

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.Nos.15241 & 15444 of 2003 and
W.P.M.P.Nos.19133, 19386 & 19387 of 2003 and
W.V.M.P.No.239 of 2004

W.P.No.15241 of 2003 :

Tamil Nadu State Transport Workers
Federation (CITU) (Regd.No.2468/MDS)
rep. by its General Secretary,
Chennai 600 012.

.... Petitioner

-vs-

- 1.State of Tamil Nadu
rep. by Secretary,
Transport Department,
Secretariat, Chennai 600 009.
- 2.Metropolitan Transport Corporation
(Chennai) Ltd., rep. by its
Managing Director, Pallavan Salai,
Chennai 600 002.
- 3.Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Villupuram Division,
Villupuram 605 602.
- 4.Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Kanchipuram Division, No.1/2, Nadu Street, Shekpet,
Kanchipuram 631 501.
5. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Vellore Division,
No.9, Rangapuram,
Vellore 632 009.
- 6.Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Tiruchi Division,
Periamilaguparai, Tiruchi 620 001.
- 7.Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Kumbakonam Division,
Railway Station New Road,
Kumbakonam 612 001.

8. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Pudukottai Division,
No.51/1, Pillai Thanneer Pandal,
Tirumayam Road, Pudukottai- 622 001.
9. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Virudhunagar Division,
Virudhunagar.
10. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Dindigul Division,
Bye-Pass Road,
Dindigul 624 004.
11. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Karaikudi Division,
Maruthupathi Mangiri Road,
Karaikudi 630 037.
12. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Madurai Division,
Bye-pass Road, Madurai 625 010.
13. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Tirunelveli Division,
No.2, Thiruvananthapuram Road,
Vannarapettai, Tirunelveli - 627 003.
14. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Nagercoil Division,
Nesamoni Nagar, Rani Thottam,
Nagercoil 629 001.
15. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Coimbatore Division,
No.37, Mettupalayam Road,
Coimbatore 641 043.
16. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Salem Division,
No.12, Ramakrishna Salai,
Salem - 636 007.

17. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Dharmapuri Division,
Bharathipuram, Salem Road,
Dharmapuri 636 705.

18. Tamil Nadu State Transport Corporation Ltd.,
(TNSTC) rep. by its Managing Director,
Erode Division,
Chennimalai Road,
Erode 638 001.

19. State Express Transport Corporation Ltd.,
rep. by its Managing Director,
Pallavan Salai, Chennai 600 002.

20. Tamil Nadu State Transport
Employees' Pension Fund Trust
'Thiruvalluvar House'
Pallavan Salai,
Chennai 600 002.

... Respondents

W.P.No.15444 of 2003 :

Tamil Nadu State Transport Corporation
Employees Federation (AITUC), rep. by
its General Secretary, J.lakshmanan
No.2, Pallavan Salai,
Kalai Arangam Complex,
Chennai 600 002.

.... Petitioner

-vs-

1. State of Tamil Nadu
rep. by its Secretary,
Finance Department,
Fort St. George,
Chennai 600 009.

2. The Secretary,
Transport Department,
Fort St. George,
Chennai 600 009.

3. Metropolitan Transport Corporation
(Chennai) Limited,
rep. by its Managing Director,
Pallavan Illam,
Pallavan Salai,
Chennai 600 002.

... Respondents

Prayer in W.P.No.15241/03: Writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of Declaration that the G.O.(D)No.46, Transport D Department, dated 25.04.2003, issued by the first respondent read with order No.21/P2/TNSTC EPFT/2003/1629, dated 2.5.2003 issued by the 20th respondent as wholly illegal and unconditional and consequently direct the respondents to pay pensionary benefits to the employees of the respondent Corporation as per the Rules issued vide G.O.Ms.No.135, Transport (D) Department, dated 15.12.2000, with all arrears and penal interest at 18% per annum.

Prayer in W.P.No.15444/03 : Writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ of Certiorari calling for the records relating to the G.O.Ms.No.75, dated 19.03.2003 passed by the 1st respondent herein and the consequential order in G.O.(D)No.46, dated 25.04.2003, passed by the IInd respondent herein and quash the same.

For Petitioner
in W.P.No.15241/03 : Mr.V.Ajay Khose
for Ms.Anna Mathew
For Petitioner
in W.P.No.15444/03 : Mr.K.M.Ramesh
For Respondents : Mr.K.Ravikumar,
For R1 in WP No.15241/03
For R1 & R2 in WP No.15444/03
For Respondents : Mrs.Rajini Ramadoss
in W.P.No.15241/03 R2 to R20
For Respondent
in W.P.No.15444/03 For R3

COMMON ORDER

These writ petitions were filed by the Tamil Nadu State Transport Workers Federation and Tamil Nadu State Transport Corporation Employees Federation respectively. After hearing these two writ petitions, during the last hearing date, this Court, passed the following order:

"In the first writ petition, the government order in G.O.(D)No.46, Transport D Department, dated 25.04.2003 is under challenge. In the second writ petition, both the government orders in G.O.(D)No.46, Transport D Department, dated 25.04.2003 and G.O.Ms.No.75, Finance (Pension) Department, dated 19.03.2003 are under challenge.

