



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.10042 of 2013

V.Rajeswari

... 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,
No.20, Royapettah High Road,
Chennai - 600 014.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus, to call for the records on the file of the second respondent passed in its proceedings in Letter No.2829/PBSC 1/MTC/2007 dated 11.02.2013 and quash the same and direct the first respondent to sanction pension and pay it as lifetime arrears of pension with effect from 01.01.1998 to 26.04.2007 the date of death of the petitioner's husband for the service petitioner's husband has put in under the 1st respondent from 02.05.1970 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 the Division Bench in W.A.[MD] No.381 of 2011 dated 09.04.2011 and the Honourable 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



judgments 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.

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For Petitioner : Mr.V.S.Jagadeesan

For Respondents: Mr.J.Ramesh
Additional Government Pleader - R1

Mr.K.Moorthy - R2

Mr.T.R.Sundaram - R3

ORDER

According to the petitioner, her husband by name D.Vinayagam was appointed as Watchman and his service was regularised with effect from 02.06.1970 in the erstwhile State Transport Corporation. Subsequently, he was absorbed in the Pallavan Transport Corporation on 01.05.1975 as Watchman and was promoted as Senior Grade Watchman and he exercised his option to go on retirement under VRS, which was accepted and he was relieved from service with effect from 31.01.1993 and he ultimately died on 26.04.2007 leaving the petitioner as his legal heir. Thereafter, seeking family pension, the petitioner made a representation dated 10.04.2012, which was rejected by the second respondent by communication dated 11.02.2013, stating that her husband's net qualifying service upto 31.03.1982 was only 9 years, 10 months and 25 days after deducting his leave on loss of pay for one year, 11 months and 4 days and he has not completed 10 years of service and hence, the petitioner is not eligible for family pension. Feeling aggrieved, the petitioner has come up with this writ petition to quash the same and for consequential direction to the first respondent to sanction family pension.

2.The learned counsel for the petitioner submitted that in similar circumstances, this Court in WP.(MD)No.3517 of 2008, by order dated 31.03.2010, considered the issue involved herein and decided the same in favour of the petitioner therein. For better appreciation, the relevant passage of the said order, is profitably, extracted below:

"9.As far as the period of service put in by the petitioner between 07.04.1972 and 01.06.1973 on daily wages basis, it is relevant to refer to Rule 11(1) of the Tamil Nadu Pension Rules, which is as follows:

"11. Commencement of qualifying service - (1) subject to the provisions



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of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in a officiating or temporary capacity. In the case of a Government servant retiring on or after the 1st October, 1969, temporary or officiating service in a pensionable post whether rendered in a regular capacity or not shall count in full as qualifying service even it is not followed by confirmation."

making it clear that even the officiating of temporary service rendered by the petitioner should be taken into consideration for arriving at the period of qualifying service. That was also the view of Division Bench of this Court as held in the Commissioner, Corporation of Chennai, Ripon Buildings, Chennai Vs. V.Sumathi and another reported in 2005 Writ L.R.308.

10. In that case, the Division Bench was referring to the payment of family pension under Rule 49(2-A) of the Tamil Nadu Pension Rules, where the eligibility of family pension is the completed continuous qualifying service for a period of not less than 2 years. While construing the term "completed continuous qualifying service" which is also the similar term used for qualification for pension under Rule 11(1) of the Tamil Nadu Pension Rules elicited above, the Division Bench has taken note of the specific cases, where the employees, who were temporary employees either as daily wages employees, casual employees, ad hoc employees or substitute employees (in that case, the husband of the petitioner) and ultimately held that even a substitute appointee on leave vacancy is to be treated as a temporary appointee and held that when the temporary employee is to be treated as general category eligible for pension, even the daily wages employees are to be considered along with said category. In fact, in that case, the Division Bench, incidentally referred to the commencement of qualifying service under Rule 11(1) of the Tamil Nadu Pension Rules, and ultimately, the Honourable Mr.Justice Markandey Katju, the Honourable the Chief Justice (as His Lordship then was), has held as follows:

"In our opinion, there is no merit in the submission of the learned counsel for appellant



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must be understood that employees are of two categories, permanent and temporary. The general category of temporary employee has under it several sub categories e.g. Daily wage employee, casual employee, ad hoc employee, substitute employee (such as the Writ Petitioner's husband) etc. A substitute appointee who is appointed on leave vacancy is a temporary appointee. All appointees who are not permanent appointees are temporary appointees. Hence even if the husband of the writ petitioner was a substitute appointee he was certainly a temporary appointee and hence covered by Rule 11 of the Rules. Learned counsel for appellant then submitted that the husband of the writ petitioner did not work continuously from 1978 to 1987 and there was break in his service. There is no such allegation in the counter affidavit and hence we cannot accept this submission merely on the oral argument of learned counsel for the appellant since there is no material on record in support of such argument. We have already quoted paragraph 2 of the counter affidavit which indicates that the Writ Petitioner's husband worked continuously from 1978 to 1987. Thus he has certainly completed more than two continuous years of service. As such we are of the opinion that the Writ petitioner is entitled to family pension under Rule 49 (2-A) of the Rules as her husband must be presumed to be dead vide Section 108 of the Evidence Act. There is no force in the appeal and it is dismissed."

