

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29/8/2018
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.1841 of 2018

The State Express Transport Corporation
(Tamil Nadu) Limited
rep. By its General Manager
Pallavan Salai
Chennai 600 002. Appellant/Petitioner

Vs

1. The Presiding Officer
Labour Court
Chennai.
2. V. Perumal
3. The Commissioner and Secretary
Transport Department
Fort St. George
Chennai 600 009. Respondents/Respondents

WRIT Appeal filed under Clause 15 of the Letters Patent
against the order dated 17/2/2017 passed in W.P.No.9874 of 2013.

W.P.No. 9874 of 2013 : Petition praying for a writ of
certiorari, to call for the records of the first respondent in
C.P.No. 92 of 2006 dated 12/12/2012 and quash the same and pass
further orders.

For appellant ... Mr.S.Rajeni Ramadass

For Respondents... M/s. P.C.Hari Kumar & Associates
for R.2.

For R.3 - No appearance.

J U D G M E N T

(Judgment of the Court was delivered by Subramonium Prasad,J)
State Express Transport Corporation (Tamil Nadu) Limited,
Chennai, has filed the instant Writ Appeal, against the order,
dated 17/2/2017, made in W.P.No.9874 of 2013. Second respondent

was appointed, as Maistry Grade - I, on 7/3/1966, in Tamil Nadu State Transport Department. Subsequently, he was transferred, to Tiruvalluvar Transport Corporation Limited and absorbed as Work Assistant and on 1/5/1977 he was regularised. He was promoted as Assistant Foreman (Civil), with effect from 28/7/1979 and thereafter, as Junior Engineer (Civil), from 1/1/1985. He retired from service, on 30/6/1997, as Assistant Engineer.

2. In G.O.Ms.No.42, Transport Department, dated 24/7/1975, issued by the Government of Tamil Nadu, it has been specifically stated that the employees of the erstwhile Tamil Nadu State Transport Department, who have more than 10 years of net qualifying service, as on 1/4/1982, alone are entitled for pension. Therefore, the second respondent filed a claim petition, in C.P.No.92 of 2006, before the III Additional Labour Court, Chennai, under Section 33 (c) (2) of the Industrial Dispute Act, for a sum of Rs.2,63,716/-, towards pensionary benefits payable for the period between 1/1/1988 and 31/1/2006 and for monthly pension.

3. Labour Court, by its order, dated 12/12/2012, allowed the claim petition and held that petitioner's services have to be counted, from 7/3/1966 and not from 1/5/1977. State Express Transport Corporation (Tamil Nadu) Limited, challenged the order of the labour Court by filing W.P.No.17220 of 2017. Vide, order, dated 17/2/2017, Writ Court, upheld the order of the labour Court, as under:-

"5. On perusal of the order passed by the labour Court, it is found that the aspect whether the second respondent has duly completed 10 years of qualifying service, has been considered in detail. It is the specific case of the second respondent that he was appointed as Maistry on 7/3/1966 and was transferred to Thiruvallur Transport Corporation Limited as Works Assistant in Civil Division and regularised his services with effect from 1/5/1977. He was promoted as Assistant Foreman with effect from 28/7/1979 and as Junior Engineer from 1/1/1985 in Civil Division. He was also given promotion as Assistant Engineer with effect from 1/8/1992 and thereafter, on 30/6/1997, he retired from service. Neither the petitioner nor the second respondent has adduced any oral or documentary evidence to establish their stand of completion of 10 years of qualifying service, before the Labour Court. Further, the petitioner has filed the present writ petition, without raising any ground of irregularities of

perverse, in allowing the order passed by the Labour Court. Learned counsel for the petitioner would submit that the relief in the claim petition has been directed to be paid by the petitioner Corporation, but the pension has to be granted by the third respondent.

6. Taking into consideration the said submission of the learned counsel for the petitioner, this Court would modify the order of the labour Court in C.P.No.92 of 2006 dated 12/12/2012 to the effect that the petitioner Corporation shall forward the pension proposal of the second respondent as ordered by the labour Court, to the third respondent herein, who is the competent authority to sanction the pension proposals of the second respondent."

