

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.RAJA

W.P. No.36399 of 2007

K.Chinnapiyan

.. Petitioner

-vs-

1.The Commissioner,
Transport Department,
Chennai, Tamilnadu.

2.The Managing Director,
Formerly Annai Sathiya
Transport Corporation, Salem
now Tamil Nadu State Transport
Corporation, Salem Division.

3.The General Manager,
Formerly Annai Sathiya
Transport Corporation, Dharmapuri
now Tamil Nadu State
Transport Corporation,
Dharmapuri.

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus calling for the entire records pertaining to Ref.1604/Pension/TNSTC/Salem/2007 dated 29.05.2007 issued by 2nd respondent and quash the same and direct the 1st respondent to pay pension to the petitioner from the date of his superannuation on 30.06.2007 with any other benefits due to the petitioner.

For petitioner : Ms.R.T.Sundari

For respondents: Mr.K.Ravikumar
Additional Government Pleader
for R1

Ms.S.Rajini Ramadass,
Standing Counsel for R2 and R3

ORDER

The writ petition has been filed challenging the impugned letter in Ref.1604/Pension/TNSTC/Salem/2007 dated 29.05.2007 issued by the second respondent refusing the request of the petitioner to pay pension and seeking a direction to the first respondent to pay him pension from the date of his superannuation on 30.06.2007.

2.Learned counsel appearing for the petitioner, assailing the impugned order, pleaded that the petitioner, who was appointed as temporary Driver in Annai Sathiya Transport Corporation on 15.10.1984, was regularised in service on 01.09.1986 and he continuously served till the date of dismissal from service on 13.08.1996. However, as against the order of dismissal dated 13.08.1996, the petitioner raised Industrial Dispute in IDOP. No.35 of 2004 before the Labour Court, Salem. After enquiring the case of the petitioner, the Labour Court vide order dated 09.12.2004 passed an Award holding that the punishment imposed on the petitioner is not justified and therefore, the petitioner was entitled to the retiral benefits since he has already attained the age of superannuation and in respect of other reliefs such as back wages and other benefits, the petition was dismissed and a direction was given to the respondents to compute the benefits and to pay the petitioner within three months from the date of receipt of the Award. According to the learned counsel appearing for the petitioner, the respondents have not followed the Award passed by the Labour Court. In this regard, the grievance of the petitioner is that as per Rule 11(4) of the Tamil Nadu Pension Amended Rules 1973, the petitioner is entitled to count 50% of service rendered by him from 15.10.1984 to 31.08.1986 along with regular service from 01.09.1986 till the date of dismissal on 13.08.1996 for the purpose of granting him pension.

3.Learned Standing Counsel appearing for respondents 2 and 3 would submit that the petitioner cannot come to this Court invoking the provisions of Tamil Nadu Pension Rules 1978 as the petitioner was eligible for pension according to the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules, which governs the payment of pension to the employees of State Transport Undertakings. While so, Rule iii v of the said Tamil Nadu State Transport Corporation Employees Pension Fund Trust defines the meaning of the 'Pensionable service' as the service rendered by the member for which the contributions have been received and the rule 2(o) also defines the meaning of the 'Contributory Service' as the period of 'actual service' rendered by the member for which the contributions to the fund have been received. In the present case, the petitioner was appointed on 15.10.1984 and he was regularised in service on

01.09.1986 and he was suffered an order of dismissal on 13.08.1996. Therefore, the petitioner is not eligible for pension, as he has rendered a net qualifying service of 8 years 8 months and 23 days only against a minimum net qualifying service of ten years stipulated in the Pension Rules. But this fact was not brought to the notice of the Labour Court and in any event, the Labour Court has not given a finding on the eligibility of the petitioner to get pension as per the Tamil Nadu State Transport Corporation Employees Pension Fund Rules and therefore, the prayer of the petitioner requesting pension is liable to be dismissed.