Therefore, by applying the dictum laid down by the Division Bench, which is inconsonance with Rules 11 (1) as well as 49(2-A) of the Tamil Nadu Pension Rules and in the light of G.O.Ms.No.42 Transport (RW) Department, dated 27.05.2005, there is absolutely no difficulty to conclude that the petitioner's service should be considered from the date of his appointment originally as a daily wage employee on 07.04.1972 to 31.03.1982, in which case, the total years of service rendered comes to 9 years 9 month and 15 days.

11.Now coming to the eligibility of the petitioner regarding the construction that he has completed 10 years period of service, the reference made by the learned counsel for the petitioner to Rule 43(3) of the Tamil Nadu Pension Rules, is relevant to be considered. Of course, said rule



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relates to the quantification of the amount of pension. Rule 43(3) of the Tamil Nadu Pension Rules, is as follows:

"In calculating the length of qualifying service, fraction of a year equal to three months as above shall be treated as completed one half year and reckoned as qualifying service".

By applying the said provision of the Pension Rules to the facts of the present case, wherein the Petitioner has completed the period of 9 years 9 months 15 days and therefore the fraction of 3 months should be treated as a completed one year. The frame of the pension rule appears to be in favour of the petitioner as per the construction of Rule 43(3) of the Tamil Nadu Pension Rules, even though it can be said that the said provision is applicable only for the purpose of quantifying the amount of pension. The word "In calculating the length of qualifying service" which has to be construed along with the term "qualifying service under Rule 11(1) of the Tamil Nadu Pension Rules" should necessarily result in the consequential decision that the fraction of three months should be taken into consideration as completed one year not only for the purpose of quantifying the pension but also for the purpose of calculating the length of qualifying service, so as to enable the person eligible for the pensionary benefits under Rule 11(1) of the Tamil Nadu Pension Rules.

12. By applying the said Rule 43(3) of the Tamil Nadu Pension Rules, I have no hesitation to hold that in the facts and circumstances of the present case, where the petitioner has undisputedly rendered his service in the respondent Corporation for a period of 9 years 9 months and 15 days is entitled to be treated as having completed 10 years of service as per rule 43(3) and accordingly, he is entitled for the pensionary benefits as per the Tamil Nadu Pension rules and also read with G.O.Ms.No.42 dated 27.05.2005.

13. In such view of the matter, this writ petition is allowed and the impugned order of the 5th respondent dated 07.03.2007 stands set aside with a direction to the respondents to consider that the petitioner has completed the qualifying years of service for a period of 10 years as per the provisions of the Tamil Nadu Pension Rules read with G.O.Ms.No.42 Transport (RW) Department, dated 27.05.2005 and grant pensionary benefits to the



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petitioner by proper computation. While accounting the amount of pension to which the petitioner is entitled, it is open to the respondents to apply the provisions of Tamil Nadu Pension Rules, especially rule 11(2) of the Tamil Nadu Pension Rules. Such orders shall be passed within a period of 8 weeks from the date of receipt of a copy of this order. No Costs."

The learned counsel further submitted that the aforesaid order was challenged by the Transport Corporation by filing WA.(MD) No.381 of 2011, which was dismissed by a Division Bench of this Court, by judgment dated 09.04.2011; and SLP (Civil) No.1660 of 2012 filed before the Supreme Court also ended in dismissal. Thus, according to him, applying the same principles to the facts of the present case, wherein, the petitioner's husband had rendered a net qualifying service of 9 years, 10 months and 25 days, it has to be construed as he deemed to have been completed 10 years of service for sanction of pension. Therefore, the learned counsel prayed for appropriate direction to the respondents to consider the claim of the petitioner herein in her favour.

3.On the other hand, the learned counsel appearing for the respondents fairly submitted that the respondents would reconsider the representation of the petitioner and pass orders, on merits and also in the light of the aforesaid order of this Court, within a reasonable time to be fixed by this Court.

4.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, the communication impugned herein is set aside and the matter is remanded back to the respondents for passing fresh orders, on merits and in accordance with law and also in the light of the order of this Court in WP(MD)No.3517 of 2008 dated 31.03.2010, which was confirmed by judgment dated 09.04.2011 in WA.(MD)No.381 of 2011 and SLP(Civil)CC No.1660 of 2012 dated 03.02.2012, within a period of six weeks from the date of receipt of a copy of this order.

5.Accordingly, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar



1. The Secretary, Transport Department,
Secretariat, Chennai - 600 009.
2. The Managing Director,
Metropolitan Transport Corporation Ltd.,
[Old Name Pallavan Transport Corporation Ltd.,]
Pallavan Salai, Chennai - 600 002.
3. The Commissioner,
Employees Provident Fund, Regional Office,
No.20, Royapettah High Road,
Chennai - 600 014.

+1cc to M/s.V.S.Jagadeesan, Advocate Sr.16541
+1cc to M/s.K.Moorthy, Advocate Sr.16567
+1cc to M/s.T.R.Sundaram, Advocate Sr.16285
+1cc to the Government Pleader Sr.16730

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