

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. No. 2358 of 2017

&

W.M.P. No. 2343 of 2017

Mr.A. Mohammad Noorullah

..Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary,
Transport Department,
Secretariat,
Chennai - 600 009.
2. Tamil Nadu State Transport Corporation
(Villupuram Division -II) Ltd.,
(Old Name Pattukottai Azhagiri
Transport Corpn. Ltd.)
rep. by its Managing Director,
Vellore Region, Vellore - 9.
3. The Deputy Secretary to Government,
Transport (RW1) Department,
Secretariat, Chennai - 600 009.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent with regard to the orders passed in Letter No. 1444/Sa.Ni.12/tha.Aa.Po.Ka(V)/Ve.Ma/2015 dated 06.01.2016 and also the orders passed by the 3rd respondent in Letter No. 17761/RW1/2015-2 dated 20.01.2016 and Letter No. 8713/RW1/2016 dated 22.06.2016 and quash the same and direct the 1st respondent to sanction and pay pension to the petitioner with effect from 01.01.1988 as per G.O.Ms. No. 42 Transport (RW) Department dated 27.05.2005 construing that the petitioner has completed the qualifying service of 10 years by following the order passed in W.P.(MD) No. 3517 of 2008 dated 31.03.2010 and confirmed by the Division Bench in W.A. (MD) No. 381 of 2011 dated 09.04.2011 and also by the Honourable Supreme Court of India in SLP (CC) NO. 1660 of 2012 dated 03.02.2012 and

implemented by ordering G.O.(3D) No. 19 Transport (RW1) Department dated 25.06.2012.

For Petitioner :: Mr.V.S.Jagadeesan

For Respondents:: Mr.K. Dhananjayan,
Special Govt. Pleader for
R1 & R3
Mr.P. Kannan Kumar for R2

O R D E R

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

2. The petitioner would aver that he was selected and appointed to the post of Driver on 13.11.1971 on daily wages basis in the service of erstwhile State Transport Department and he joined the said post on 14.11.1971 (Staff No. 5882) and his service was also regularised. Subsequently, on formation of various new Transport Corporations on 01.01.1972, he was transferred and absorbed in the newly formed Thanthai Periyar Transport Corporation Limited as a Driver on 01.05.1975 and there, he was allotted Staff No. 237. In the year 1982, the petitioner was transferred to Tamil Nadu State Transport Corporation (Villupuram Division II) Limited, (Old Name Pattukottai Alagiri Transport Corporation Limited) and was allotted Staff No. 4397. After putting in nearly 27 years of service, the petitioner retired from service on 31.05.1998, on attaining the age of superannuation.

3. The petitioner would further aver that 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 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. 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 with effect from the date of their absorption in the Transport Corporation in addition to their salaries in the Corporations even while in service. The validity of the said cut-off date was challenged by the Trade Unions before this Court and it was held in a batch of Writ Petitions and Writ Appeals that the cut-off date fixed as

01.05.1975 was illegal and suggested to fix a fresh cut-off date so as to enable such of those employees, who are not able to get pension, would be able to get pension. As against the same, the Government filed Civil Appeal Nos. 1444-1445 and 1446-1452 of 1999 before the Honourable Supreme Court and the Honourable Apex Court, while holding that the cut-off date fixed as 01.05.1975 was illegal, fixed the cut-off date as 01.04.1982 and directed the Government to extend the pensionary benefits to the eligible employees and pay arrears of pension from 01.01.1988, within a period of four months from the date of the order.

4. Based on the above said order of the Honourable Apex Court, the Government, by G.O.Ms. No. 42 Transport (RW) Department dated 27.05.2005, ordered that the pension be paid, if an employee had put in qualifying service of 10 years as on 01.04.1982 and accordingly, the sanction of pension and payment of arrears of pension shall be calculated and paid. By virtue of the said Government Order, the petitioner became eligible to receive pension from 01.04.1982 and arrears of pension with effect from 01.01.1988 and in this regard, he submitted several representations seeking sanction of pension. Since the said representations were not considered, the petitioner filed W.P. No. 33580 of 2015 and by order dated 16.10.2015, while disposing of the writ petition, this Court directed the respondent concerned to consider and dispose of the petitioner's representation dated 03.10.2015, on merits and in accordance with law, within a stipulated time.