4. Aggrieved against the order, dated 17/2/2017, instant Writ Appeal has been filed.

5. Placing reliance on, Rule 12 of the Tamil Nadu Pension Rules, 1978, learned counsel for the appellant contended that since the second respondent had been appointed as a Maistry, only on temporary basis, from 7/3/1966, his services prior to his regularisation, i.e., from 1/5/1977, cannot be counted, for calculating pensionary benefits. We are afraid that this argument of the learned counsel appearing for the appellant can be sustained.

6. Rule 11 of the Tamil Nadu Pension Rules, deals with the commencement of qualifying service. 11 (1) of the said Rules, reads thus:-

"Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government Servant retiring on or after 1st October, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation.

7. Rule 12 of the said Rules reads thus:-

Conditions subject to which service qualifies -

(1) The service of a Government servant shall not qualify for pension unless his duties and pay are regulated by the Government or

under conditions determined by the Government.

(2). For the purposes of sub-rule (1) the expression "service" means service under the Government and paid by the Government from the Consolidated Fund of the State, or a local fund administered by that Government but does not include service in a non-pensionable establishment unless such service is treated as qualifying service by that Government.

(3). Temporary Central Government Servants on deputation to the State, on getting absorbed under this Government will be allowed to count the period of continuous temporary service under the Central Government immediately preceding the service under this Government for purposes of pensionary benefits admissible under the rules of this Government. The pensionary liability will be shared between the central and this Government on the basis of length of qualifying service rendered under each of them. This benefit will not be allowed to those who secure jobs under this Government on their own volition in response to advertisements or circulars including those by the Tamil Nadu Public Service Commission.

4 (a). Temporary Central Government Servant who has been appointed under the State Government Service shall be allowed to count their qualifying service rendered under the Central Government Service for the grant of pension by the Government from where he eventually retires in the following two categories, namely;

(i). Pensioner who having been retrenched from the service of the Central Government secure employment under the State Government either with or without interruption of service from the date of retrenchment; and

(ii). Pensioner who while holding temporary post under the Central Government, applies for the post under the State Government, through proper channel or with proper permission of the administrative authority concerned.

(b). The pensionary liability will be shared between the Central and State Government on the basis of length of qualifying service rendered under the respective Government.

Provided that when a Government servant retires on or after the 1st April 1987, the

liability for pension including gratuity will be borne in full by the Central Government to the State Government under which the Government servant permanently absorbed at the time of retirement.

5 a. Temporary local body employee or State Government Servant who has been appointed under the State Government service or under any Local Body as the case may be, shall be allowed to count his qualifying service rendered under the respective Local Body or the State Government Service as the case may be for the grant of pension by the State Government or Local Body from where he eventually retires, in respect of the following two categories, namely:-

(i). Person who having been retrenched from the service of the local body or State Government, secures employment under the State Government or Local Body, as the case may be, either with or without interruption of service from the date of retrenchment; and

(ii). Person who, while holding temporary post under the State Government or Local Body applies for a post under any local body or State Government, as the case may be, through proper channel or with proper permission of the administrative authority concerned.

(b). The pensionary liability shall be shared between the respective local body and the Government, as the case may be, on the basis of length of qualifying service rendered under each of them:

Provided that when a person retires or on after the 1st April 1987 the liability for pension including gratuity shall be borne in full by the respective Local Body or the State Government, as the case may be under which such pension has been permanently absorbed at the time of retirement.

8. Material on record shows that second respondent was appointed, on 7/3/1966, as Maistry Grade - I. Appointment order reads as under:-

Note No.99530/E7/66

Dated 7.3.66

Sub: Establishmemnt - work charged establishment - Appointment of Maistry Grade I - Orders issued.

Ref: Application from Sri.V.Perumal, dated 19/1/66.

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Sri.V.Perumal, is appointed as Maistry Grade - I on a pay of Rs.90/- in the scale of Rs.65-1-70-2-90 with usual dearness allowance in force and is posted to Salem Sub-Division.

