



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.368 of 2018

in

W.P. (MD)No.14224 of 2012

T.Dhanaraj

... Appellant/Petitioner

Vs.

1.Tamil Nadu State Transport Corporation
Employees Pension Fund Responsibility Department
Thiruvalluvar Illam, Pallavan Salai,
Chennai-02.

2.Tamil Nadu State Transport Corporation
(Madurai) Limited, rep. by its General Manager,
Madurai Region, Bye-Pass Road,
Madurai-10.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the n order passed by this Court dated 19.03.2015, passed in W.P. (MD)No.14224 of 2012.

Prayer in WP(MD). 14224/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records of the 1st and 2nd respondents impugned orders dated 15.10.2012 letter No.44/P2/ThaAPoKa VuO NeeThi Po/2012-792 and 21.09.2012 bearing ThaAPoKa/Madurai/Va vaiNeeThi8/1627 respectively and quash the same and direct the respondents to pay Pensionary benefits or to pay the corporate Provident fund and consequently to refund the withheld amount of Rs.10050/- to the petitioner with interest

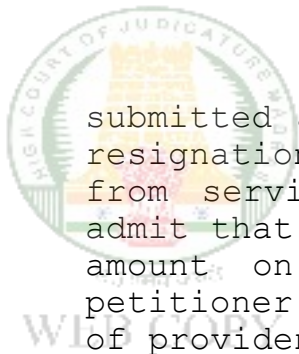
For Appellant : Mr.R.Saravanan
For Respondents : Mr.J.Senthil Kumaraiah
Standing Counsel

JUDGMENT

(Judgment of the Court was made by **M.SATHYANARAYANAN, J.**)

The appellant is the writ petitioner.

2.In the affidavit filed in support of the writ petition, the petitioner averred that he was appointed as a Driver in the services of the second respondent Corporation on 06.07.1987 at Melur and he was confirmed in the post vide order dated 17.08.1988 with effect from 01.08.1988 and claims to have rendered 21 years of heart blemishless service. The petitioner further submitted that due to personal reasons, especially due to physical ailments, he was not in a position to continue in occupation as a Driver and therefore, he



submitted a representation through proper channel for acceptance of resignation and the same was accepted on 13.02.2010 by relieving him from service with effect from 12.11.2009. The petitioner would admit that he was paid his provident fund on 29.04.2010 and gratuity amount on 10.08.2010 respectively. It is the claim of the petitioner that he is also entitled to the employer's contribution of provident fund also and he made a request in this regard and vide impugned proceedings dated 21.09.2012 and consequential proceedings of the second respondent dated 15.10.2012, his request came to be rejected and he made a challenge to the same by filing W.P.(MD). No.14224 of 2012 and it was entertained and notice was ordered. The second respondent has filed a counter affidavit stating that while he was in service, he was covered by the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules and as per Rule 16(3) of the above rule, the past service rendered by an employee will be forfeited on his resignation, as such, he was not entitled for any pension. Reliance has also been placed upon very many judgments rendered by the Honourable Supreme Court and this Court and the learned Judge, taking into consideration the factual aspect as well as the Rule position, found that he was not inclined to interfere with the impugned order and further directed the respondent to pay a sum of Rs.10,050/- to the petitioner, within a period of four weeks from the date of receipt of a copy of this order and challenging the legality of the said order, the present writ appeal is filed.

3.The learned counsel appearing for the appellant/writ petitioner reiterated the submissions, as per the grounds raised in the writ petition as well as in the writ appeal and the learned counsel appearing for the respondent would submit that in the light of the Rule position, the learned Single Judge, has rightly dismissed the writ petition and inso far as the disbursal of Rs.10,050/- to the petitioner within a period of four weeks from the date of receipt of the copy of that order, since the writ petitioner/appellant did not approach and on account of the pendency of writ appeal, the said amount cannot be disbursed.

4.This Court has carefully considered the rival submissions and also perused the materials available on record carefully.

5.It is relevant to extract Rule 16(e) of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules.

16(e) : Forfeiture of Service on Resignation:

Resignation from service or post entails forfeiture of past services.

