IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.18113 of 2010

1.C.Marimuthu(deceased)
2.Mariyammal
3.Vijay Anand
4.Mohana
5.Ravikumar

petitioners 2 to 5 are substituted vide order dated 02.02.2018 in W.M.P.No.26314 of 2016 in W.P.No.18113 of 2010 ... Petitioners

Vs

1.Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Rep by its Managing Director,
37, Mettupalayam Road, Coimbatore-13.

2.The General Manager,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Erode Region, Chennimalai Road,
Erode.

3.The Administrator,
Tamil Nadu State Transport Corporation Employees Pension Trust,
Pallavan Salai, Chennai-2. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Declaration, to declare the Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Scheme Rules and the action of the respondents in denying the petitioner pension on the ground that he did not complete 50 years of age as on the date of voluntary retirement as illegal and consequently direct the respondents to pay the petitioner monthly pension and commuted value of pension w.e.f. 01.05.2010, with all arrears and other consequential benefits together with interest at the rate of 12% per annum, award costs.

For Petitioners : Mr.V.Ajoy Khose

For Respondents : Ms.S.Vijaya for
Mr.T.Chandrarasekaran for R1
: No appearance for R2

: Mr.R.Singaravelan
Senior counsel for
Mr.I.Saddam Hussain for R3

O R D E R

Heard Mr.V.Ajoy Khose, learned counsel for the petitioners and Ms.S.Vijaya, learned counsel appearing for the first respondent and Mr.R.Singaravelan, learned counsel appearing for the third respondent.

2. The petitioners have approached this Court, seeking the following relief,

> "To issue a writ of Declaration, to declare the Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Scheme Rules and the action of the respondents in denying the petitioner pension on the ground that he did not complete 50 years of age as on the date of voluntary retirement as illegal and consequently direct the respondents to pay the petitioner monthly pension and commuted value of pension w.e.f. 01.05.2010, with all arrears and other consequential benefits together with interest at the rate of 12% per annum, award costs."

3. The case of the petitioners is as follows:-

The first petitioner was working as Conductor in the erstwhile Transport Corporation. He retired from service under Voluntary Retirement Scheme with effect from 30.04.2000. Before his retirement, a 12(3) Settlement was arrived at between the workman and the Management and in pursuance of which, a circular was issued by the second respondent, in which, it is provided that a workman who had completed 15 years of qualifying service and completed 50 years of age or a workman who had completed 20 years of qualifying service is eligible to go on voluntary retirement and on that basis, having completed more than 20 years of service, the first petitioner took voluntary retirement and stood retired from service on 30.04.2000.

4. On the basis of the above said 12(3) Settlement, dated 13.02.1999, the State owned Corporation including the

respondents herein agreed to introduce and implement the pension scheme to all the employees who were in service as on 31.08.1998, with effect from 01.09.1998. Thereafter, the pension rules were framed and notified by the Government on 15.12.2000. The workman who retired between the period 01.09.1998 to 15.12.2000, were brought under the pension scheme and paid pension. At that time, the first petitioner took voluntary retirement under the Settlement and he was duly informed that once the pension rules were framed, he would be paid pension.

5. While matter stood thus, the first petitioner was not paid pension even after a lapse of considerable time, since his retirement and therefore, a representation was made on 11.12.2001, to the Corporation for payment of pension. In response to the representation, an order was issued by the first respondent on 21.02.2002, rejecting the request of the employee that he having not completed 50 years of age, though he had put in more than 20 years of service, he would not be entitled to pension as per the pension rules. The said rejection order is put to challenge in the present writ petition. During the pendency of this writ petition, the first petitioner died on 17.04.2016 and the legal representatives have been brought on record.

6. The learned counsel for the petitioners would submit that at the time when the employee took voluntary retirement, he was assured that he would be paid pension under 12(3) Settlement dated 13.02.1999, which was put into effect from 01.09.1998. However, when subsequently the pension rules came to be framed, he was denied pension on the basis of the Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Scheme Rules, on the ground that the employee did not complete 50 years of age as on date of voluntary retirement, though he completed 20 years of qualifying service.

