BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.10.2019
CORAM
THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**
W.P.(MD)No.11956 of 2010

S.Arunachalam ... Petitioner

vs.

1.The State of Tamil Nadu,
represented by the Secretary,
Transport Department,
Secretariat, Chennai.

2.The Tamil Nadu State Corporation,
represented by the General Manager,
Tirunelveli Division, Vannarapettai,
Tirunelveli - 627 003. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in Ka.No.4864/Nir.9/Tha.Po.K(m)Tli/09, dated 11.06.2010 issued by the second respondent and Letter No.5939-1/Ni.Ya.3/TNAPo.K/(m)V.Tu./Tli/10, dated 12.08.2010 issued by the second respondent and to quash the same and consequently, to direct the respondents to provide pensionary benefit to the petitioner under the Madras Liberalized Pensions Rule, 1960 with arrears from 01.01.1988 with interest.

For Petitioner	:Ms.D.Geetha
For R1	:Mr.D.Muruganandam Additional Government Pleader
For R2	:Mr.S.C.Herold Singh

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O R D E R

This Writ Petition is filed to quash the orders of second respondent, dated 11.06.2010 and 12.08.2010 and consequently, to direct the respondents to provide pensionary benefits to the petitioner under the Madras Liberalized Pensions Rule, 1960 with arrears from 01.01.1988 with interest.

2.The petitioner states that he entered into service under the State Transport Department as a Driver on 13.05.1970, under the Ex-Serviceman quota, as he was working earlier in Indian Army. Though the petitioner was appointed on daily basis from 03.04.1970, it is stated that the petitioner was absorbed into monthly cadre with effect from 22.07.1970 and completed probation on 18.08.1972.

3.The State Transport Department was bifurcated into various transport Corporations and all the employees of the Transport Department were absorbed in the newly formed transport Corporations. The bifurcation was with effect from 01.05.1975. The petitioner was absorbed in Kattabomman Transport Corporation., Tirunelveli. All the employees of the State Transport Department were governed by a pension scheme. It is admitted that the Drivers, Conductors and technical employees are governed by separate service Rules, called Tamil Nadu State Transport Corporation Department Operational Subordinates Retiring Invalid and Compassionate Gratuities (Non Pensionable Establishment) (OSSR). The employees governed under the OSSR Scheme were eligible for share and compassionate gratuity at the time of their retirement from service.

4.The Government issued G.O.Ms.No.212, dated 28.03.1974 to extend the benefit of Madras Liberalized Pension Rules 1960 (herein after referred to as "MLP Rules, 1960") to the employees of Tamil Nadu State Transport Department. As per G.O.Ms.No.212, dated 28.03.1974, the employees of Tamil Nadu State Transport Department were called upon to exercise their option either to come under MLP Rules 1960 for pension or for settlement of gratuity under the scheme "OSSR". A cut off date was fixed for exercising the said option, which is 30.06.1974. The said date was subsequently extended to 31.12.1974 by an official memorandum, dated 12.12.1974. It was stated that those, who did not exercise any option, shall automatically come under the MLP Rules 1960. The option was given to the employees either to be under the existing OSSR scheme or to opt the newly introduced MLP Rules 1960.

5.It is stated by the respondents that the intimation given to all the employees governed by the existing rules to give their option as per G.O.Ms.No.212, dated 28.03.1974. It is further stated that the petitioner had exercised his option on 29.06.1974. However, the petitioner states that he did not exercise any option by submitting any application, as stipulated under G.O.Ms.No.212. Therefore, the petitioner states further that he automatically become a member under MLP Rules 1960 and entitled to pension provided under the said scheme.

