

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 19828 of 2017

K.Kaliappan

.. Petitioner

Vs

1. Principal Secretary
Transport Department,
Secretariat, Fort.St.George,
Chennai-600009.

2.Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
12,Ramakrishna Road,
Salem-627007.

3.Administrator,
Tamilnadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai-600002.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents for payment of monthly superannuation pension to the petitioner from the date of his retirement on 30.04.2013 and to pay arrears of the pension till this date with interest at the rate of 18% after adjusting the employer contribution of provident fund amount of Rs.64 333 which was paid to him and continue to pay monthly pension every month to him.

For Petitioner : M/s.A.Rajendiran

For Respondents : Mr.S.Thangavel, Spl.GP - R1
Mr.D.Raghu - R2
Mr.S.Sai Prasad - R3

O R D E R

The prayer sought for in the Writ Petition is to direct the respondents for payment of monthly superannuation pension to the petitioner from the date of his retirement on 30.04.2013 and to

pay arrears of the pension till this date with interest at the rate of 18% after adjusting the employer contribution of provident fund amount of Rs.64,333 which was paid to him and continue to pay monthly pension every month to him.

2. Brief facts leading to the case is that the writ petitioner joined in the respondent corporation as driver on 07.08.1988 and retired on attaining superannuation on 30.04.2013. While in service he was imposed with punishment of dismissal from service and after completion of enquiry, reinstated into service. In view of the above, he was denied monthly pension, though he possessed minimum qualifying service of 9 years 11 months and 2 days as per Rule 13 of the Tamil Nadu Transport Corporation Employees Pension Fund Rules,. Hence this writ petition.

3. According to the learned counsel for the petitioner, the writ petitioner has completed 9 years 11 months and 2 days as qualifying service in the respondent department. As per Rule 13 of the Tamil Nadu Transport Corporation Employees Pension Fund Rules, he satisfies the aforesaid rules and eligible for the pensionary benefits.

4. The learned counsel for the writ petitioner has also relied upon the order of this Court in W.P. No. 29695 of 2004 dated 19.04.2010 in the case of P.Perumal Vs. Government of Tamil Nadu & Others, wherein this Court has considered the case of a retired employee, who had put service of 19 years and 7 months and 29 days and passed order observing that any fraction of a period exceeding six months shall be rounded off to the nearest year. Accordingly, service of the said employee should be treated a 20 years of service of all purposes.

5. The learned counsel for the Transport Corporation has submitted that in view of the aforesaid Rules, the petitioner is entitled for pensionary benefits. If any representation is received from the petitioner to this effect, the same shall be considered by the respondent and pass appropriate orders within a time, as stipulated by this Court.

6. Heard both sides and perused the documents available on record.

7. It is the contention of the learned counsel for the writ petitioner that he served 9 years 11 months and 2 days as qualifying service in the respondent department. To prove the same, he also produced the letter in reference No. 817/F3/PIO/TNSTC(S0/2016 dated 07.12.2016 obtained through RTI Act, wherein the respondent corporation has admitted the fact that the writ petitioner herein put qualifyig service of 9 years

11 months and 2 days in the corporation during his service. Therefore the writ petitioner is entitled to receive pension as per Rule 13 of the Tamil Nadu Transport Corporation Employees Pension Fund Rules.

Rule 13 of the Tamil Nadu Transport Corporation Employees Pension Fund Rules is extracted hereunder;

"13. Determination of eligible service

The eligible service shall be determined as follows;

- a) In the case of a "New Entrant" entering into service on or after 1.9.1998, the "actual service" shall be treated as eligible service. The total actual service shall be rounded off to the nearest year. The fraction of service for 6 months or more shall be treated as 1 year and the service less than 6 months shall be ignored.
- b) In the case of the "existing member" as on 1.9.1998, the aggregate of actual service as indicated para (P) shall be treated as eligible service.
- c) If there is any non-contributory period during the service, it shall not be counted for arriving the actual service"

8. Though the learned counsel for the writ petitioner in support of his arguments, has produced a judgment of this Court , which is of the year 2010, subsequently, the Hon'ble Division Bench of this Court has considered similar cases and granted relief directing the authorities concerned to treat the fraction of service for six months or more should be treated as one year.

It is useful to extract the relevant paragraphs from some of the judgments of the Hon'ble Division Bench of this Court.

I. In the case of The Secretary to Government, Planning, Development & Special Initiatives Department & Other Vs.R. Baskaradass in W.A.No.1122 of 2013 dated 27.03.2014.