7. The learned counsel for the petitioners would submit that once an employee was assured of pension under the Settlement and in this case, the employee retired from service on 30.04.2000, before coming into force of the Rules, the embargo stipulated in the pension rules i.e., 50 years of age, cannot be put against him. According to him, such action on the part of the respondents is a violation of the principles of promissory and also equitable estoppal.

8. The learned counsel for the petitioners would draw the attention of this Court to an order passed by the Hon'ble Division Bench of this Court in the case of Tamil Nadu State Transport Corporation, Employees' Pension Trust Vs. State Transport and Transport Corporation, Retired Employees Welfare Association, reported in 2015-I-LLJ-336 (MAD). The Division

Bench has dealt with the similar claim and the learned Division Bench in paragraph 12, has incorporated the orders passed by the Hon'ble Supreme Court of India. The learned counsel would particularly, draw the attention of this Court to the observations made by the Hon'ble Supreme Court of India as incorporated in the Division Bench order as found in paragraph Nos.12, 13, 14, and 15, which are extracted hereunder:-

> “12. Moreover, now the issue is not res integra and on the other hand, it is a settled one covered by a judgment of the Hon'ble Supreme Court in SLP (Civil) No.16446/2013 dated 08.05.2013 between M.D., TNSTC (MADURAI) LTD. Vs. M Natarajan & Anr. When a similar case went before the Supreme Court, the Hon'ble Supreme Court held that such an employee who was allowed to voluntarily retire under the then prevailing scheme on completion of 20 years of service, even though he had not completed the age of 50 years, was entitled to the pensionary benefits and other retiral benefits as per the pension scheme. In the said case which went before the Supreme court, the employee was allowed to retire voluntarily with effect from 01.04.2000 on completion of 20 years of service without any reference to his age and admittedly he had not attained the age of 50 years on the date of retirement. The Transport Corporation, in that case, relying on Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules had contended that unless both the conditions stipulated in the said rule were fulfilled, the employees who went on voluntary retirement, would not be entitled to claim pension and retiral benefits under the new pension rules. The said contention was rejected and the Hon'ble Supreme Court, besides categorically holding that the employee was entitled to pension, saddled the transport corporation with a cost of Rs.1,00,000/-. The relevant portion of the judgment is extracted hereunder.
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> > "In our considered view, after having accepted the prayer of respondent No.1 for voluntary retirement w.e.f. 01.04.2000, it was not open to the officers of the Corporation to deny him pension and other retiral benefits. If the concerned authority felt that on account of his age, was no occasion for that authority to pass order dated 20.03.2000. Once the application for voluntary retirement was accepted, the Corporation and its officers were estopped from questioning the entitlement of respondent No.1 to receive pensionary benefits."
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> 13. Following the dictum made by the Hon'ble Supreme Court in Natarajan's case cited supra, yet

another Division Bench of this court, in W.A.No.1937/2013, rejected the contention of the Transport Corporation by judgment dated 28.10.2013.

14. In a similar case, which came up before the another Division Bench (one of us NPVJ was part of the Division Bench) of this court sitting at Madurai in W.A.(MD) No.45 of 2013 judgment dated 04.06.2013, referring to the judgment of the Hon'ble Supreme Court in Natarajan's case cited supra, it was observed that denying such pensionary benefits to the persons, who went on voluntary retirement from service in accordance with the scheme with effect from 01.09.1998 was not justified. The employee therein was also similarly placed. Besides rejecting the claim of the transport corporation, the Division Bench also chose to impose a cost of Rs.5,000/- with the following observation:

"The appellant had given the first respondent much mental and financial strain. It is really a fight between a 'Goliath and a Lilliputian'. The appellant is not right in its approach. In the circumstances, that the appellant have to be saddled with a cost of Rs.5,000/- so as to dissuade it from not to indulge further in this kind of exercises."

