IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.11.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. Nos.10877 of 2013 and 1959 of 2015
and
MP No.1 of 2013

M.Govindaraj .. Petitioner in W.P. 10877/2013
M.Seetharaman .. Petitioner in W.P. 1959/2013

- vs -

1. The State of Tamil Nadu,
Rep. by its Secretary,
Transport Department,
Secretariat,
Chennai - 600 009. .. R-1 in both Writ Petitions

2. Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
(Old Name M.G.R. Transport Corpn. Ltd.)
Rep. by its Managing Director,
Villupuram. .. R-2 in W.P. 10877/2013

2. Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
(Old Name Pattukottai Azhagiri)
Transport Corporation Limited)
Rep. by its Managing Director,
Vellore. .. R-2 in WP 1959/2015

Prayer in W.P. No.10877 of 2013 : Writ Petition is filed under Article 226 of the Constitution of India to issue writ of Certiorarified Mandamus to call for the records on the file of the 2nd respondent in connection with letter in No.10667-1693/pio/TNSTC(V)/2009, dated 12.03.2011 and quash the same and direct the 1st respondent to sanction and pay pension to the petitioner with effect from 01.01.1988 as per G.O. Ms. No.42 Transport (RW) Department dated 27.05.2005 and as per the provisions of the Tamil Nadu Pension Rules construing that the petitioner has completed the qualifying years of service of 10 years by following the order passed in W.P. (MD) 3517 of 2008, dated 31.03.2010 confirmed by the Division Bench in W.A. (MD) No.381 of 2011 dated 09.04.2011 and confirmed by the Hon'ble Supreme Court of India in S.L.P. (CC) No.1660 of 2012 dated 03.02.2012 and followed in issuing the G.O. (3D) No.19, Transport (RW1) Department dated 25.06.2012.

Prayer in W.P. No.1959/2015 : Writ Petition is filed under Article 226 of the Constitution of India to issue writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent passed in Letter No.5690/RW1/2014-4, dated 14.7.2014 and the same and direct the 1st respondent to sanction and pay pension to the petitioner with effect from 01.01.1988 as per the G.O. Ms.No.42, Transport (RW) Department dated 27.05.2005 construing that the petitioner has completed the qualifying years of service of 10 years by following the order passed in W.P. (MD) No.3517 of 2008, dated 31.03.2010 confirmed by the Division Bench in W.A. (MD) No.381 of 2011, dated 09.04.2011 and the Supreme Court of India in S.L.P. CC) No.1660 of 2012, dated 03.02.2012 and followed in issuing the G.O. (3D) No.19, Transport (RW1) Department dated 25.06.2012.

For Petitioner in both Writ Petitions : Mr.R.Singaravelan, Senior Counsel for M/s.V.S.Jagadeesan

For Respondents in both Writ Petitions : Mr.C.S.K. Sathish

COMMON ORDER

It is the case of the petitioner in W.P. No.10877 of 2013 that he was appointed as Driver in the erstwhile State Transport Department as Driver on daily wages basis in the month of December, 1971 and his services were regularised w.e.f. 01.01.1973. Subsequently, the petitioner was absorbed in the newly formed Transport Corporation on 1.5.1975. On attaining the age of superannuation, he was permitted to retire from service in the month of March 1996.

2. It is the case of the petitioner in W.P. No.1959 of 2015 that he was appointed as Conductor in the erstwhile State Transport Department as Driver on daily wages basis on 05.11.1971 and his services were regularised w.e.f. 01.11.1972. Subsequently, the petitioner was absorbed in the newly formed Transport Corporation on 1.5.1975. The petitioner exercised his option to go on voluntary retirement in the year 1994 and accordingly, he was voluntarily retired from service on 30.09.1994.

3. It is the further case of both the petitioners that on the winding up of the State Transport Department, all the employees like the petitioners were absorbed in the various Transport Corporations. Various Government Orders were issued relating to the pension and other benefits that were earned by such of those employees, who stood absorbed in the Transport Corporation by fixing cut off date, against which litigations were preferred and ultimately, the Hon'ble Supreme Court, fixed the cut off date as 1.4.1982 for the purpose of exercising option by the employee. Pursuant to the said direction of the Hon'ble Apex Court, G.O. Ms. No.42, Transport (RW) Department, dated 27.5.2005 was issued prescribing that pension would be paid if an employee had put in qualifying service of 10 years as on 1.4.1982.

4. By virtue of the said Government Order, petitioner in WP No.10877 of 2013 became eligible to receive the pension as he had put in a consolidated service of 10 years and 4 months. It is the further case of the petitioner that Rule 11 (1) prescribes the date of first appointment as the date to be reckoned for calculating the qualifying service. Further, it is averred that Rule 43 (2) of the Pension Rules prescribe that a fraction of three months should be treated one half year, while calculating the qualifying service of the petitioner.

