

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.34484 of 2013

M.Dasarathan

.. Petitioner

..vs..

- 1.The Presiding Officer,
3rd Additional Labour Court,
Chennai - 104.
- 2.The Secretary to Government,
Transport Department,
Fort St.George, Chennai - 9.
- 3.The Managing Director,
Pallavan Transport Corporation Ltd.,
Pallavan Illam Chennai - 2. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent herein in CP.No.63/2009 dated 17.04.2013 passed by the 3rd Additional Labour Court, Chennai and quash the same and direct the 1st respondent to pay the pension arrears as prayed for by the petitioner.

For Petitioner : Mr.R.Lawrence

For Respondents : Mr.N.Sakthivel
Additional Government Pleader for R2
Mr.Rajani Ramadass for R3
R1: Court

O R D E R

The order dated 17.04.2013, passed in Claim Petition No.63 of 2009, is under challenge in the present writ petition.

2. The writ petitioner is a retired selection grade Driver and reached the age of superannuation on 31.08.2009. The learned counsel for the writ petitioner made a

submission that the petitioner is entitled to get pension under the Tamil Nadu Pension Rules 1978, in view of the fact that he was appointed in the erstwhile Transport Department and served in the said Transport Department and thereafter observed in Pallavan Transport Corporation Limited during the year 1974.

3. Relying on the judgment of the Supreme Court of India in the case of The Government of Tamil Nadu and Ors vs. M.Ananchu Asari & Ors, in Review Petition Nos.648 & 649 of 2004 in Civil Appeal Nos.1444 & 1445 of 1999, the learned counsel for the writ petitioner reiterated that the case of the writ petitioner is to be considered for grant of pension under the Tamil Nadu Pension Rules 1978 and the relevant paragraphs are extracted hereunder:

"It is submitted that the respondent - employees whoever have retired should get the pension arrears only from 01.01.1998 by which this Hon'ble Court has passed an order that the cut-off date is 01.04.1982 and the pensionary benefit from 01.01.1998 for the retired employees. The petitioner most respectfully accepts the said judgment, but for the remaining employees whoever have retired on or after 01.01.1998 should be eligible for pension on the date of actual retirement on attaining the age of superannuation. Certain contentions are raised on the merits, especially, in regard to the conclusion of this Court that the process of absorption did not take place in 1975. We are not inclined to rehear the arguments on merits. If the petitioners failed to furnish the necessary material even during the pendency of appeal in this Court, that is no ground to review the Judgment. There is also nothing to be clarified insofar as the operative part of the judgment is concerned. It is not necessary for us to express any view on the question whether the Transport Corporation employees who were erstwhile Government servants retiring after 01.01.1998 would be eligible to get the pension in addition to the salary drawn by them in the Corporation, as per the Rules and G.O.s applicable to them. It is the contention of the learned counsel for the respondent - employees that the G.O.s issued by the Government themselves contemplated such payment and in fact those who were parties to the earlier writ petitions were given that benefits. This issue

cannot legitimately form the subject matter of either review or clarification. Hence the Review Petitions are dismissed."

4. Further it is contended that no prior adjudication is required in this case, in view of the fact that the Hon'ble Supreme Court of India approved the rights of the employees, who served in the Transport Department for grant of pension. Thus, the petitioner was inclined to file the petition under Section 33(c) (2) of Industrial Disputes Act and the said petition is dismissed by the Labour Court without considering the legal principles settled by the Supreme Court of India.

5. The petitioner further states that his earlier service rendered in the Civil Supplies Department were not taken into consideration for the purpose of reckoning the period of service for calculating the qualifying services for grant of pension. This apart, the subsequent service rendered in Pallavan Transport Corporation Limited also had not taken into consideration for the purpose of calculating the qualifying services for grant of pension under the Tamil Nadu Pension Rules 1978. All these factors were ignored by the Labour Court in the petition filed by the petitioner under Section 33(c) (2) of Industrial Disputes Act. Thus, the writ petitioner is inclined to move the present writ petition.