6.It is the further case of the petitioner that as per the subsequent order, vide G.O.Ms.No.378, 1028 and 284, (Finance), the persons, who completed more than 10 years of service as on 01.04.1982, are entitled to the benefit of G.O.Ms.No.212. It is the case of the petitioner that, taking advantage of his ignorance, the respondents adopted OSSR (non-pensionable) scheme and arbitrarily denying the benefits of MLP Rules 1960 to the petitioner. Though the petitioner retired from service on 31.11.1994, he did not give any representation regarding his entitlement for pension under MLP Rules 1960. However, in response to one of the representations of the petitioner, after six years the respondents sent a reply on

11.06.2010 that as per G.O.Ms.No.212, the petitioner had given an option to remain under OSSR scheme and that his account was therefore, settled under the said scheme. It was, thereafter, the petitioner submitted a representation under Right to Information Act seeking for a copy of Service Register and the option form exercised by him. The petitioner was given a copy of Service Register as well as the option form, dated 29.06.1974 stated to have been submitted by the petitioner exercising his option to remain under OSSR scheme. However, the petitioner disputed his signature in the said form stating that the signature found in the option form is not his signature

7.It is further stated that the option form stated to have been submitted by the petitioner is not in the prescribed format as per G.O.Ms.No.212. It is stated that as per G.O.Ms.No.212, the employees were directed to give two copies of passport size photograph and the signature of employees should be duly attested by Officers of Corporation. Disputing the petitioner's signature and the option form and raising certain doubts with regard to certain entries in Service Register of the petitioner, the petitioner has come forward with the present Writ Petition challenging the impugned communication, by which, the petitioner's request for pension under MLP Rules 1960, was negatived.

8.The petitioner has raised several factual aspects disputing the correctness of certain entries in his Service Register and specifically disputing the alleged option stated to have been exercised by the petitioner pursuant to G.O.Ms.No.212. The learned Counsel for the petitioner submitted that the impugned order denying pension to the petitioner is arbitrary, illegal and violative of Articles 14 and 21 of Constitution of India. She further submitted that the petitioner did not sign or submit the option form and that the signature found in the option form, which is served to the petitioner, is not the signature of the petitioner. The learned Counsel for the petitioner then submitted that the respondents have failed to provide the original Service Register of the petitioner till date and that it would probabalise that the entries made in Service Register are false and without counter signature from the petitioner. Since the option stated to have been given by the petitioner is not in the prescribed format and no Officer of the Transport Corporation has counter signed, as per Government Order, it is stated that the option form cannot be accepted as a valid document and that the denial of pension benefit to the petitioner solely on the ground of such fabricated document is illegal.

9.The learned Counsel for the petitioner relied upon the judgment of Honourable Supreme Court in the case of ***Government of Tamil Nadu and others vs M.Ananchu Asari and others***, reported in ***(2003) 10 SCC 503***. The issue arose before the Honourable Supreme Court in the said judgment is whether the cut off date fixed by the

Government for the purpose of entitlement to pension of the erstwhile Transport Employees, who were absorbed later in Transport Corporation, is constitutionally valid or not. Relying upon the judgment of Honourable Supreme Court, the learned Counsel for the petitioner developed her argument that in view of new cut off date, directed by the Honourable Supreme Court, the option given earlier by the employees of erstwhile Transport Department, has no significance. This Court is unable to accept the said submission. The petitioner has produced a judgment of Honourable Supreme Court in Civil Appeal Nos.410-429 of 2002 in the case of ***The Commissioner and Secretary to Government, Transport Department vs. N.Govindan Achary***, dated 31.01.2006. The Honourable Supreme Court considered the issue whether the subsequent Government Order vide G.O.No.378 was intended to supersede G.O.Ms.No.212. After extracting the subsequent Government Order, the Honourable Supreme Court refused to accept the contention of transport employees that subsequent Government Order vide G.O.No.378 was not intended to supersede G.O.Ms.No.212. Hence, this Court is of the view that subsequent Government Orders do not supersede G.O.Ms.No.212, and the petitioner, if has given option, can not contend that he is entitled to pension as per MLP Rules 1960. IN the judgment in ***M.Ananchu Asari case***, (reported in ***(2003) 10 SCC 503)***, the Honourable Supreme Court considered the eligibility of transport employees to get pension, if they were in service under Government for more than 10 years. Hence, the option in terms of G.O.No.378 is for different reasons.