15. The above said discussions will make it clear that the issue raised in these writ appeals are not res integra and that it has already been covered and finally decided by the Hon'ble Apex Court in Natarajan's case and by various Division Benches of this court. Even after such judgments/orders rejecting similar pleas wherein the concerned Transport Corporations were saddled with costs, the appellants have chosen to prefer these appeals against the order of the learned single judge, which is in tune with the above said judgment of the Hon'ble Supreme Court and also the Division Benches of this court. Hence we deem it appropriate to dismiss the writ appeals together with a cost of Rs.25,000/- to be paid to the sole respondent in W.A.No.2211/2013.

In the result, both the writ appeals fail and they are dismissed. The appellants are directed to pay a cost of Rs.25,000/- to the sole respondent in W.A.No.2211/2013. The appellants shall work out the pensionary benefits and disburse the amount within a period of eight weeks from this day."

9. The aforesaid decision dealt with the same Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Scheme Rules and however held that completion of 20 years of

service was fair enough for pension entitlement and not 50 years. The learned counsel for the petitioners would further submit that the issue is squarely covered by the above decision. In the said circumstances, the rejection is not only contrary to 12(3) Settlement and also contrary to the law laid down by this Court.

10. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a detailed counter affidavit.

11. The learned counsel appearing for the Corporation would submit that it is not open to the employee to claim for pension at this distant of time when the employee having been settled Provident Fund under the earlier scheme, before coming into force of the pension scheme. Therefore, the petitioner is estopped from making any claim under the pension scheme and the decision cited by him, cannot be applied to this case, in view of the above fact. She would also submit that, even otherwise, he was not entitled to, since there is a specific bar in the pension scheme, wherein, completion of 50 years is a criterion for eligibility of receiving pension.

12. This Court has considered the rival submissions of the learned counsel, pleadings and materials placed on record. As rightly contended by the learned counsel for the petitioners, once the employee was assured of pension under 12(3) Settlement, which was entered into at the time when the employee proceeded on voluntary retirement, by a subsequent scheme, such benefit cannot be snatched away as that would tantamount to violation of principles of equitable and promissory estoppel. Moreover, as rightly held by the Hon'ble Supreme Court of India, which was found incorporated in the order of the Hon'ble Division Bench as aforementioned, the completion of 50 years of age was not applicable to the employee who voluntarily retired prior to coming into force of the pension scheme in 2000.

13. The issue is directly covered under the above said decision of the Hon'ble Division Bench of this Court. There is no justification on the part of the corporation to treat the claim of the first petitioner differently and denying him the benefit of pension/family pension. Even otherwise, it has to be seen that once the employee has come to understanding that pension would be payable to him and on that basis, he took voluntary retirement, it is not open to the Corporation to turn around and deny the benefit by taking refuge under the provisions of the pension scheme which was subsequently put in place. The accrued right of the first petitioner cannot be taken away by the subsequent event. Such action amounts to arbitrary

and colourable exercise of power, which cannot be countenanced in law.

14. Lastly, in regard to the submission of the learned counsel for the Corporation that the Provident Fund which was due to him, had been paid when the employee took voluntary retirement, it is clarified that such payment by the Corporation and the acceptance of the same by the employee, cannot be held against him when he has a right to claim pension, otherwise. Therefore, in the said circumstances, it is made clear that the Corporation while sanctioning the pension, as admissible to the deceased employee and family pension payable to the substituted petitioners shall adjust the amount which was already paid to the employee towards Provident Fund, at the time when the employee took voluntary retirement.

15. For the above said reasons, the impugned order dated 21.02.2002, is set aside. The respondents are directed to sanction pension and also family pension from the date of the deceased employee took voluntary retirement after making necessary reduction towards Provident Fund Contribution of the employee. The direction shall be complied with by the Corporation within a period of eight weeks from the date of receipt of a copy of this order.

16. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

1.The Managing Director,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
37, Mettupalayam Road, Coimbatore-13.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Coimbatore) Ltd.,
Erode Region, Chennimalai Road,
Erode.

3.The Administrator,
Tamil Nadu State Transport
Corporation Employees Pension Trust,
Pallavan Salai, Chennai-2.

+1cc to Mr.V.Ajoy Knose, Advocate SR.No.8218
+1cc to Mr.T.Chandra Sekaran, Advocate SR.No.7860

W.P.No.18113 of 2010

SS(CO)
GN(15/03/2018)