6. The learned counsel for the respondent disputed the contentions raised on behalf of the writ petitioner by stating that the petitioner was appointed as driver in the then Pallavan Transport Corporation Limited on 02.08.1974 and absorbed into time scale w.e.f. 29.04.1975. The writ petitioner reached the age of superannuation on 31.08.1996 and allowed to retire from service and the E.P.F. Trust Pension Scheme was implemented w.e.f. 01.09.1998. However, the petitioner had retired voluntarily on 31.08.1996, prior to the implementation of the Pension Scheme. The Pension Scheme cannot be implemented with retrospective effect and there is no such clause in the scheme itself. Thus, the petitioner is not eligible and further he is not entitled to get pension from 01.09.1996 to 31.08.2008. The petitioner has now drawing Regional Provident Fund Commissioner's Pension in P.P.No.23665. In view of the fact that the petitioner is retired voluntarily on 31.08.1996 and he is not entitled to get the pension for the period covering from 01.09.1996 to 31.08.2008 as per G.O.No.42, Transport Department, dated 27.05.2005, the petitioner is

not eligible for Government Pension as he was appointed in the Corporation and further not completed 10 years of service in the erstwhile State Transport Department. Thus, the judgment of the Apex Court is not applicable in respect of the claim of the writ petitioner.

7. It is further contended that the pre-existing right has not been established for the purpose of filing a petition under Section 33(c) (2) of Industrial Disputes Act before the Labour Court. For all these reasons, the writ petition is liable to be rejected.

8. Considering the findings of the Labour Court, it is stated that the petitioner admitted that he entered into service under the Transport Department as a Driver on 04.03.1968. Later on the petitioner was appointed as a Driver in Pallavan Transport Corporation Limited on 02.08.1974 and his services were confirmed and regular time scale of pay was paid from 29.04.1975. Undoubtedly, the services of the writ petitioner rendered in the State Transport Department is a pensionable service. The Hon'ble Supreme Court of India in Civil Appeal No.14445 of 1999, directed the State Government to give pension to all the retired employees and the arrears of pension is to be paid from 01.01.1998. However, the writ petitioner in the present case served in the Government Service below 10 years and further he served in the Pallavan Transport Corporation Limited for 7 years and 9 months. Even as per G.O.No.42 dated 27.02.2005, (5) (a) for getting pension, the employee has to serve in the Management for minimum period of 10 years and the cut-off date fixed was 01.04.1982. As per Ex.R2 Service Register, the writ petitioner entered into service on 01.08.1974 and observed by Pallavan Transport Corporation as a regular Driver on 29.04.1975 and as per Ex.R2 Service Register the writ petitioner had voluntarily retired from service with effect from 31.08.1996. Thus, the writ petitioner had completed 7 years and 9 months of service and as per the Government Order, the petitioner had not completed 10 years of service. Thus, he is not entitled to get pension as per the Tamil Nadu Pension Rules 1978, the minimum qualifying service for grant of pension is 10 years of service. The Labour Court considered the facts and circumstances with reference to the documents filed by the respective parties and arrived the conclusion that the writ petitioner is not entitled to get Government Pension as he has not completed qualifying service for grant of pension under the Tamil Nadu Pension Rules 1978. Even the writ petitioner has filed Claim

Petition under Section 33(c) (2) of Industrial Disputes Act, without any prior adjudication of the disputed issues. Though the writ petitioner has raised so many issues and the respondent Management also disputed all such issues, prior adjudication of these disputes are mandatory and without any such prior adjudication, the Claim Petition under Section 33(c) (2) of Industrial Disputes Act, cannot be entertained, when the entitlement of writ petitioners were not established the Claim Petition cannot be entertained. Even the Labour Court had considered the documents including the Service Register of the writ petitioner and thereafter found that the writ petitioner has not completed qualifying service so as to consider his case for grant of pension.

9. This being the factum, in all respects the writ petitioner has not established any acceptable legal ground to grant the relief as such sought for in the present writ petition. Thus, there is no perversity or infirmity in respect of the findings of the Labour Court.

10. Accordingly, the order dated 17.04.2013 passed in Claim Petition No.63 of 2009, stands confirmed. Consequently, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Presiding Officer,
3rd Additional Labour Court,
Chennai - 104.

2.The Secretary to Government,
Transport Department,
Fort St.George, Chennai - 9.

3.The Managing Director,
Pallavan Transport Corporation Ltd.,
Pallavan Illam Chennai - 2.

+1cc to Mr.S.Rajeni Rajendiran , Advocate SR.No. 76756

+1 cc to Government Pleader Sr.No. 76879

W.P.No.34484 of 2013

A.SK(09/10/2019)