for voluntary retirement and was relieved on 31.5.1995. Thereafter, he sent a representation to the authorities to pay him pension as the orders of the Supreme Court and G.O.Ms.No.42, Transport (R.W) Department, dated 27.5.2005, with effect from 1.1.1988 and the management rejected the same stating that he has not put in qualifying service of ten years. Assailing the same, he filed a claim petition before the Labour Court under Section 33(c)(2) of the Industrial Disputes Act to compute the monetary value of Rs.3,61,847/- from the Management with interest.

2.2. Along the same lines, the first respondent in W.A.No.29 of 2017 was appointed as Driver in the erstwhile Tamil Nadu State Transport Department vide proceedings dated 16.10.1971 and he joined duty on 17.10.1971. On 1.1.1972, he was deputed to

Pallavan Transport Corporation, a Government of Tamil Nadu undertaking. He was absorbed into monthly cadre with effect from 1.11.1972 and his probation was declared on 18.3.1975. He opted for voluntary retirement and was relieved on 31.12.1994. Thereafter, he sent a representation to the authorities to pay him pension as the orders of the Supreme Court and G.O.Ms.No.42, Transport (R.W) Department, dated 27.5.2005 with effect from 1.1.1988 and the management rejected the same stating that he has not put in qualifying service of ten years. Assailing the same, he filed a claim petition before the Labour Court under Section 33(c)(2) of the Industrial Disputes Act to compute the monetary value of Rs.3,61,847/- from the Management with interest.

2.3. The Labour Court after examining the pleadings and the evidence let in by the parties, found that the first respondents in these appeals have completed ten years of qualifying service and are entitled to pension and arrears of pension from 1.1.1988 and consequently, allowed the claim petitions.

2.4. Calling into question the said orders passed by the Labour Court, the management has filed writ petitions and the learned Single Judge dismissed the writ petitions.

2.5. Assailing the same, the management has preferred these appeals for the relief stated supra.

3. The primordial contention of the learned counsel for the appellant is that the first respondents in these appeals have not put in ten years of net qualifying service and, therefore, they are ineligible for pension. It is submitted that the net qualifying service has to be reckoned from the date of regularization/absorption and not from the date of entry into service as casual employee. It is further pleaded by the appellant that the leave on loss of pay should be excluded while calculating the qualifying service.

4. Per contra, the learned counsel appearing for the first respondent in both the appeals reiterated the submissions made before the Labour Court and the learned Single Judge, which received acceptance.

5. We have heard the learned counsel on either side and perused the orders passed by the learned Single Judge.

6. The factual position is not in dispute. It is beyond any cavil that the first respondents in both the appeals joined duty on 29.12.1971 and 17.10.1971 respectively. They were absorbed into monthly cadre with effect from 1.11.1972. Their probation was declared on 1.1.1973 and 18.3.1975 respectively. The said individuals opted for voluntary retirement and retired from

service on 31.5.1995 and 31.12.1994 respectively.

7. A person claiming qualifying service should have been working as a full-time employee in a job, for which a regular post has been sanctioned, and the payment of salary - either on a monthly or daily basis, from the contingency should have been continuous and without any break. In the instant appeals, it is beyond any demur that the first respondents were continuously discharging their duties without any break from the date of their initial appointment. Therefore, in our considered opinion, the qualifying service must be reckoned from the date of their initial entry into service.

8. In *M.Brindavanam v. The Secretary to Government Transport Department & another*, 2012 Supreme (Madras) 3150, which was relied upon by the learned Single Judge in the orders under challenge, a learned Single Judge has quashed G.O.Ms.No.42, Transport (RW) Department, dated 27.5.2005, as violative of Article 14 of the Constitution of India insofar as denial of daily paid service for counting the qualifying service for pension and held that the daily paid service should be reckoned for counting the service of ten years for the purpose of pension.

9. We are, thus, of the firm view that the Labour Court and the learned Single Judge, rightly held that the first respondent in both the appeals have put in more than ten years of qualifying service as on 1.4.1982, from the date of entry into service as daily paid employees.

10. Insofar as the second limb of the argument with regard to exclusion of the period of leave on loss of pay (LLP) while calculating the qualifying service is concerned, the learned counsel for the appellant relied upon a decision of the Supreme Court in *Indian Bank and another v. G.Ramachandran and others*, (2008) 1 SCC 711, wherein it was held that only in a case where leave has been granted on medical grounds, the appointing authority at the time of granting such leave may allow the period thereof to be counted as qualifying service and if no specific direction is issued, such leave period should not be reckoned for counting the service of ten years for the purpose of pension.

11. In the instant appeals, the appellant did not produce an iota of evidence before the Labour Court to justify the plea that the first respondents in these appeals have availed leave on loss of pay without obtaining prior permission from the management. It is merely averred by the appellants that the first respondent in W.A.No.28 of 2017 was on leave on loss of pay for 4 months and 12 days and the first respondent in W.A.No.29 of 2017 was on leave on loss of pay for 5 months and

15 days. However, no materials have been produced by the appellant in support of the said plea. It is not known whether the first respondent in these appeals availed leave on loss of pay with or without the permission of the employer. Even at the first instance, before the Labour Court, the appellant has not produced any material in support of the said plea. Mere averments in the affidavits unsubstantiated by material evidence have no sanctity in law and, in our considered opinion, the said plea has been rightly rejected by the Labour Court. Even before this Court, no material was produced by the appellant to justify the said plea and, therefore, the said ground does not hold water.

For the foregoing reasons, these appeals are dismissed. No costs. Consequently, C.M.P.Nos.421 to 424 of 2017 are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government
Transport Department
Fort St. George
Chennai - 600 009.
2. The President Officer
III Additional Labour Court
City Civil Court Annex Buildings
High Court Compound
Chennai - 600 104.

+2cc to Mr.P.Paramasivadosh, Advocate SR.No.52460,52461
+2cc to Mr.K.Malai Kannu, Advocate SR.No.51835,51834
+1cc to Government Pleader SR.No.54748

W.A.Nos.28 and 29 of 2017

SVI (CO)
GN(03/08/2017)