4.I fully agree with the submission made by the learned Standing Counsel appearing for respondents 2 and 3. When the petitioner was appointed as temporary Driver on 15.10.1984, he was given the benefit of regularisation on 01.09.1986 and subsequently, he was suffered an order of dismissal on 13.08.1996 and he also reached the age of superannuation on 30.06.2003. Thereafter, the petitioner raised an Industrial Dispute in IDOP. No.35 of 2004 before the Labour Court, Salem, questioning the correctness of the dismissal order. By order dated 09.12.2004, the Labour Court dismissed the petition and directed the respondent to compute the benefits and to pay the same.

5.It is seen from records that the petitioner has put in only 8 years 8 months and 23 days of service and therefore, he is not eligible to get pension as per Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules which is payable from and out of the employer's contribution of the provident fund and the petitioner should have completed ten years of net qualifying service to become eligible for the same from the date on which he became a member of the Provident Fund. In this regard, it is relevant to refer Rules 2(v) and 2(o) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules as under:

'Pensionable Service' means the service rendered by the member for which the contributions have been received.

'Contributory Service' means the period of 'actual service' rendered by the member for which the contributions to the Fund have been received.

6.In view of the above Rules, the prayer sought for by the petitioner cannot be granted. Accordingly, the writ petition is dismissed. No costs.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

vga
To

1.The Commissioner,
Transport Department,
Chennai, Tamilnadu.

2.The Managing Director,
Formerly Annai Sathiya
Transport Corporation, Salem
now Tamil Nadu State Transport
Corporation, Salem Division.

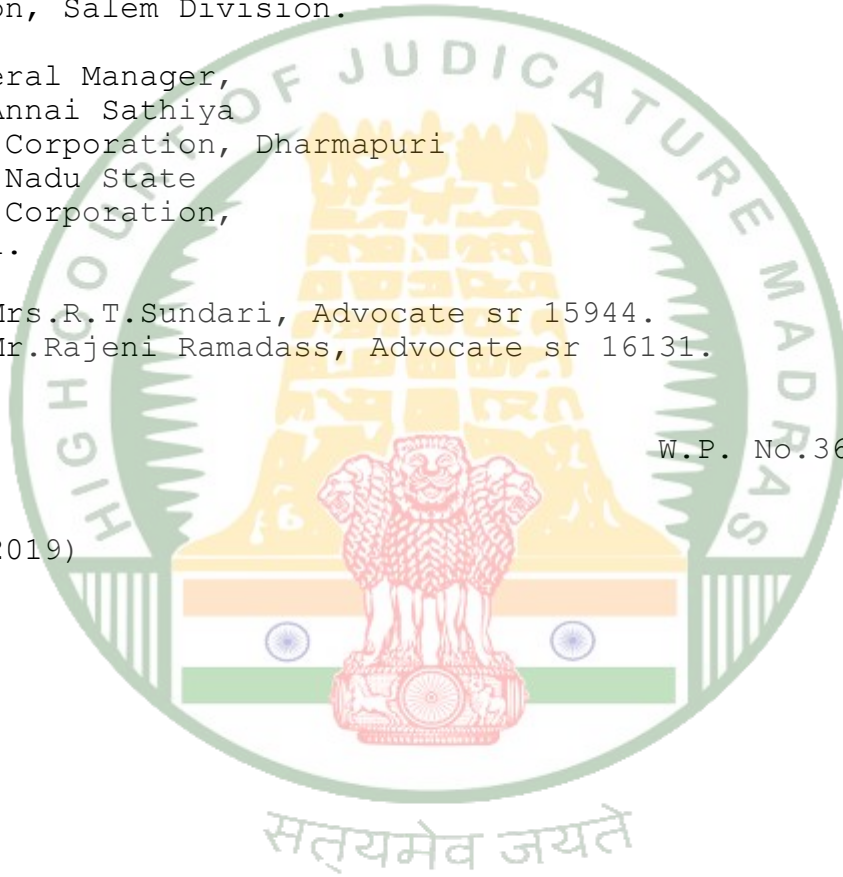
3.The General Manager,
Formerly Annai Sathiya
Transport Corporation, Dharmapuri
now Tamil Nadu State
Transport Corporation,
Dharmapuri.

+1 CC to Mrs.R.T.Sundari, Advocate sr 15944.

+1 CC to Mr.Rajeni Ramadass, Advocate sr 16131.

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PM(CO)
SP(01/04/2019)



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