10.The purpose and object of G.O.Ms.No.212 was specific and different. Before the Honourable Supreme Court in ***(2003) 10 SCC 503***, the object and terms of G.O.Ms.No.212 was not considered and this Court is unable to appreciate how the subsequent Government Order vide G.O.Ms.No.284, Finance Department, dated 31.03.1980 would render the earlier order vide G.O.Ms.No.212 as invalid and inoperative. As per G.O.Ms.No.284, dated 31.03.1980, the pension in respect of industrial and non-industrial workers, who got themselves absorbed in the State owned Corporation/Department, will be calculated at the time of transfer and that the said pension is payable by the State Government only after retirement of the employees from the Public Sector Corporation. In the said Government Order, in relation to Transport Employees, it is stated as follows:

> *"The crucial date for calculating the terminal benefits in respect of all the State Public Sector, except the Transport Corporations, will be the date from which the employee is continuously working in Corporation or the date of incorporation of the Corporation, whichever is later. In respect of Transport Corporation , the crucial date will be 1st May 1975 or the date from which the employees is continuously working in the Corporation, whichever is later."*

11.This Court and Honourable Supreme Court held in unequivocal terms that the cut off date fixed by the Government for the purpose of conferring the pension benefits cannot be arbitrary or whimsical. The purpose and object of G.O.Ms.No.284 and the terms of G.O.Ms.No.212 are different and therefore, this Court is unable to accept the prime contention of the learned Counsel for the petitioner that the petitioner cannot be denied pension benefits under MLP Rules 1960, based on the option stated to have been given by the petitioner.

12.The learned Counsel for the petitioner then raised a factual issue questioning the option form, by stating that the signature found in the option form is not the signature of the petitioner and that the said form is not in the prescribed format. In connection with the stand taken by the petitioner, the petitioner has raised several factual issues, which cannot be dealt with in a Writ Petition. It is to be seen that based on option, the petitioner was not given pension under MLP Rules 1960, when he retired in 1994. The petitioner did not question nor raise an issue stating that he never gave option. It is in the said context, the submission of the learned Counsel for the respondents, raising preliminary objection for the maintainability of the Writ Petition on the ground of delay and laches, assume more importance.

13.The learned Additional Government Pleader appearing for the first respondent has produced before this Court, a judgment of Honourable Division Bench of this Court, dated 06.09.2011 in ***W.A.No.1245 of 2018***, in the case of ***Tamil Nadu State Transport Corporation and others vs G.Kamala and another***. Similar Writ Petition, which was filed by the wife of a Transport Employee denying family pension to her, was allowed by a learned Single Judge of this Court. In the appeal filed by the respondents in the Writ Petition, the Honourable Division Bench of this Court, without going into the merits of the case, has held as follows:

> “7. *But in the case on hand, the learned Single Judge has observed thus:*
> *''... Once the option exercised by the deceased employee, the husband of the petitioner, as held to be invalid, the employee would be governed by the Madras Liberalized Pension Rules, 1960 and in which case, the petitioner is entitled to the family pension admissible to her. It is not in dispute that the family members of the deceased Transport Corporation employee, are entitled to family pension, as such entitlement has been a settled legal position and there is no dispute regarding the said entitlement.*

13. In view of the above conclusion, this Court is of the considered view that the petitioner has made out a clear case for grant of relief. The respondents are directed to sanction family pension to the petitioner from the date of death of her husband and pay the arrears of family pension to the petitioner and continue to pay monthly pension as revised from time to time. In case, the deceased employee had been settled with the non-pensionable service benefits at the time of his death and the same may be adjusted while disbursing arrears of family pension payable to the petitioner. Since the petitioner's husband has died while in service as early as in 1994 and the family pension has been unduly denied for more than twenty years, the petitioner is also entitled to simple interest at the rate of 12% percent from the date it became payable till the date of actual payment.''

