

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.12273 of 2009

N.Namasivayam

.... Petitioner

Versus

1.The Secretary to Government,
Transport Department,
Secretariat, Chennai-600 009.

2.The Managing Director,
State Express Transport Corporation,
No.2, Pallavan Salai,
Chennai-600002.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Certiorarified Mandamus to call for the records of the first respondent relating to the G.O.Ms.No.42, Transport (RW) Department dated 27.05.2005 and to quash the condition in para 5(a) to exclude daily wage service while calculating qualified service for pension and consequently direct the respondents to take it into account the service of the petitioner from 17.10.1971 for the purpose of pension and to pass orders sanctioning pension to take effect from 01.01.1988.

For Petitioner : Mr.C.Manohar

For Respondents : Mr.S.Gunasekaran, AGP for R1

Mr.P.Paramasivadoss for R2

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a Certiorarified Mandamus to call for the records of the first respondent relating to the G.O.Ms.No.42, Transport (RW) Department dated 27.05.2005 and to quash the condition in para 5(a) to exclude daily wage service while calculating

qualified service for pension and consequently direct the respondents to take it into account the service of the petitioner from 17.10.1971 for the purpose of pension and to pass orders sanctioning pension to take effect from 01.01.1988.''.

2.The petitioner was originally appointed as driver in the erstwhile Tamil Nadu State Transport Department. His service was subsequently regularized on 01.11.1972. The petitioner's service was transferred to State Express Transport Corporation, on its formation on 01.05.1975. After attaining the age of superannuation, the petitioner retired from service on 30.08.1996. He retired from service in the Transport Corporation without any government pension, since he had put in less than 10 years qualifying service, i.e. the petitioner had put in only 9 years and 5 months service.

3. Originally, the cut-off date of eligibility of pension was fixed on 01.05.1975. But certain orders were passed by the Hon'ble Supreme Court of India and the cut off date was changed to 01.04.1982. Therefore, the employees of erstwhile Transport Department, who rendered 10 years on 01.04.1982, have become eligible for pension. However, in the instant case, the petitioner having put in less than 10 years of service, was not found eligible.

4. In this connection, he has made a representation to the authorities concerned for counting the service rendered by him from 17.10.1971 to 31.10.1972 and if the said period is counted, the petitioner would become eligible for grant of pension. However, the said plea was rejected as counting of daily wage service cannot be allowed.

5. It appears that this Court has passed several orders by directing the respondent to count 50% of daily wage service of employees concerned for the purpose of calculation of pension. The persons who were benefited by the orders passed by this Court are getting pension by counting 50% of daily wage service rendered by them and therefore, the petitioner is before this Court seeking a similar relief.

6. Upon notice, Mr.S.Gunasekaran, learned Additional Government Pleader entered appearance on behalf of the first respondent and Mr.P.Paramasivadosh, learned counsel entered appearance for the second respondent and made their submissions.

7. Learned counsel for the respondents would submit that if 50% of the service rendered by the petitioner is taken into consideration, then he will become eligible for grant of pension and he would not dispute the fact that similarly placed persons have granted relief as per the order of this Court,

however, he would submit that in terms of the Hon'ble Supreme Court's order, the cut off date for arrears of pension is 01.01.1988.

8. This Court has taken note of the submissions of the learned counsel for the respondents. Since the similarly placed persons were granted benefit of 50% of temporary service, who were in daily wage service, the same benefit would be extended to this petitioner also, for the service rendered by the petitioner from 17.10.1971 till 31.10.1972. On counting of 50% of service, the petitioner shall be paid admissible pension with effect from 01.01.1988.

9. In these circumstances, the writ petition is allowed and the impugned order passed by the first respondent dated 27.05.2005, insofar as the denial of the benefit of counting of 50% of daily wage service rendered by the petitioner, is set aside and consequently, the petitioner is to be paid pension with arrears from 01.01.1988. In view of the above, the orders shall be passed by the respondents, within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Secretary to Government,
Transport Department,
Secretariat, Chennai-600 009.

2.The Managing Director,
State Express Transport Corporation,
No.2, Pallavan Salai,
Chennai-600 002.

+ 1 cc to M/s.N.Sundara Murthy, Advocate,SR.85767
+ 1 cc to The Govt.Pleader, SR.86916

W.P.No.12273 of 2009

nr 26/12/2017