2. Insofar as the G.O.(D)No.46, Transport D Department, dated 25.04.2003 is concerned, since the rule namely, the Tamil Nadu State Transport Corporation Employees Pension Rule got amended by substituting the figure "33" instead of "30" in Sub-rule (a) and (b) of the Rule 14 and by virtue of that the maximum service which was required for making the employee to get full pension was enhanced from 30 to 33 years, the said amendment is under challenge in both writ petitions.

3. In this regard, it is brought to the notice of this Court by the learned counsel appearing for the petitioner that, the government subsequently issued G.O.No.496 Finance (Pension) Department dated 01.08.2006, whereby the similar provision which is available in Tamil Nadu Pension Rules, 1978 i.e, 33 years of maximum qualifying service, had been reduced to 30 years and the same has been implemented with effect from 31.07.2006. The similar relief therefore shall be given to the Transport Corporation employees also. Since the Government already taken the policy to reduce the maximum qualifying service for getting full pension from 33 years to 30 years for the Government servants, the same yardstick shall be adopted insofar as the transport employees also.

4. In respect of the challenge with regard to the G.O.No.75, Finance (Pension) Department dated 19.03.2003 is concerned, at the time of retirement of the employees, only 50% of the gratuity are being paid and remaining 50% will be paid by way of Small Savings Certificates and the same was imported on the G.O.No.75, Finance (Pension) Department dated 19.03.2003, hence the same was challenged on the ground that, the said payment of 50% of gratuity by way of Small Savings Certificate is against the provisions of the Gratuity Act and therefore, on that ground the said G.O. was also challenged.

5. Insofar that first issue of requirement of reduction of maximum qualifying service from 33 years to 30 years is concerned, even though such reduction of years have already been made by making amendment to the Tamil Nadu Pension Rules, 1978 by virtue of G.O.No.496 Finance (Pension) Department dated 01.08.2006, whether the government has got any proposal to make similar amendment to the Tamil Nadu State Transport Corporation Employees Pension Rule and if so, what is the present status of the said proposal. The said position has to be ascertained from the government and then only the issue raised in the writ petition can be dealt with further.

6. Like that, insofar as the G.O.No.75 Finance (Pension) Department dated 19.03.2003 is concerned, the import of the said G.O. is against the provisions of Gratuity Act and it is submitted by the learned counsel for the petitioner in the second writ petition that, subsequently, the government has come forward to rectify the said mistake, now the entire gratuity is being paid as per the provisions of the Act. In this regard also, the stand of the Transport Corporation viz-a-vis the government also to be ascertained, since the said G.O. itself is under challenge in the second writ petition.

7. Therefore, in order to get the stand of the Tamil Nadu Government as well as the Transport Corporation, to these issues comprehensively, this Court wants both the Tamil Nadu Government as well as the Transport Corporation to file their written response explicitly on the stand towards the said issues indicated above. In this regard, the learned Additional Government Pleader appearing for the Government and the learned Standing Counsel appearing for the respondent Corporation wanted ten days time.

8. Hence ten days time is granted to file the written response as indicated above by the Government as well as the Transport Corporation. Post the matter on 23.10.2018."

2. Pursuant to the said order passed by this Court, the State Government through the Deputy Secretary to Government, Transport Department, Secretariat, Chennai has filed a position note. In that position note, the State Government has taken the stand, as regards to the import of the said G.O.(D)No.46, Transport Department, dated 25.04.2003 and G.O.Ms.No.75, Finance (Pension) Department, dated 19.03.2003. The relevant portion of the position note as given by the State Government is extracted hereunder for easy reference:

"6. In this regard, it is also submitted that as per the G.O.(D)No.46, Transport(D) Department, dated 25.04.2003 orders have been issued by enhancing the maximum qualifying service to 33 years and the same has not been implemented by Tamil Nadu State Transport Corporation Employees Pension Fund Trust due to stay order issued in W.P.No.15241 of 2003. The same status quo has been maintained by Tamil Nadu State Transport Corporation Employees Pension Fund Trust for sanctioning pension to Pensioners/Family Pensioners i.e., 30 years are eligible for getting full pension. However, the expeditious action is being taken by the Government to amend G.O. (D)No.46, Transport (D) Department, dated 25.04.2003 by adopting G.O.(Ms)No.71, Finance (Pension) Department, dated 19.03.2003, G.O.No.496, Finance (Pension) Department, dated 01.08.2006 and G.O.(Ms)No.127, Finance (Pension) Department, dated 11.04.2007.