Anyhow, though several grounds have been raised for granting family pension to the 1st respondent, it is quite surprising to note that the husband of the 1st respondent died during the year 29.01.1994 whereas the writ petition was filed only in the year 2017 after a lapse of nearly 23 years by taking a suo motu decision. Therefore, we are of the view that mainly on the ground of delay and laches itself, there is no case for the 1st respondent. That apart, it is pertinent to note that within the extended cut off date, the deceased husband of the writ petitioner exercised option and received the benefits on attaining the age of superannuation.

14.The learned Additional Government Pleader appearing for the first respondent relied upon yet another judgment of Honourable Supreme Court in the case of ***Union of India and others vs M.K.Sarkar***, reported in ***(2010) 2 SCC 59***, wherein it has been held as follows:

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C. Jacob vs. Director of Geology and Mining & Anr. - 2009 (10) SCC 115 :

"9.The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would

not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15.When a belated representation in regard to a `stale' or `dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the `dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16.A Court or Tribunal, before directing `consideration' of a claim or representation should examine whether the claim or representation is with reference to a `live' issue or whether it is with reference to a `dead' or `stale' issue. If it is with reference to a `dead' or `state' issue or dispute, the court/Tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

15.The learned Counsel for the petitioner relied upon a judgment of learned Single Judge of this Court, dated 08.10.2009 in ***W.P.(MD)No.1181 of 2008*** in the case of ***S.Thamburan vs The Secretary to Government, Transport Department and others***. The Writ Petition filed by the Transport Employee for issuing a Writ of Mandamus, to direct the respondent to provide pensionary benefits to the petitioner under MLP Rules 1960, was allowed by the learned Single

Judge of this Court. Though the facts are similar, the distinguishing factor, which was considered by the learned Single Judge of this Court in that case was that the option was given only on 11.04.1979, which is not as per G.O.Ms.No.212. Hence, the learned Single Judge of this Court has held as follows:

> *"10.By relying upon the said endorsement, it is submitted on behalf of the petitioner that in terms of G.O.Ms.No.212, an option to stay under the O.S.S.R. Scheme has to be exercised on or before 30.06.1974 and in respect of others they automatically will come under the Liberalised Pension Rules. Therefore, this endorsement in the service register is dated 11.04.1979, admittedly, on the said date, the option cannot be recorded because on and after 30.06.1974 such of those person, who did not exercise option will be under the Madras Liberalised Pension Rules. Therefore, prima facie, it is to be noted that such recording of option during 1979 cannot deny the benefit."*

16.The learned Single Judge of this Court then accepted the case of the petitioner that the entries in the service book are not authorised in the absence of counter signature from the petitioner. Thus, the claim of petitioner based on his assertions can be considered, if he has come to Court within a reasonable time. Admittedly, the petitioner retired in 1994. He has given a representation just few months before the filing of Writ Petition in 2010. The petitioner also obtained the copy of service book and the option form on his application under RTI Act. The issue relating to veracity in the entries in the Service Register and the option form cannot be taken up for adjudication, after this length of time as serious prejudice is likely to be caused to the respondents.

17.In this case, the option form itself is produced before this Court and the contention of the respondents that the option was in fact received and accepted is supported by endorsements in the service book. Hence, the respondents have acted upon on the basis of option. Any irregularity in acceptance of such option cannot be permitted to be raised at this length of time to the disadvantage of the respondents. It is a fit case, where, the Writ Petition can be dismissed on the ground of delay and laches. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Secretary,
   The State of Tamil Nadu,
   Transport Department,
   Secretariat, Chennai.

2. The General Manager,
   Tamil Nadu State Corporation,
   Tirunelveli Division, Vannarapettai,
   Tirunelveli - 627 003.

+1 CC to M/s.D.GEETHA, Advocate (SR-94105[F] dated 24/10/2019)

+1 CC to SPL GP (SR-94249[F] dated 24/10/2019)

Order made in
W.P.(MD)No.11956 of 2010
23.10.2019

VB (14.09.2020) 9P 5C