Provided that a resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, under Government Department/State



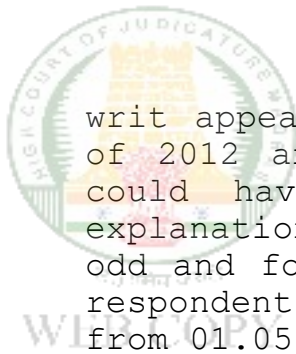
public Sector Undertaking/ Board. In such case, the pensionary benefits shall be transferred to the new employer's pension fund/EP Scheme 1995, as the case may be, and such benefits shall not be directly paid to the individual."

The said provision is in *pari materia* to Rule 23 of the Tamil Nadu Pension Rules, 1978. The interpretation to Rule 23 of the Tamil Nadu Pension Rules came up for consideration before a Division Bench of this Court, in a decision reported in **(2016) 3 CTC 87: (2016) 2 LLN 254 : (2016) 3 MLJ 839** in the case of **A.L.AGNEIL ILANGOVAR VS. THE GOVERNMENT OF TAMIL NADU AND OTHERS**, wherein, the Division Bench of this Court, after surveying the catena of judgments, concluded that in the light of the said express provisions, on resignation, the concerned employee is not entitled to pension. The Hon'ble Supreme Court, in the decision reported in **2019 (16) SCALE 862 BSES YAMUNA POWER LIMITED Vs. SH.GHAHSHYAM CHAND SHARMA AND ANOTHER**, had considered the scope of Rule 26 of Central Civil Service Pension Rules, 1972 and held that the past services rendered by an employee stands forfeited upon resignation, as such, there cannot be any positive direction for pensionary benefits. In the light of the factual aspect, Rule position as well as the principles laid down by the Division Bench of this Court as well as the Hon'ble Supreme Court, this Court is of the considered view that there is no merit in this writ appeal. The learned Single Judge, in the impugned order, had taken note of the various judgments of the Hon'ble Apex Court as well as this Court and rightly concluded that the relief sought for by the petitioner cannot be granted.

6.It is brought to the knowledge of this court by the learned counsel appearing for the writ petitioner/appellant that despite of direction directing the respondent Corporation to pay a sum of Rs.10,050/- to the petitioner within a period of four weeks from the date of receipt of a copy of that order, the amount is yet to be disbursed.

7.The learned counsel appearing for the respondent Corporation, on instructions, would submit that since the appellant/writ petitioner did not approach the respondents and on account of the pendency of the writ appeal, the amount could not be disbursed.

8.A perusal of the order sheet, it would disclose that writ appeal has not been entertained and only at the request of the learned counsel appearing for the respondent/Corporation, the matter has been adjourned four times. It is well-settled position of law that unless there is an interim order forbearing the respondent Corporation from disbursing the said amount, they are expected to disburse the amount, as ordered by this Court, within a reasonable time. The order, which is the subject matter of challenge in this



writ appeal came to be passed on 19.03.2015 vide W.P.(MD).No.14224 of 2012 and within a reasonable time, the respondent Corporation could have received certified copy of the order also. No explanation has been put forth as to the delay of nearly 4 years and odd and for disbursal of the said amount and therefore, the second respondent is liable to pay interest at the rate of 12% per annum from 01.05.2015 till the date of payment of the said amount.

9.In the result,

i)the writ appeal is dismissed, confirming the order dated 19.03.2015, passed in W.P.(MD).No.14224 of 2012. There is no order as to costs.

ii)The second respondent / Corporation is directed to pay Rs.10,050/- to the appellant/writ petitioner with interest at the rate of 12% per annum from 10.05.2015 till the date of actual payment.

iii)The said exercise has to be completed within a period of six weeks from the date of receipt of a copy of this judgment.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Vs

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.Tamil Nadu State Transport Corporation
Employees Pension Fund Responsibility Department
Thiruvalluvar Illam, Pallavan Salai,
Chennai-02.
- 2.Tamil Nadu State Transport Corporation
(Madurai) Limited, rep. by its General Manager,
Madurai Region, Bye-Pass Road,
Madurai-10.

W.A(MD)No.368 of 2018
in

W.P. (MD)No.14224 of 2012
03.08.2018

KB(18.08.2020) 4P 3C

<https://hcservices.ecourts.gov.in/hcservices/>