The appointment is purely temporary and liable to be terminated at any time without prior notice. The candidate cannot claim any preferential treatment for future appointment.

He should report for duty before the Assistant Engineer (Civil) at Salem.

V.DURAISAMY
for Executive Engineer (Civil)
Dated: 7/3/66

9. A perusal of Rule 11 show that, even if the appointment is temporary but the employee is confirmed, then the period spent as a temporary employee would be counted towards the attachment of pension. A perusal of Rule 12 show that, the service of the government servant could mean service under the government and paid by the government from the consolidated fund of the state or local fund administered by the government. The petitioner satisfies the conditions as stipulated in Rule 12.

10. Perusal of the order of appointment shows that the second respondent was appointed, on a temporary basis. His duties and pay are regulated by the Government. His continuous services are rendered by the Government. His appointment is to a particular post. His services rendered in the Transport Department, as Maistry, even in temporary capacity, has to be counted towards qualifying the service, for grant of pensionary benefits. No other point has been argued.

11. With the above observation, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

mvs.

To

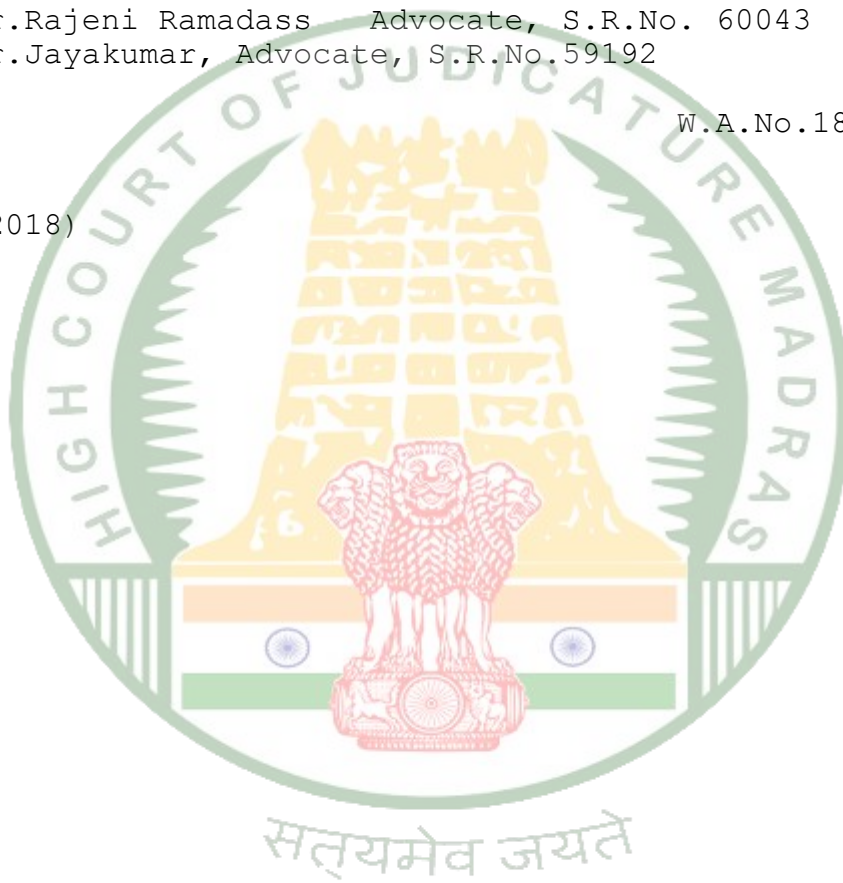
1. The Presiding Officer
Labour Court
Chennai.
2. The Commissioner and Secretary
Transport Department
Fort St. George
Chennai 600 009.

+1cc to Mr.Rajeni Ramadass Advocate, S.R.No. 60043

+1cc to Mr.Jayakumar, Advocate, S.R.No.59192

W.A.No.1841 of 2018

SAI (CO)
GN(27/09/2018)



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