5. It is the further contention of the petitioner that counting of temporary service for the purpose of calculating the qualifying service as prescribed u/r 11 (1) of the Pension Rules was considered by this Court in W.P. (MD) No.3517 of 2008 vide order dated 31.3.2010 and held that 50% of the the service of an employee on daily wage basis should be taken into account for the purpose of calculating the qualifying service, which was confirmed by the Division Bench of this Court in W.A. (MD) No.381 of 2011. Therefore, it is averred that counting 50% of the daily wage period of the employee together with the balance service of the petitioner would make the petitioner eligible for pension, as he has put in a qualifying service of 10 years. Though various representations have been given by the petitioner for the purpose of sanction of pension, however, the same having not been considered, the present writ petition has been filed.

6. Learned Senior Counsel appearing for the petitioners submitted that while the date of appointment of the petitioner in W.P. No.10877 of 2013 on daily wage basis even as per service register is 19.12.1971 and the date of regularisation is on 01.01.1973. The cut off date for the purpose of exercising the option for availing pension is 1.4.82. The petitioner would be eligible to have 50% of his daily wage service from 19.12.1971 to 31.12.1972 taken into account for the purpose of calculating his pension. On and from 01.01.73 till 1.4.82, the full service

of the petitioner would stand counted for the purpose of pension, and the period of 50% of his daily wage service, is to be included while calculating the total qualifying service. In effect, while the petitioner has put in full service of 9 years and 3 months, his 50% service on daily wage basis works out to 6 months 7 days. In all the total qualifying service put in by the petitioner is 9 years 9 months and 7 days and applying Rule 43 (2) of the Pension Rules, fraction of three months to be treated as one half year, the total qualifying service should be reckoned at 10 years. Therefore, the petitioner is eligible for pension.

7. Insofar as the date of appointment of the petitioner in W.P. No.1959 of 2015 is 5.11.71 on daily wage basis is concerned and the date of regularisation is on 01.11.1972, it is the submission of the learned counsel that the cut off date for the purpose of exercising the option for availing pension is 1.4.82. The petitioner would be eligible to have 50% of his daily wage service from 05.11.1971 to 30.11.1972 taken into account for the purpose of calculating his pension. On and from 01.11.72 till 1.4.82, the full service of the petitioner would stand counted for the purpose of pension, and the period of 50% of his daily wage service, is to be included while calculating the total qualifying service. In effect, while the petitioner has put in full service of 9 years, 5 months and 3 days, his 50% service on daily wage basis works out to 6 months and 8 days. In all the total qualifying service put in by the petitioner is 9 years 11 months and 11 days and applying Rule 43 (2) of the Pension Rules, fraction of three months to be treated as one half year, the total qualifying service should be reckoned at 10 years. Therefore, the petitioner is eligible for pension.

8. Per contra, Mr.C.S.K.Sathish, learned standing counsel appearing for the 2nd respondent vehemently submitted that the petitioners have not put in the requisite qualifying service of 10 years and the calculation submitted by the petitioner is erroneous. It is the contended by the learned counsel for respondents that the petitioners have not completed the required period of service as on 01.05.1975. In this regard, the learned counsel for the respondents placed reliance on the counter wherein the calculation pertaining to the net qualifying service is provided and drawing the attention of this Court, it is submitted that the petitioner not having a net qualifying service of 10 years and falling short by 11 months for petitioner in W.P. No.10877 of 2013 and 9 months for petitioner in W.P. No.1959 of 2015 after deducting the non-qualifying service period, i.e., period of leave on loss of pay and other non-qualifying service periods, the petitioners have not put in the requisite qualifying service and, therefore, not entitled for pension. It is the ancillary contention of the learned

counsel for the respondents that the petition in W.P. No.10877 of 2013 have been filed after a long delay and the same is hit by laches.

9. The 1st respondent, while sailed along with the 2nd respondent by filing a separate counter, however, has adopted the sum and substance of the counter of the 2nd respondent and has averred that the qualifying service put in by the petitioners being not equal to 10 years, which is the minimum prescribed qualifying service for the purpose of pension, the petitioners are not entitled for the grant of pension.

10. In respect of contention of delay, it is the submission of the learned counsel for the petitioner that the petitioner has been following all along with representations and the non consideration of the representation and passing any order by the respondents cannot be attributed as delay on the part of the petitioner.

11. This Court gave its anxious consideration to the contentions advanced by the learned counsel on either side and also perused the materials available on record.

12. The facts relating to the service of the petitioners either with the Transport Department or with the Transport Corporation is not in dispute. The date of entry into service as also the date of retirement of the petitioners either on superannuation or on voluntary basis are not in dispute. The quantification of net qualifying is the only disputed aspect and in the quantification process the respondents have shown that the petitioners have availed leave on loss of pay during the regularised period between 1.1.73 and 1.4.1982 to an extent of 1 month and 17 days. However, the records do not reveal that the petitioner was put on notice with relation to the leave availed by him on loss of pay. The petitioner having not been put on notice with regard to the leave availed by him on loss of pay nor any action taken for the said leave, it cannot be put to the detriment of the petitioner to deduct the said portion of 1 month and 17 days.

