

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
W.P.No.12816 of 2019

M.Saraswathi

... Petitioner

-vs-

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

2. State Express Transport Corporation Ltd.,
Rep. by its Managing Director,
Thiruvalluvar House,
Pallavan Salai,
Chennai- 600 002.

3. The Commissioner,
Employees Provident Fund,
Regional Office,
No.20, Royapettah High Court,
Chennai- 600 014.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to sanction and pay pension to the petitioner with effect from 01.01.1988 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 by following the order passed in W.P. (MD)No.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 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 along with 18% interest.

For Petitioner : Mr.P.Kirthana Mayuri

For Respondents: Mr.T. Pothiraj (R1)
Special Government Pleader
Mr.T.R.Sundaram (R3)
Mr.K.Kathiresan (R2)

O R D E R

This Writ petition is filed, seeking a direction to the first respondent to sanction and pay pension to the petitioner

with effect from 01.01.1988, 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 by following the order passed in W.P. (MD)No.3517 of 2008 dated 31.03.2010, which was confirmed by 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 along with 18% interest.

2. It is the case of the petitioner that she was appointed as Typist on 03.03.1972 in the erstwhile State Transport Department and was regularised in the said service. Subsequently, on formation of various new Transport Corporations on 15.09.1975, she was absorbed in the Second Respondent Corporation and retired on attaining the age of Superannuation in the post of Section Officer on 31.01.2007. It is further stated that the petitioner had a given representation seeking pension as per the G.O.Ms.No.378, Finance (FR-II Department) dated 18.04.1975, G.O.Ms.No.284, Finance Department dated 31.03.1980 and G.O.Ms.No.1028, Transport Department dated 23.09.1985, for which the second respondent vide letter dated 13.12.2018, has stated that the petitioner has put in less than 10 years of service and in the Service Register of the petitioner, the period between 27.08.1977 to 02.09.1977 has been shown as strike period and the said period has been treated as Leave on loss of pay / absent and therefore, she is not eligible for the pension. However, the petitioner came to know through Right to Information Act, that she had put in 9 years, 11 months, and 27 days of service and it was reliably understood that the said period has already been treated as a regular service and therefore, she should have been granted pension on par with others.

3. A counter affidavit has been filed on behalf of the second respondent, wherein, it is stated that the petitioner has not completed Ten Years of service and as per the Service Book of the petitioner, it is found that the period from 27.08.1977 to 02.09.1977 has been treated as "Strike" and for certain cases, the period has been treated as "Leave on Loss of pay" and it has been found that the petitioner had one month 2 days Loss of Pay, in total, the net qualifying service arrived at 9 years 11 months and 28 days and there is no Government Order regarding treating the strike period as duty period. He would further submit that the Government has informed to take action as per the other State Transport Undertaking, as the period of strike is related to corporation service period. Based on the Government reference and details received from certain other State Transport Undertakings, the period of strike could not be treated as qualifying service to the petitioner as done for other cases.

3. The learned counsel for the petitioner submits that even according to the respondents, the petitioner has put in 9 years, 11 months and 27 days of service, she should have been deemed to have put in 10 years of service and the minimum pension should have been paid to her, which they have failed to pay and hence filed this Writ petition seeking for the aforesaid relief.

4. Heard both sides. Perused the materials available on record.

5. The petitioner was appointed in the Tamil Nadu State Transport Department on 03.03.1972 and was regularised in the said post. The main plea of the petitioner is that though she had rendered 9 years 11 months and 27 days of service, the respondents have not extended the benefit of pension to her on the ground that she had not completed 10 years of service. In terms of G.O.Ms.No.45 Transport (RW) Department dated 27.05.2005, more so, in the light of 43 (3) of the Tamil Nadu Pension Rules, 1978, the petitioner is entitled to pension, as she has completed 10 years of service. In this context, it is useful to extract Rule 43 (3) of the said rules:

"43 (3) In calculating the length of qualifying service, fraction of a year equal to three months (substituted for the words "six months" by G.O.Ms.No.762 Finance (Pension) dated 05.09.1994) and above shall be treated a completed one half year and reckoned as qualifying service."

