

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.20829 of 2009

M. Subramania Pillai

Petitioner

Vs

1. The Secretary to Government,
Transport Department,

Secretariat,
Chennai - 600 009.

2. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Division) Ltd.,
Nagercoil.

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent to grant pension to the petitioner for the services rendered in Transport Corporation up to 31.08.1998 afternoon, by adjusting any amount due to be paid by the petitioner, in the arrears of pension to be paid thereon.

For Petitioner : Mr.N. Sundaramurthy

For Respondents: R1 - Mr.K. Ravikumar

Additional Government Pleader

R2- Mrs.Rita Chandrasekaran

for M/s. Jayesh B. Dolia

W R I T
O R D E R

Mr.M. Subramania Pillai, who after serving as a driver in the erstwhile Tamil Nadu State Transport Department from 01.11.1973 till 31.08.1988, has come to this Court, after 11 years of his retirement seeking Writ of Mandamus, directing the 2nd respondent to grant pension to him for the services rendered in the Transport Corporation up to 31.08.1998 A.N.

2. Learned Counsel appearing for the Writ petitioner submitted that the petitioner was appointed as a Driver in the erstwhile Tamil Nadu State Transport Department by an order dated 21.10.1973 and he joined duty on 01.11.1973 in Kanyakumari Region. Consequent to

the formation of new Transport Corporation in the name of Kattabomman Transport Corporation, he was ousted from service along with other drivers, by an order dated 29.12.1973, with a direction to join duty in the newly formed Transport Corporation. As such, he was taken as a driver along with other drivers in the newly formed Transport Corporation on 01.01.1974 and his service was regularised with effect from 01.12.1976. After serving 24 years 8 months of service as on 31.08.1998, he retired from service on attaining the age of superannuation.

3. It is further submitted by the learned Counsel appearing for the Petitioner that after the retirement of the petitioner, on 13.02.1999, a Memorandum of Settlement was reached under Section 12(3) of the Industrial Disputes Act, 1947. As per the said settlement, by virtue of Clause 19, the employees who are on the rolls of the State Transport Undertakings as on 31.08.1998 shall have the option of joining the new pension scheme or continue to be a member in the existing Employees Contributory Provident Fund Scheme. This exercise of giving option shall be completed within a period of 3 months from the date of signing this settlement subject to getting the exemption from the Regional Provident Fund Commissioner. Any option exercised for this purpose shall be final.

4. It is also submitted by the learned Counsel for the petitioner that at the time of retirement of the petitioner, there was no scheme for payment of pension for the Transport Corporation service and therefore, he is unable to get any pensionary benefits for the service rendered by him in the Transport Corporation. Subsequently, in a Batch of Civil Appeal Nos. 1444 & 1445 with 1446-1452 of 1999 etc., the Supreme Court of India passed an order on 29.10.2003, striking down the validity of the cut off date on 1.5.1975 and held 1.4.1982 as a cut off date so as to add the requisite period of service in the Transport Corporation up to 31.3.1982 with earlier Government service so as to make every employee to complete the minimum qualifying service of 10 years to get pension. Following the said judgment, the Government issued G.O.Ms.No.42, Transport, Department, dated 27.05.2005 for sanction of pension to the employees, who had served in the Transport Department and also in the Transport Corporation.

5. Further, according to the learned Counsel for the petitioner, in the light of the above, the petitioner applied for grant of pension to him to the 1st respondent through the 2nd respondent. But, there was no response. Therefore, he was constrained to come to this Court seeking to issue a Writ of Mandamus, directing the 2nd respondent to grant pension to him for the services rendered by him in the Transport Corporation.

6. A Counter Affidavit and also an Additional Counter Affidavit have been filed by the 2nd respondent.

7. Mrs.Rita Chandrasekaran, learned Counsel appearing for the second respondent stated that when the G.O.No.42 dated 27.5.2005 specifically gives the cut off date as 01.04.1982 in respect of all eligible absorbed employees retired prior to 01.09.1998 in State Transport Undertaking, the petitioner failed to exercise his option while he was in service. After his retirement in the year 1998, he has approached this Court with a long delay of 11 years. Therefore, as per clause 6 of G.O.Ms.No.1208, Transport Department, dated 29.03.1985, since the optee for permanent absorption in State Transport Undertaking will cease to be Government servant, the Government liability for family pension will cease. Moreover, the petitioner failed to exercise his option before the cutoff date, while he was in service. Hence, since the petitioner having accepted the Provident Fund contributions, failed to exercise his option and not paying back the contribution amount within the specified period to the 2nd respondent, he is not entitled for seeking grant of family pension.

8. I also find merit in the submission of the learned Counsel for the 2nd respondent.

9. At the outset, it appears that the petitioner, who was working as a driver in the erstwhile Tamil Nadu State Transport Department from 01.11.1973, retired from service on reaching the age of superannuation on 31.08.1988. Subsequently, it appears that on 13.02.1999, a Memorandum of Settlement was reached under Section 12(3) of the Industrial Disputes Act, 1947 between the Joint Commissioner of Labour, Chennai and the representatives of the Managements of the State Transport Corporations of Tamil Nadu and the Federations of the Central Trade Unions. As per the said settlement, by virtue of Clause 19, the employees who are on the rolls of the State Transport Undertakings as on 31.08.1998 shall have the option of joining the new pension scheme or continue to be a member in the existing Employees Contributory Provident Fund Scheme. This exercise of giving option shall be completed within a period of 3 months from the date of signing this settlement subject to getting the exemption from the Regional Provident Fund Commissioner. Any option exercised for this purpose shall be final. But in the present case, the petitioner has not exercised his option for joining the new pension scheme or continue to be the employee in the State Transport Corporation or State Transport Department. Moreover, he has not paid any contribution within the specified period to the

respondents. Therefore, I find no merit in the Writ Petition.

10. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Transport Department,

Secretariat,
Chennai - 600 009.

2. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Division) Limited,
Nagercoil.

+1cc to Mr.N. Sundaramurthy , Advocate SR.No. 29424

+1cc to M/s. Jayesh B. Dolia , Advocate SR.No. 30553

+1 cc to Government Pleader SR.NO. 30252

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A.SK(01/05/2019)

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