5. In compliance of the said order, the 2nd respondent has considered the request made by the petitioner and rejected the same vide impugned order dated 06.01.2016 stating that the petitioner had put in 9 years 3 months and 2 days, excluding the period of 28 days for which he had not attended duty and even assuming 50% of his service as daily wage employee could be taken into consideration, he had put in only 9 years 9 months and 10 days and therefore, he is not entitled to get pension. Since this Court had directed the 1st respondent to consider and pass orders on the representation of the petitioner, the said fact was brought to the notice of the 1st respondent and by letter dated 22.06.2016, the Deputy Secretary to Government passed orders rejecting the request of the petitioner and even prior to this order, the very same Deputy Secretary had passed orders dated 20.01.2016 rejecting the petitioner's request. Challenging the legality of the said orders, the petitioner has come forward with the present writ petition.

6. Learned counsel for the petitioner would submit that one N. Sundaram Nadar had filed W.P.(MD) No. 3517 of 2008, in similar facts and circumstances and it was ordered on 31.03.2010 and challenging the same, the Tamil Nadu State Transport Corporation, Madurai, had filed W.A.(MD) No. 381 of 2011 and it was also dismissed on 09.04.2011 and SLP (CC) No. 1660 of 2012 filed was also dismissed on 03.02.2012 and subsequently, by G.O. (3D) No. 19 Transport (RW1) Department dated 25.06.2012, the 1st respondent has complied with the said order and further invited the attention of this Court to the order dated 02.11.2012 passed in W.P. No. 25790 of 2012 (M.Joseph V. The State of Tamil Nadu, rep. by its Secretary, Transport Department, Secretariat, Chennai - 600 009 and another), which was also complied with by issuance of G.O.(3D) No. 27 Transport (RW1) Department dated 02.07.2014 as well as the judgment dated 05.08.2015 rendered in W.A. No. 1752 of 2014 (The Secretary, Transport Department, Secretariat, Chennai -9 V. KA. Padmavathi and another) and in the light of the same, there cannot be any impediment on the part of the respondents to positively consider the request of the petitioner.

7. Per contra, Mr.K. Dhananjayan, learned Special Government Pleader, who accepts notice on behalf of respondents 1 and 3 and Mr.P. Kannankumar, learned Standing Counsel for the 2nd respondent would contend that fixation of cut-off date is the prerogative of the Department and if the plea of the petitioner is considered, it would open the floodgates and very many persons may approach them for conferment of the said benefits and therefore, prays for dismissal of the writ petition.

8. This Court has considered the rival submissions and also perused the materials on record.

9. A perusal of the above cited orders as well as the Government Orders passed by the 1st respondent would disclose that similar claims of persons were directed to be considered positively by this Court and the said orders were also complied with by the 1st respondent Department. The petitioner has a net qualifying service of 9 years 9 months and 11 days, which falls short only by a few months and days and in the light of the various orders passed by this Court, which have also been complied with, by the 1st respondent, this Court is of the view that the petitioner is entitled to similar benefit.

10. Hence, the impugned orders are quashed and the 1st respondent is directed to accord consequential benefits to the petitioner, in the light of the order passed in G.O.(3D) No. 27

Transport (RW1) Department dated 02.07.2014 and pass appropriate orders, within a period of ten weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner. The writ petition is allowed accordingly. No costs. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Secretary,
Transport Department,
Secretariat,
Chennai - 600 009.
2. Tamil Nadu State Transport Corporation
(Villupuram Division -II) Ltd.,
(Old Name Pattukottai Azhagiri
Transport Corpn. Ltd.)
rep. by its Managing Director,
Vellore Region, Vellore - 9.
3. The Deputy Secretary to Government,
Transport (RW1) Department,
Secretariat, Chennai - 600 009.

+1cc to Mr.V.S. Jagadeesan, Advocate, S.R.No.1437
+1cc to Mr.P. Kannan Kumar, Advocate, S.R.No.14438

(CO)KJ
EU 5.4.17

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