



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.11884 of 2020

J.Sridharan

..Petitioner

Vs

1.The State of Tamil Nadu,
rep. by its Principal secretary to Government,
Transport Department,
Secretariat, Fort St.George,
Chennai - 600 009.

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

3.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai - 600 002.

..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned letter issued by the 3rd respondent in Lr.No.27602-18/L2/TNSTC EPFT/2018-587 dated 23.01.2019 and the subsequent impugned letter issued by the 2nd respondent in Letter No.001210/Y1/PF/SETCTN/2019 dated 15.06.2019 and to quash the same and consequently direct the respondents to sanction the retirement benefits to the petitioner as on date of retirement on 30.04.2016 in the post of Assistant Manager (State Express Transport Corporation) with all consequential and other attendant benefits, including regular pension from the date of retirement.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.G.Krishnanaraja
Additional Government Pleader for R1
Mr.K.Kathiresan
for R2 and R3.



O R D E R

The petitioner was initially appointed as Graduate Apprentice in Tiruvalluvar Transport Corporation on 13.05.1981 and subsequently, posted as Clerk from 14.05.1982 to 26.08.1985. The service had been regularised in the post of Record Clerk cum Conductor with effect from 27.08.1985. Thereafter, he reached the grade of Assistant on 01.05.1992 and worked as such till 11.06.1996.

2. Subsequently, the petitioner was selected and appointed to the post of Assistant Labour Welfare Officer by order dated 05.06.1996. He was further promoted as Assistant Manager on 30.06.2015 and reached the age of superannuation on 30.04.2016, pending enquiry into certain complaints against him. Subsequently, he was issued with a charge memo dated 23.03.2016 alleging certain acts of misconduct.

3. The 2nd respondent proceeded to issue an order, not allowing the petitioner to retire from service citing pendency of the disciplinary proceedings initiated against him. Thereafter, the department enquiry was conducted and concluded and the enquiry report held the charges not proved against the petitioner which is reflected in the report dated 05.12.2016. However, the 2nd respondent proceeded to issue notice proposing to differ from the view of the Enquiry officer and further explanation was also called for from the petitioner. Ultimately, punishment of stoppage of increment for a period of two years without cumulative effect was imposed on him vide order dated 29.05.2019. The petitioner was also allowed to retire from service by office order dated 29.05.2018 notionally with effect from 30.04.2016 by revocation of the order of suspension, the actual date of superannuation. The relieving order was issued on 28.06.2018 retiring the petitioner notionally with effect from afternoon of 30.04.2016.

4. The grievance of the petitioner herein is that while settling the retirement dues to him, instead of the actual date of retirement i.e., 30.04.2016, the date of allowing the petitioner to retire from service on 29.05.2018 was taken into account. According to the petitioner there cannot be any change of date of retirement as the petitioner has reached the age of superannuation on 30.04.2016. In the said circumstances, he submitted a representation to the respondent on 02.07.2018, requesting them to allow retirement benefits as on 30.04.2016 with all consequential benefits after giving effect to the punishment order. Finding no response from the respondents, the petitioner was constrained to file a writ petition in W.P.No.27602 of 2018 and this Court vide order dated 23.10.2019 directed the respondent to pass orders on the representation within a period of six weeks.



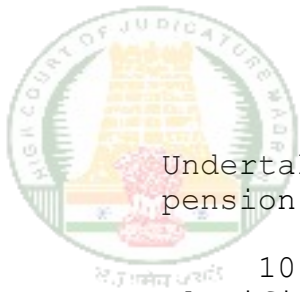
5. In pursuance of the direction of this Court in the above writ petition, the 3rd respondent issued communication dated 23.01.2019 that the petitioner was granted pensionary benefits with effect from August, 2018 in terms of the clarification issued by Government Letter dated 18.07.2005. According to the respondents, the petitioner was entitled to pensionary benefits only from the next date of the final order passed in the disciplinary proceedings. The 2nd respondent also issued further order dated 15.06.2019 by rejecting the claim of the petitioner.