6. Though it is an admitted fact that the petitioner has not actually completed 10 years of service and completed only 9 years 11 months and 27 days, there is a shortage of only 3 days. In the light of the Rule extracted supra, the length of qualifying service has to be taken into account and the petitioner is deemed to have completed 10 years of service and is entitled to pensionary benefits. Hence, the first respondent is directed to extend pensionary benefits to the petitioner, within a period of three months from the date of receipt of a copy of this order, along with arrears. It is made clear that if the arrears have not been paid within the stipulated period, interest @ 9% per annum shall be paid on the arrears, from the date of filing of the Writ Petition.

7. With the above direction, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
State of Tamil Nadu,
Transport Department,
Secretariat,
Chennai- 600 009.

2.The Managing Director,
State Express Transport Corporation Ltd.,
Thiruvalluvar House,
Pallavan Salai,
Chennai- 600 002.

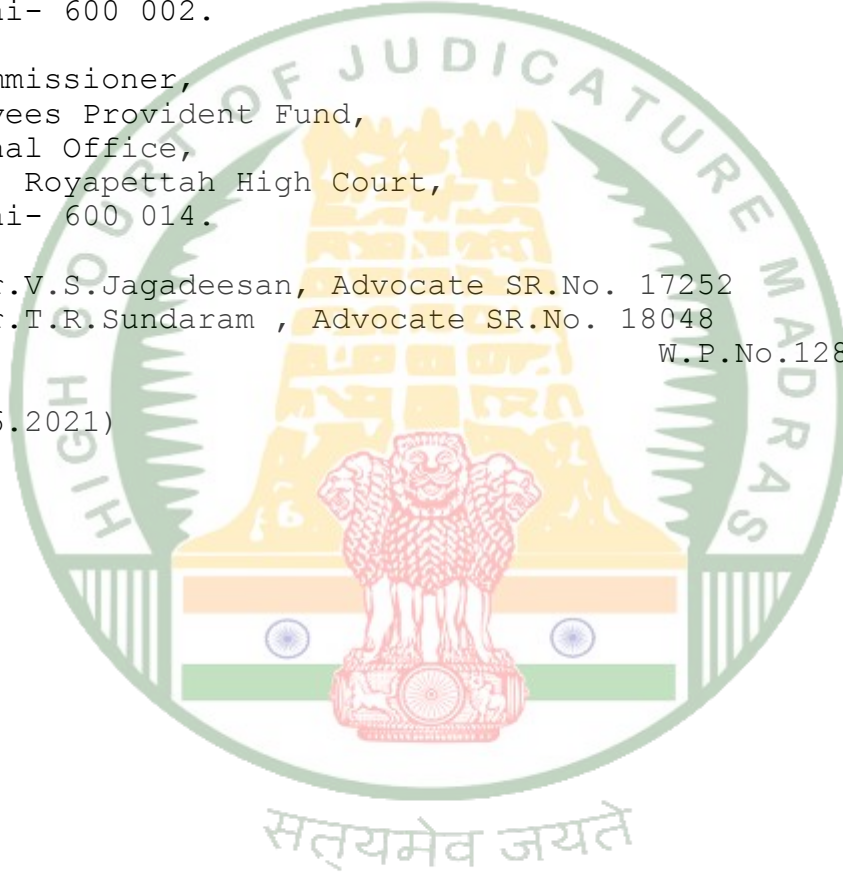
3. The Commissioner,
Employees Provident Fund,
Regional Office,
No.20, Royapettah High Court,
Chennai- 600 014.

+1cc to Mr.V.S.Jagadeesan, Advocate SR.No. 17252

+1cc to Mr.T.R.Sundaram , Advocate SR.No. 18048

W.P.No.12816 of 2019

(CO)
A.SK(22.06.2021)



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