

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.39278 OF 2005

A.Jani Basha

... Petitioner

-Vs-

- 1.The Secretary to Government
Transport Department,
Secretariat, Chennai 600 009.
- 2.The Chief Accounts Officer
Metropolitan Transport Corporation
(Chennai) Limited, Chennai-600 002.
- 3.The Selection Grade Assistant Manager
(Bills), Metropolitan Transport Corporation
(Chennai) Ltd., Chennai 600 002.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the third respondent relating to the impugned order in Lr. No. 049/PBSC/MTC/05 dated 15.11.2005 to quash it and directing the respondents to take steps to sanction pension to the petitioner for payment of pension from 1.1.1988 as ordered by the Honourable Supreme Court.

For Petitioner : Mr.C.Manohar
For Respondents : Mr.K.Magesh,
Special Government Pleader
- for R1
Mr.M.Murthy, Standing Counsel
- for R2 and R3

O R D E R

The prayer sought for herein is to call for the records of the third respondent relating to the impugned order in Lr. No. 049/PBSC/MTC/05 dated 15.11.2005 to quash it and directing the respondents to take steps to sanction pension to the petitioner for payment of pension from 1.1.1988 as ordered by the Honourable Supreme Court.

2. That the petitioner was working as Assistant Tradesman in the erstwhile Tamil Nadu State Transport Department and when the State Transport Corporations were established, the staffs who were working in the erstwhile Transport Department stood transferred to the Transport Corporations and the petitioner also stood transferred.

3. Subsequently, on superannuation many of the employees retired from service and while retiring from service, whether pension has to be paid to them was the question that arose, which was ultimately concluded by issuing G.O.Ms.No.42, Transport (RW) Department dated 27.05.2005. Accordingly, those who completed 10 years of service as on 01.04.1982 were considered for pensionary benefits. In this context, the case of the petitioner is that, he was also working as the employee of the erstwhile Transport Department, where he worked upto 20.02.1982, and that till such date whatever accrued service shall be taken into account for pensionable service and accordingly he seems to have requested for sanction of pension, which was turned down by the respondent Transport Corporation by order dated 15.11.2005. Challenging the same, the present writ petition has been filed with the aforesaid prayer.

3. Heard Mr.Magesh, learned Special Government Pleader for the first respondent and Mr.Murthy, learned Standing Counsel appearing for the second and third respondents.

4. Learned Standing Counsel for the Transport Corporation has submitted that, as per the import of G.O.Ms.No.42, those who have completed 10 years of qualifying service as on 01.04.1982 alone would be entitled to get pensionary benefits. The petitioner since was removed from service pursuant to unauthorised absence, on 20.02.1982 ie., well before the cut off date of 01.04.1982, he is not entitled to get pension, as he has not completed 10 years minimum service. Therefore the impugned order is sustainable and the writ petition is liable to be dismissed, he contended.

5. I have considered the said submission made by the learned Standing Counsel and also perused the materials placed before this Court.

6. In order to appreciate the contentions raised by the learned Standing Counsel for the Transport Corporation, the relevant portion of G.O.Ms.No.42 is extracted hereunder.

"5. The Government after re-examination of the whole issue have decided to implement the orders of the Supreme Court of India, referred in the judgment seventh read above

and accordingly issue the following orders:-

The Government fix the cut off date as 01.04.1982 in respect of the erstwhile Tamil Nadu State Transport Department employees who had put in less than 10 years of government service as on their permanent absorption in State Transport Undertakings, only for the limited purpose of assessing the requisite length of qualifying service of 10 years to earn pension. The eligible erstwhile Tamil Nadu State Transport Department employees whoever have retired shall get the arrears of pension only from 1.1.1988 which date is fixed with reference to the year of filing the first writ petition. The fixation of pension and payment of arrears shall be done accordingly as ordered by the Hon'ble Supreme Court of India as per the rules and Government Orders applicable to them in the following manner:-

a) The erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil Nadu State Transport Corporations and retired before 01.01.1988 or after 01.01.1988 but before 01.09.1998 as on 01.04.1982. Period of Daily paid services, leave on loss of pay and suspension treated as specific punishment should be excluded while arriving the net qualifying service."

7. The aforesaid portion of the Government Order makes it very clear that, the erstwhile Tamil Nadu State Transport Department employees, who were absorbed by Tamil Nadu State Transport Corporation and retired before 01.01.1988 or after 01.01.1988 but before 01.09.1998 as on 01.04.1982, would be paid pensionary benefits.

8. Here in the case on hand, the petitioner did not have the qualifying service of 10 years as on 01.04.1982. Even before 01.04.1982, ie., on 20.02.1982 the petitioner was removed from service due to disciplinary action as he was unauthorisedly absent.

9. Learned Standing Counsel for the Transport Corporation has submitted that, the said disciplinary action, which culminated in the removal of service of the petitioner has become final and therefore, the minimum criteria that has been fixed in the Government Order referred to above to have the

minimum qualifying service of ten years as on 01.04.1982 since admittedly has not been fulfilled by the petitioner, the question of giving any pension to the petitioner does not arise. Therefore, the impugned order can be sustained.

10. In view of the above, this Court feels that, the impugned order is sustainable, as the petitioner has not successfully challenged the same. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Secretary to Government,
Transport Department, Secretariat,
Chennai-9.
2. The Chief Accounts Officer,
Metropolitan Transport Corporation
(Chennai)Limited, Chennai-600 002.
3. The Selection Grade Assistant Manager (Bills),
Metropolitan Transport Corporation(Chennai) Ltd.,
Chennai 600 002.

+1cc to Mr.M.Murthy, Advocate, S.R.No.7680

+1cc to the Government Pleader, S.R.No.8057

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W.P.No.39278 of 2005

SS (CO)

CS/08/04/2021

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