"21. In an unreported judgment dated 06.12.2013 made in W.P.No.29896 of 2013, as stated supra, the Division Bench of this Court, exhaustively considered the said issue and, it is useful and relevant to extract Paragraph 8 to 11 in the said judgment:-

"8.The learned counsel for the first respondent also relied on the judgment of the Division Bench of this Court made in Writ Petition No.45465 of 2002 dated 4.10.2007 (Union of India, rep. by the Secretary, Dept. of Posts, Dak Bhawan, New Delhi 110 001 v.M.R.Palanisamy), wherein in similar issue was raised by an E.D.Staff, whoserved for 29 years before his permanent absorption as Group "D" staff

and he was ordered to be granted pension treating the person as completed 10 years of qualifying service, though he was having a regular service of 9 years, 3 months and 29 days, with reference to the E.D. Staff service. The said judgment was challenged before the Hon'ble Supreme Court in SLP No.13829 of 2008 and the Hon'ble Supreme Court also dismissed the Special Leave Petition on 17.10.2008. Thereafter, the very same Department sanctioned pension to the said person, viz., M.R.Palanisamy by order dated 9.10.2009.

9. Even though the order of the Division Bench in Writ Petition No.45465 of 2002 dated 4.10.2007 restricted the relief only to the first respondent in the said Writ Petition, another Division Bench of this Court in by the Department.

10. Again, in the order dated 14.2.2013 passed by this Court in Writ Petition No.22496 of 2009 (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v.G.Thulasidasan), similarly placed person was ordered to be granted pension, considering the long number of years of service as E.D. staff, though the person was not having ten years of completed pensionable service.

11. A Division Bench of Karnataka High Court by order dated 25.3.2013 in Writ Petition No.72872 of 2012 (S-CAT) (Union of India, rep. by the Secretary, Department of Posts, Dak Bhavan, New Delhi 110 001 and others v. B.V.Dambal) also passed similar order."

22. In the considered opinion of this Court, the ratio laid down in the above cited decision is ipso facto applicable to facts of the present case. Though it was under an analogous scheme, namely, Contributory Pension Scheme under Central Civil Services (Pension) Rules. The respondent herein had put in 9 years, 7 months and 17 days of service and therefore, the said service is to be rounded off to 10 years and in that event, the new pension scheme will not apply and consequently, the respondent herein is entitled to the relief as prayed for in the writ petition."

II. In the case of The Secretary to Government, Transport Department, Secretariat, Chennai-600 009 Vs.S.Kamachi in W.A.No. 523 of 2015, dated 09.04.2015

" 5. The learned Government Advocate appearing for the appellant submits that even after treating the half year of service, the writ petitioner has completed only 9 years 8 months and as such, the writ petitioner is not entitled to pensionary benefits as he is not having the minimum qualifying years of service of 10 years.

6. We have heard the learned Government Advocate and have carefully examined the pleadings and documents appended thereto.

7. Rule 43(3) of the Tamil Nadu Pension Rules, 1978 clearly prescribes that if fraction of service is within three months, it should be treated as half year of service. In that event, after treating the half of the service spent as daily wages, the total service of the writ petitioner is computed to be more than 9 years and 6 months. Applying the provision of Rule 43(3) of the Tamil Nadu Pension Rules, the remaining period has to be treated as half year service. We do not find any infirmity or illegality in the order rendered by the learned Single Judge, warranting interference."

9. In the present case on hand, though the petitioner was dismissed from service in view of the disciplinary proceedings initiated against him, the said order of dismissal came to be quashed in I.D.No. 58/2007 by the Labour Court, Salem and consequently, he was reinstated with continuity of service by the 2nd respondent and retired from service on 30.04.2013 after rendering total service of 9 years 11 months and 2 days in the 2nd respondent/corporation.

10. In the light of the decision of the judgments of this Court cited supra and as per Rule 13 of Tamil Nadu Transport Corporation Employees Pension Fund Rules, this Court is of the view that the respondent- corporation cannot reject the claim on the ground that writ petitioner did not possess qualifying service of ten years in the transport corporation.

11. Accordingly, the 2nd respondent/Corporation is directed to treat the qualifying service of 9 years 11 months and 2 days of the writ petitioner as 10 years of service and grant pensionary benefits to the writ petitioner as expeditiously as possible, in any event, within a period of eight (8) weeks from the date of receipt of a copy of this Order.

12. Insofar as other eligibility of the writ petitioner is concerned, the writ petitioner is directed to submit his representation and after receipt of such representation, the 2nd respondent shall consider and pass appropriate orders on merits and in accordance with law as expeditiously as possible.

13. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. Principal Secretary
Transport Department,
Secretariat, Fort.St.George,
Chennai-600009.

2. Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
12, Ramakrishna Road,
Salem-627007.

3. Administrator,
Tamilnadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai-600002.

+1 CC to Mr.A. Rajendiran, Advocate sr 6415.

+1 CC to Mr.D.Raghu, Advocate sr 7113.

+1 Cc to The Govt. Pleader sr 7239.

W.P.No. 19828 of 2017

RK(CO)
SP(11/03/2020)