13. Be that as it may. As per the direction of the Division Bench of this Court, 50% of the service of the petitioner on daily wage basis should be added towards the qualifying service to arrive at the net qualifying service. Even according to the department, the daily wage period of the petitioner is from 19.12.1971 to 31.12.1972. That being the case, 50% of the same would be 6 months 7 days and adding this 6 months and 7 days to the regularised period of 9 years 3 months, the total qualifying service of the petitioner works out to 9 years 9 months and 7 days and applying rule 43 (2) of the Pension Rules, fraction of

three months to be treated as one half year, the total qualifying service of the petitioner works out to 10 years.

14. Though it is the incidental contention of the 2nd respondent that the petitioner had not put in 1 year and 13 days of service in daily wage basis of which 50% works out to 6 months and 7 days, as he had availed leave on loss of pay and the total 50% term comes only to four months, however, it is to be pointed out that no material whatsoever has been placed before this Court by the respondents to substantiate the said contention. Merely submitting before this Court that the petitioner had availed leave on loss of pay would not suffice to deduct the same from the petitioners qualifying service. The respondents ought to have placed materials in the form of monthly daily wage settlement paid to the petitioner to show the total days worked by the petitioner. In the absence of the same, this Court is not inclined to deduct any period from the service of the petitioner on daily wage basis.

15. Insofar as the petitioner in W.P. No.1959/15 is concerned, while the counter reflects the 50% service quantified for the daily wage basis in which a deduction has been made towards non-qualifying service, the regularised service is quantified at 9 years and 5 months. Even in the case of this petitioner, a period of 6 months 23 days is deducted towards non-qualifying service after quantifying the regularised service. However, the nature of the non-qualifying service relating to 6 months and 23 days has not been stated by the respondents. This Court is at a loss to understand as to what the two non-qualifying service periods stand for as shown in the counter. Without admitting that while one non-qualifying service could be inferred as the leave during the weekends, when the petitioner would not have worked on daily wage basis, however, the other part of the non-qualifying service is not explained clearly by the respondents. If it is to be presumed to be leave on loss of pay, records ought to have been placed before this Court to substantiate the deduction of the said period. However, no material whatsoever has been placed in the case of this petitioner except the counter. Even the extract of the service register is not placed before this Court for the regularised service. In such a backdrop, counting the 50% of the service at 5 months 14 days with the regularised service of 9 years 5 months, as reflected in the counter, the total qualifying service of the petitioner works out to 9 years 10 months and 14 days and applying Rule 43 (2) of the Pension rules, the total service of the petitioner should be reckoned as 10 years and, accordingly, he also would be entitled for pension.

16. On the question of delay, though it is the stand of the respondents that there is huge delay on the part of the petitioner in approaching this Court, mere delay by itself cannot be put against the petitioner to deny him the benefits to which he is legally entitled to. Further, it is borne out by record that the order fixing the cut off date was passed by the Hon'ble Supreme Court pursuant to which in the year 2005, G.O. Ms. No.42 was passed. Thereafter, only on the basis of the order in W.P. (MD) No.3157 of 2011 dated 31.3.2010, which was affirmed in W.A. (MD) No.381/2011 vide order dated 9.4.11 and the SLP filed by the respondents herein against the order in appeal having been dismissed by the Hon'ble Apex Court on 3.2.12, the eligibility to count the service as daily wages was settled and in such view of the matter, the petitioner having submitted his representation on 17.8.12, the delay in claiming pension, canvassed by the respondents cannot be sustained. The petitioner has approached this Court immediately once the law stood settled relating to computation of the period of daily wages for the purpose of pension. Therefore, the delay, as raised by the respondents does not in any way affect the case of the concerned petitioner.

17. For the reasons aforesaid, this writ petition is allowed and the respondents are directed to take the qualifying service of the petitioner at 10 years and calculate the pension based on the said qualifying service and pay the pension to the petitioner from the date of his retirement on superannuation. The respondents are directed to calculate the pension and arrears due to him and the same is payable within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Secretary,
State of Tamil Nadu,
Transport Department,
Secretariat,
Chennai - 600 009.

2. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
(Old Name M.G.R. Transport Corpn. Ltd.)
Villupuram.

3. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
(Old Name Pattukottai Azhagiri)
Transport Corporation Limited)
Vellore.

+1 CC to Mr.C.S.K. Sathish, Advocate sr 38004.
+1 CC to The Government Pleader sr 37937.

W.P. No.10877 of 2013 and W.P. No. 1959/2015.

AJS(CO)
CAA(19/12/2020)