7.Regarding the issue of Gratuity as per G.O.(Ms.) No.75, Finance (Pension) dated 19.03.2003 50% amount paid in cash and balance by Small Saving Certificates has to be given. But Gratuity to retired employees of State Transport Undertakings are being sanction in cash."

3. By placing the above said position note, the learned Additional Government Pleader appearing for the State Government would submit that, the Government's intention to make amendment to G.O.Ms.No.46, has been expansively given in paragraph 6 of the position note and therefore, accordingly, the Government will make necessary amendment enabling the persons, government employees to get maximum pension for rendering 30 years instead of 33 years. Like that, with regard to the disbursement of gratuity to the retired transport employees are concerned, even though G.O.Ms.No.75 Finance (Pension), Department, dated 19.03.2003 was issued to make the payment of gratuity 50% by way of cash and 50% by way of Small

Savings Certificate, the said practice has been done away in respect of the retired transport undertaking employees and in respect of those employees, the amount granted is paid by way of cash. This has also been stated in the paragraph 7 of the position note referred to above.

4. Therefore, by making all these submissions, the learned Additional Government Pleader would submit that, in so far as the two grievance projected by the petitioner's association Federation is concerned, two groups are being redressed in the manner indicated above, there cannot be any further quarrel on the issue, to be decided in these writ petitions.

5. Similarly, Mr. Ajya Khose and Mr. K.M. Ramesh, learned counsel appearing for the petitioners would submit that, if the intention of the Government as reflected in the position note, especially in paragraphs 6 & 7 is recorded and the employees of the Transport Corporation are getting maximum punishment by rendering only 30 years of service and the retired employees are getting full gratuity, the petitioner federation must have no further grievance for adjudication.

6. Like that Mr. K. Ravikumar, learned Standing counsel for the respondent Corporation would also submit that, in view of the stand taken by the State Government as reflected in paragraphs 6 & 7 of the position note the Transport Corporation will abide by any such decision taken by the Government and will pay the maximum pension for the retired employees, who have rendered maximum of 30 years of service alone instead of citing of ban of 33 years, as has been imported in G.O. Ms. No. 46 and also in respect of getting the entire gratuity, by way of cash unmindful of G.O. Ms. No. 75, Finance (Pension) Department, dated 19.03.2003, since the Transport Corporation already paid the entire gratuity by way of cash, as has been stated in Paragraph 7 of the position note given by the Government, the said practice shall continue hereinafter.

7. I have considered the submissions of the learned Standing counsel appearing for the parties and also have noted the averments contained in the position note, filed by the Deputy Secretary to Government, especially paragraphs 6 & 7 thereof.

8. In view of the said stand taken by the Government, this Court is inclined to dispose, these two writ petitions by making the following directions:

(i) The State Government is directed to make amendment to G.O. (D) Ms. No. 46, Transport (Pension) Department, dated 25.04.2003, as stated in the position note filed today, before this Court. Such exercise shall be undertaken by the State Government within a period of three months, from the date of receipt of a copy of this order.

(ii) With regard to the payment of gratuity to the retired Transport Employees are concerned, the Government Order i.e., G.O.Ms.NO.75, Finance (Pension) Department, dated 19.03.2003, shall not stand in the way for the disbursement of entire gratuity to the retired Transport Employees by way of cash.

(iii) Further, it is open to the State Government to make suitable amendment in G.O.Ms.No.75, and till such time, the practice of payment of entire gratuity by way of cash shall continue.

(iv) The respondent Transport Corporation and the trust, shall follow the above directions and act accordingly, by sanctioning full pension to those retired employees, who rendered 30 years of service and also disburse the entire gratuity for the retired employees by way of cash.

With these directions, both the writ petitions are disposed of. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To,

1. The Secretary,
State of Tamil Nadu
Transport Department,
Secretariat, Chennai 600 009.
2. The Managing Director,
Metropolitan Transport Corporation
(Chennai) Ltd., Pallavan Salai,
Chennai 600 002.
3. The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division, Villupuram 605 602.
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Tamil Nadu State Transport Corporation Ltd.,
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No.1/2, Nadu Street, Shekpet,
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20. Tamil Nadu State Transport
Employees' Pension Fund Trust
'Thiruvalluvar House'
Pallavan Salai, Chennai 600 002.

W.P.Nos.15241 &
15444 of 2003

PP (CO)
GMY (06/02/2020)

सत्यमेव जयते

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