6. According to the petitioner, the reliance placed by the respondent in Government Letter dated 18.07.2005 was in relation to sanction of commutation of pension and not to the regular pensionary benefits payable to him. Challenging the orders of rejection, the petitioner is before this Court.

7. Mr.G.Sankaran, the learned counsel appearing for the petitioner submitted that when the petitioner was allowed to retire from the date of his superannuation i.e., on 30.04.2016, the question of postponing the grant of pensionary benefits from the future date did not arise at all. The learned counsel would further submit that postponing the date of retirement after the age of 58 years would be in violation of the fundamental rules and therefore, the stand taken by the respondents is contrary to law. The learned counsel would also refer to the provisions of TNSTC EPFT Rules Part VI pensionary benefits under Rule 19B wherein it provides for payment of provisional pension, in case, of any departmental action pending at the time of retirement. An employee is eligible for provisional pension and provisional pension shall commence from the date of retirement of the employee concerned. In such event, the rejection of the petitioner's claim cannot be countenanced either in law or on facts.

8. On behalf of the 2nd & 3rd respondents Mr.K.Kathiresan, learned counsel appeared and made his submission. A counter affidavit has also been filed in the matter. In the counter affidavit, in substance, the stand that has been disclosed in the rejection order has been adopted in its entirety. The point that is sought to be drawn is that being an employee who was subjected to disciplinary action, cannot excepted to be treated equally with employees who had no disciplinary action pending against him. According to them, once the word notionally is incorporated in the order of retirement, the question of grant of any pensionary benefits from that date from 30.04.2016 does not arise.

9. When the Court specifically confronted the Advocate for Corporation as to any rule that has been relied upon in support of the stand as disclosed in the counter affidavit, no specific provision or rule has been brought to the notice of this Court. In paragraph No.4 of the counter affidavit, a rule has been cited which is applicable to the State Transport



Undertakings but that deals with the aspect of commutation of pension and the same does not cover the issue on hand.

10. This Court is unable to appreciate as to how a clarification regarding commutation of pension would be made applicable to the present claim made by the petitioner herein in this case.

11. Once the petitioner had been retired with effect from 30.04.2016, as a consequence of the imposition of penalty subsequent to his retirement, the petitioner became entitled to the pensionary benefits from that date, after giving effect to the punishment order. There is no question of postponing the date of retirement only for the purpose of grant of pensionary benefits. On behalf of the respondent, as stated above, no convincing answer is forthcoming in support of the action taken by the Corporation. On the other hand, it has been demonstrated by the learned counsel that there cannot be any postponement of retirement age for the purpose of pensionary benefits which is against the Rules.

12. This Court finds there is no iota of justification forthcoming from the Corporation for denying pensionary benefits which are otherwise due to the petitioner with effect from the date of his superannuation. The impugned orders passed by the respondents are therefore, liable to be set aside.

13. For the above said reasons, the Writ Petition is allowed. The impugned letter issued by the 3rd respondent in Lr.No.27602-18/L2/TNSTC EPFT/2018-587 dated 23.01.2019 and the subsequent impugned letter issued by the 2nd respondent in Letter No.001210/Y1/PF/ SETCTN/2019 dated 15.06.2019 are set aside and the respondents are directed to sanction retirement benefits to the petitioner from the date of his attaining the age of superannuation on 30.04.2016.

14. The respondents are directed to pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vsi



To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Transport Department,
Secretariat, Fort St.George,
Chennai - 600 009.

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

3.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai - 600 002.

+1cc to Mr.G.Sankaran, Advocate SR. No.62087
+1cc to Mr.K.Kathiresan, Advocate SR. No.61457
+1cc to the Government Pleader SR. No.61967

W.P.No.11884 of 2020

JPL (CO)
PR (07/12/2021)