

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 11427 of 2013

and

M.P.No.1 of 2013

K.S.Thankamani

.. Petitioner

- Vs -

1.The State of Tamil Nadu,
Rep. By its Secretary,
Transport Department,
Secretariat,
Chennai 600 009.

2.Metropolitan Transport Corporation Ltd.,
(Old Name Pallavan Transport Corporation Ltd,)
Rep. By its Managing Director,
Pallavan Salai,
Chennai 600 002.

3.The Commissioner,
Employees Provident Fund,
Regional Office,r
No.2, Royapettah High Road,
Chennai 600 014.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus, to direct the 1st respondent to sanction pension and pay it as the Life Time Arrears of Pension to the petitioner with effect from 01.01.1988 to 07.08.1994 the date death of the petitioner's husband for the service the petitioner's late husband has put in under the 1st respondent from 22.11.1972 to 01.04.1982 as per the 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 as on 01.04.1982 by following the order passed in W.P.(MD) 3517 of 2008 dated 31.03.2010 confirmed by

Page numbers

the Division Bench in W.A.(MD)No.381 of 2011 dated 09.04.2011 and 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 and to grant family pension to the petitioner by following the judgements in W.A.No.1246 of 2009 dated 18.08.2010, in W.P.NO.35674 of 2005 dated 20.09.2011 and W.P.No.8941 of 2012 dated 10.04.2012 by issuing a writ of mandamus.

For Petitioner:Kirthana Mayuri for
M/S.V.S.Jagadeesan

For Respondents:Mr. A.N.Thambidurai, Spl.G.P. For R1

:Mr.K.Moorthy for R2

:M/S.T.R.Sundaram for R3

ORDER

The case of the petitioner is that the petitioner's husband P.K.Chandrasekaran (deceased) was appointed in the erstwhile State Transport Department, as Driver on 10.09.1964 and was allotted Staff NO.2679. While he was discharging his duty sincerely, due to his health condition in the year 1996, he was forced to go on leave, thereafter, the 1st respondent appointed him again as a Driver on 22.11.1972, under the same Staff Number and thereafter, his service was also absorbed in the Transport corporation in the year 1982.

1.1.It is the further case of the petitioner that in the year 1972, on formation of various new transport corporations on 01.01.1972 the petitioner's husband was transferred and absorbed in the newly formed transport corporation, viz., M/s.Pallavan Transport Corporation Ltd., as driver on 01.05.1975. While he was working in the 2nd respondent corporation, he was removed from service by an order dated 24.12.1983, stating that he was absent without leave for more than 8 consecutive days by invoking (11)(c) of their standing order, without any enquiry.

1.2.As per the Government Order in G.O.Ms.NO.378, Finance (FR-II) Department dated 18.04.1975, an optee is entitled to receive pension/gratuity earned by him in the government service prior to such absorption in addition to pay in the public undertaking and the same was followed by other government order in G.O.Ms.NO.284, Finance Dept., dated 31.03.1980 and in G.O.Ms.NO.1028, Transport Dept., dated 23.09.1985 by which the

Page numbers

crucial date for permanent absorption in the Transport Corporation was fixed as 01.05.1975/15.09.1975. Thus the cut off date was fixed for absorption in various transport corporations as 01.05.1975/15.09.1975. Accordingly the employees who had put in 10 years of net qualifying government service as on 01.05.1975/15.09.1975. Accordingly the petitioner's husband had put in 10 years of qualifying service and was entitled to get pension with effect from the date of his absorption in the transport corporation in addition to his salary in the corporations even while in service.

1.3.The grievance of the petitioner is that after demise of her husband, for the purpose of claiming Life Time Arrears of Government Pension and family pension for the past service rendered by her husband in the 2nd respondent corporation, the petitioner made a representation on 17.12.2012 to the 1st respondent, but the said benefit was not granted to the petitioner. Therefore, the petitioner has filed the present petition with the above said prayer.

2.Learned counsel appearing for the petitioner submits that whoever rendered service in the Transport department, after completion of ten years service, he is entitled to get minimum pension from the Government. In the present case the initial appointment of the petitioner's husband is in the year 1964, the cut off date mentioned in the G.O.Ms.NO.42, Transport department dated 27.05.2005, is fixed as 01.04.1982. In the present case, the petitioner's husband has rendered more than 10 years of qualifying service and he is eligible for getting minimum pension from the Government. Accordingly he prays for allowing the writ petition.

