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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).No.365 of 2018
and
C.M.P.(MD) No.2246 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Madurai North,
Bye-pass Road, Madurai. ... Appellant

Vs.

1.J.Kannan

2.The Administrator,
Tamil Nadu State Transport Corporation
Employee Pension Fund,
Pallavan Salai, Chennai.

3.The State of Tamil Nadu,
rep. By Secretary to Government,
Finance (Pension) Department,
Secretariat, Fort St. George,
Chennai - 600 009. ... Respondents

PRAYER:This appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 11.01.2017 and passed in W.P.(MD) No.15008 of 2012.

Prayer in WP(MD). 15008/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus by calling for the records pertaining to the order of the 1st Respondent in his TNSTC/Madurai/P. F8/C.R.11179 Dated 27.02.2012 quash the same as illegal and consequence thereof directing the 2nd Respondent to pay pension benefit to the petitioner.

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For Appellants : Mr.A.Jeyaram
For Respondent : Mr.D.Selvaraj, for R1
Mr.D.Muruganandam, AGP for R3
No Appearance for R2

JUDGMENT

(Judgment of this Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.A.Jeyaram, learned counsel appearing for the appellant and Mr.D.Selvaraj, learned counsel appearing for the first respondent and Mr.D.Muruganandam, learned AGP for the third respondent.

2.The first respondent/writ petitioner has challenged the order passed by the appellant dated 27.02.2012, rejecting the request made by the petitioner for grant of pension. The question which falls for consideration is as to whether the petitioner has the required qualifying number of years of service for grant of pension.

3.The learned counsel for the appellant reiterated the contentions advanced before the Writ Court and submitted that the Writ Court ought to have considered that the first respondent has rendered total service of 7 year 10 months only and the Tamil Nadu State Transport Corporation Pension Fund Rules has fixed a minimum of 10 years qualifying service for being eligible for grant of pension. In this regard, the learned counsel referred to Rule 16(a)(i) of the Pension Fund Rules. It is submitted that in terms of the aforesaid rule, the first respondent is not eligible to get monthly pension.

4.The issue which is canvassed before us was considered in depth by the learned Single Judge in the impugned order. At this juncture, we would refer to two paragraphs of the order viz., paragraphs 11 and 13, which deals with this issue:

> "11. The admitted facts are that though the petitioner had been appointed at the respondent Corporation in the year 1983, he was removed twice from the service and ultimately, after having entered into a settlement under Section 18(1) of the Industrial Disputes Act, the petitioner had been appointed afresh on 12.06.1998 only, that too, by way of daily wages employee. No doubt, his service has subsequently been regularised from 04.08.1999. Atleast from that date, according to the Rules, he was entitled to calculate the service period for the purpose of pension. If it is calculated from 04.08.1999 till 31.01.2011, the date on which, he retired, it would come more than 10 years. However, in between this period, there was an

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unqualified period of three years 7 months two days. When the said period was treated as loss of pay, naturally during this period, there was no chance for the petitioner to make any contribution towards Provident Fund of the respondent Corporation.

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13. Insofar as the 2nd hurdle is concerned, whether the three years 7 months and 2 days period, which was treated as unqualified period, for which, there was no contribution on the part of the petitioner towards the Fund is concerned, the 2nd judgment is the answer, by which, the analysis if there is any proof to show during the service record of the employee concerned that non contribution to the said Fund would disentitle the employee from becoming the qualified person for the purpose of pension by calculating the said period, where there was no contribution, then, such unqualified period also can be taken into account, of course, subject to the recovery of the contribution from the employee concerned for the said period. Therefore, by virtue of the two judgments cited supra, both the hurdles faced by the petitioner herein can be resolved. If these two hurdles are resolved, the reasoning cited by the respondents in the order impugned for rejection of the claim of the petitioner for giving pension and other retirement benefits is concerned, cannot be sustained. Therefore, this Court is of the view that by applying the ratio of the said two judgments, as the facts of those cases are also similar to that of the present case, the petitioner would become eligible to claim pensionary and other retirement benefits from the respondent Corporation, provided, if he is contributing the Fund for the period of unqualified service.

5.As pointed by the Writ Court, according to the Rules, the first respondent was entitled to calculate the service period for the purpose of pension and even if calculated from 04.08.1999 till 31.01.2011, the date on which he retired, it comes to more than 10 years. However, in between this period, there was an unqualified period of 3 years 7 months and 2 days. The Court next analyzed as to how this period should be reckoned and whether the first respondent was entitled to pension. Reliance was placed on the decision in the case of *R.Deivasigamani V. The Administrator, Tamilnadu State Transport Corporation Employees' Pension Fund and others - 2013(4) LLJ 139 (Madras).* By applying the said decision, the Court held that if there is any proof to show that during the service of the employee concerned that non contribution to the fund would disentitle the employee from becoming a qualified person for the purpose of pension by calculating the said period, where there was no contribution, then, such unqualified period can be taken into account subject to recovery of the contribution from the employee concerned for the said period. In our considered opinion, the

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decision rendered by the Writ Court is inconsonance with the earlier decision in the case of R.Deivasigamani, which has laid down principles as to how the period of unqualified service was to be reckoned.

6.In the light of the above, we find that the appellant has not made out any case for interference with the order passed by the Writ Court. Accordingly, this writ appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CSII)

/True Copy/

Sub-Assistant Registrar

To

The Secretary to Government,
State of Tamil Nadu,
Finance (Pension) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

+One cc to The Special Government Pleader, SR.No.54797

+One cc to M/s.D.Selvaraj, Advocate, SR.No.54608

Arul
RL/4C/4P/JC/SAR1/27/3/2018

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