

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.6765 of 2010

A.Selvaraj

.. Petitioner

Vs.

1. The Secretary to Government
Transport Department
Secretariat, Chennai-600 009.
2. The Managing Director
Pallavan Transport Corporation Limited
Now known as Metropolitan Transport
Corporation, Pallavan saalai
Chennai-600 002.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus directing the respondents to take steps to sanction pension to the petitioner as per the direction of the Supreme Court.

For Petitioner : Mr.N.Sundaramurthy
For R1 : Mr.R.S.Selvam
Government Advocate
For R2 : Ms.Rajini Ramadhass

सत्यमेव जयते
O R D E R

The petitioner is seeking writ of mandamus directing the respondents to take steps to sanction pension to the petitioner as per the direction of the Hon'ble Apex Court.

2.The learned counsel appearing for the petitioner contended that the petitioner was appointed as a driver in the Tamil Nadu State Transport Department by order dated 08.08.1967 and he was absorbed in the time scale of pay from 01.08.1968. On formation of Pallavan Transport Corporation Limited on 01.01.1972, the petitioner was deputed to the 2nd respondent. The 1st respondent issued G.O.Ms.No.378, Finance Department, dated 18.04.1975

calling for option to serve in the Transport Corporation and gave assurance that all the persons who gave option to serve in the Transport Corporation will be given pension for their service in the Transport Department provided they have to put in ten years of service as on 01.05.1975. The petitioner and others opted to transfer to the 2nd respondent and the petitioner and others were absorbed with effect from 01.05.1975. The cut off date fixed by the 1st respondent was challenged by number of workers. Ultimately, the Hon'ble Apex Court set aside the cut off date as 01.05.1975 and fixed the cut off date as 01.04.1982. The 1st respondent issued G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 as per the order of the Hon'ble Apex Court. As per the judgment of the Hon'ble Apex Court and the said G.O., the petitioner is entitled to get pension. The petitioner was removed from service on 11.06.1981 on the charge of unauthorised absence. Due to family circumstances, he could not challenge the said order. The removal from service will not be a ground for denial of pension to the petitioner for the service rendered by him in the Transport Department and prayed for allowing the writ petition.

3.The 2nd respondent filed counter affidavit. Both the learned Government Advocate appearing for the 1st respondent as well as the learned counsel appearing for the 2nd respondent separately contended that the petitioner was removed from service on 11.06.1981. The petitioner did not challenge the said order. Due to his removal from service, he is not entitled to get pension. The pension is payable to an employee only when he retires from service. The learned counsel appearing for the 2nd respondent further contended that as per Rule 21 of the Tamil Nadu Pension Rules, 1978, once an employee has been removed from service, all the terminal benefits will be forfeited and the petitioner is not entitled for any terminal benefits and pension and prayed for dismissal of the writ petition.

4.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

5.From the materials available on record, it is not in dispute that the erstwhile Transport Department employees, who were absorbed in the 2nd respondent/Transport Corporation are entitled to get pension, if they have worked for not less than ten years as on 01.04.1982. The petitioner was appointed in the Transport Department on 08.08.1967 and was absorbed in the 2nd respondent/Transport Corporation with effect from 01.05.1975. The petitioner was removed from service on 11.06.1981. The petitioner has not challenged the said order of removal and the

said order has become final. Even though the petitioner has rendered ten years of service as per the cut off date fixed, he is not entitled to get pension as he was removed from service. A terminated or dismissed employee is not entitled to get any pension even though he worked for minimum period prescribed for pension. It is the contention of the learned counsel appearing for the 2nd respondent that as per Rule 21 of the Tamil Nadu Pension Rules, 1978, once an employee has been removed from service, all the terminal benefits will be forfeited and the petitioner is not entitled for any terminal benefits and pension. Rule 21 of the Tamil Nadu Pension Rules, 1978, reads as follows:

"21. Forfeiture of service on dismissal or removal.- Dismissal or removal of Government servant from a service or post entails forfeiture of his past service."

Further, the petitioner was removed from service with effect from 11.06.1981. The petitioner has not challenged the said order of removal. The present writ petition is for mandamus filed by the petitioner after 21 years from the date of his retirement. The writ petition is not maintainable on the ground of delay and laches also.

6. In the result, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Transport Department
Secretariat, Chennai-600 009.

+1cc to Mr.N.Sundaramurthy, Advocate, S.R.No.60380
+1cc to Ms.Rajini Ramadhass, Advocate, S.R.No.60606
+1cc to the Government Pleader, S.R.No.60682

W.P.No.6765 of 2010

NRJK(CO)
CS/23/09/2019