3.Per contra, learned counsel appearing for the respondent Transport submitted that though the petitioner was initially appointed in the year 1964 as a driver in the respondent Transport department, however thereafter the petitioner absented from duty and he was given reemployment on 14.11.1972 as fresh entrant. Unless the petitioner challenged that order at the relevant point of time, he is not entitled to calculate the past service rendered in the transport department and the total qualifying service of the petitioner's husband is only 9 years, 4 months. Even as per G.O.Ms.NO.42, Transport (RW) department, dated 07.05.2005, the cut off date for receiving Government pension is fixed as 01.04.1982 in respect of the ex-Tamil Nadu State Transport Department employees. As on this date the erstwhile Tamil Nadu State Transport Department employer who has completed the requisite net qualifying service of 10 years alone is eligible to receive Government pension. However, the

Page numbers

petitioner's husband has rendered only 9 years, 4 months of net qualifying service under the Government, which is less than the prescribed net qualifying service of 10 years and, therefore, he is not entitled for pension.

4. Heard the arguments advanced by the learned counsel on either side and perused the materials available on record.

5. It is not in dispute that the petitioner's husband was appointed in the year 1964 and was in continuous service. However, the petitioner's husband absented himself from duty in the year 1969 and re-employment was given to him on 14.11.1972 as fresh entrant. It is not in dispute that the petitioner's husband was treated as a fresh entrant and re-employed on and from 14.11.1972. Such being the case, the petitioner's husband has put in only a qualifying service of 9 years, 4 months before his superannuation, which falls short of net qualifying service of 10 years to be made eligible for receiving pension as per the above Government Orders. The petitioner's husband not having challenged the said order of re-employment afresh, the contention of the petitioner that the service rendered by her husband from 1964 to 1969 should also be taken into consideration for calculating the net qualifying service is wholly misconceived and cannot be sustained. In the above backdrop, the order of the respondents rejecting family pension to the petitioner cannot be found fault with.

6. For the reason aforesaid, this petition, being devoid of merits, is accordingly dismissed. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The State of Tamil Nadu,
Rep. By its Secretary,
Transport Department,
Secretariat,
Chennai 600 009.

Page numbers

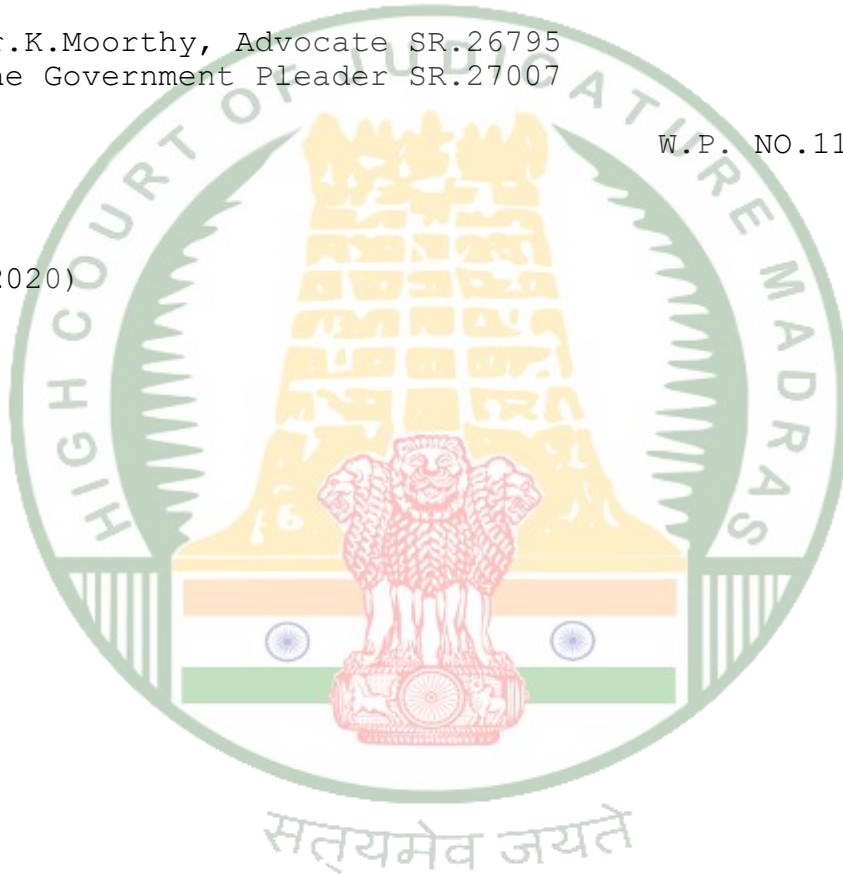
2.Metropolitan Transport Corporation Ltd.,
(Old Name Pallavan Transport Transport Corporation Ltd,)
Rep. By its Managing Director,
Pallavan Salai,
Chennai 600 002.

3.The Commissioner,
Employees Provident Fund,
Regional Office,r
No.2, Royapettah High Road,
Chennai 600 014.

+lcc to Mr.K.Moorthy, Advocate SR.26795
+lcc to the Government Pleader SR.27007

W.P. NO.11427 OF 2013

NRL(CO)
CB(28/10/2020)



WEB COPY

Page numbers