



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.12.2021
CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**
W.P.(MD)No.767 of 2013

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Kesava Narayana Pillai

... Petitioner

vs.

1.The Managing Director,
The Tamil Nadu State Transport
Corporation,
Madurai Division, Madurai.

2.The General Manager,
The Tamil Nadu State Transport
Corporation,
Ranithottam,
Nagercoil, Kanyakumari District.

3.The Director of Pensions,
No.807, 5th Floor,
Anna Salai, Chennai.

4.The Accountant General (Pension),
Thenampet, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the second respondent stated in Letter No.3302/A4/TNSTC (TIN) NGL/2009, dated 28.10.2011 and quash the same and to direct the second respondent to count the defence service of the petitioner along with the civil service with the erstwhile TNSTD for pension as per G.O.Ms.No.1093, dated 10.10.1990 and G.O.Ms.No.42, dated 27.05.2006, (Transport) (RT) Department and consequently to grant the arrears and other benefits and the monthly pension of the petitioner regularly.

For Petitioner : Mr.D.Hari

For R1 and R2 : Mr.K.Sathya Singh

For R4 : Mr.P.Gunasekaran

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned proceedings of the second respondent in Letter No.3302/A4/TNSTC (TIN) NGL/2009, dated 28.10.2011 and to direct the second respondent to count the defence service of the petitioner along with the civil service with the erstwhile TNSTD for pension as per G.O.Ms.No.1093, dated 10.10.1990



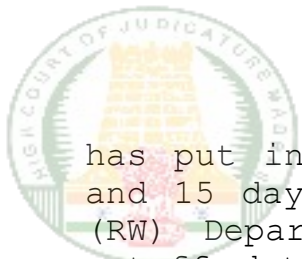
and G.O.Ms.No.42, dated 27.05.2006, (Transport) (RT) Department and consequently to grant the arrears and other benefits and the monthly pension of the petitioner regularly.

2.The petitioner is an Ex-service man and had worked in Indian Army for a period from 04.10.1962 to 19.10.1968, i.e. for 6 years and 15 days as a Driver Mechanical in Transport Division. The petitioner was relieved from the armed service and the reason is given as "not fulfilling the conditions of the enrollment on extreme compassionate grounds under Item III (iv) of the table annexed to Armed Rule 13". After 6 years and 16 days of service, the Army has also certified that the petitioner is fit for civil employment in the same certificate.

3.Based on these certificates, the petitioner approached the Transport Corporation for employment and he was appointed permanently as Driver in Tamil Nadu State Transport, Nagercoil at Kuzhithurai Depot from 30.03.1972 till his superannuation on 31.12.1995, i.e., for 23 years 9 months. The petitioner prayed to add the two service and grant pension. Since the respondents have not granted any pension, the petitioner has approached this Court in W.P.(MD)No.4134 of 2010. This Court directed the second respondent to consider the petitioner's claim in the light of G.O.Ms.No.1093, dated 10.10.1990 and G.O.Ms.No.42, dated 27.05.2006, Transport (RW) Department and pass an order within a period of four weeks. The respondents have passed the impugned order dated 28.10.2011 stating that the G.O.Ms.No.1093, dated 10.10.1990, has stated the period can be condoned only if it is within the period prescribed. As far as G.O.Ms.No.42, dated 27.05.2006, Transport (RW) Department is concerned, the impugned order says that the net qualifying service is only 8 years, 6 months and 23 days, which is below 10 years. Therefore, the petitioner is not entitled to pension. Aggrieved over the impugned letter the petitioner has filed the present writ petition.

4. Heard Mr.D.Hari, learned Counsel appearing for the petitioner, Mr.K.Sathya Singh, learned Counsel appearing for the first and second respondents and Mr.P.Gunasekaran, learned Counsel appearing for the fourth respondent.

5. The Learned Counsel for the petitioner states that there is break in service from military service to the civil service for 3 years 5 months and 11 days. As per Note 7(v) of the Tamil Nadu Pension Rule, 1878, the break between the military service and civil service was treated as automatically condoned provided the period of break between those two services does not exceed one year. However in the subsequent G.O.Ms.No.1093, dated 10.10.1990 wherein, it is stated that the break in service shall be condoned irrespective of delay period between the two service. The petitioner claims that he



has put in both military and civil service for 29 years, 9 months and 15 days. The petitioner claims that in G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005, the Government has fixed the cutoff date as 01.04.1982 for calculating pensionable service, in respect of erstwhile TSNTD employees as on their permanent absorption in State Transport. If this cutoff date is taken into account, the petitioner has put in military service to 6 years 15 days and the civil service in Transport Corporation to 8 years, 6 months and 23 days and in total, the petitioner is having 14 years 7 months and 8 days and he is eligible for minimum pension.

6. The Learned Counsel appearing for the Transport Corporation submitted that as far as G.O.Ms.No.1093, dated 10.10.1990, is concerned, the petitioner is not entitled to pension because the break in service exceeds the period prescribed. As far as the G.O.Ms.No.42, dated 27.05.2006, Transport (RW) Department is not applicable, because the said G.O. was issued to absorb the erstwhile Transport Department employees into service of Transport Department. The petitioner has not served in Transport Department seeking to invoke the said G.O. 42. The respondents 3 and 4 submitted that as per the Pension Rule 16, the petitioner ought to have opted and exercised the option within a period of one year. Since the petitioner has not opted within a period of one year, the petitioner is not entitled to pension.

7. On perusing the impugned order, the respondents have taken the first paragraph from G.O.Ms.No.1093, dated 10.10.1990, wherein the G.O. narrates the past history of the entire issue. The operative portion is in paragraph 3 of the G.O., which reads as follows:

"3. The Government after careful, consideration, have decided to fall in line with the Government of India rules. They accordingly direct the approval military/war service shall be counted as qualifying service along with civil service without any condonation of the break irrespective of the duration of break between the two periods of service. The periods of interruption itself shall under no circumstances be recorded as qualifying service for pension."

Therefore, the contention of delay as stated in the impugned order is incorrect and erroneous.

8. As far as G.O.Ms.No.42, dated 27.05.2006, Transport (RW) Department, is concerned, the respondent Transport Corporation has stated, it is applicable to the employees, who were absorbed from the Government service to Corporation service and this G.O. is



not applicable to the petitioner. However the respondents have invoked the said G.O. and passed the impugned order, wherein it has stated the petitioner is having only 8 years 6 months and 23 days. Now the respondent Corporation cannot turn around and state the petitioner is not eligible to G.O. 46. Even if the respondent is taking such a plea before this Court, then this Court is of the opinion that the analogy stated in the said G.O. shall be taken into account in the present case. Therefore, this Court is of the considered opinion that the cutoff date stated in G.O.Ms.No.42, dated 27.05.2006, Transport (RW) Department, shall be taken for calculating the qualifying service.

9. The third respondent stated that the petitioner would have availed gratuity and other monetary benefits from the army service and for this the petitioner was directed to file an affidavit stating whether he has received any monetary benefits from the military service. The petitioner has filed an affidavit stating that he has not received any monetary benefits. Since he has not received any benefits from the military service, this Court is of the considered opinion that the petitioner is entitled to terminal benefits from the civil employment by calculating the military service.

10. The third respondent also submitted that as per Rule 13 of the Army Rule, the petitioner has not enrolled in the military service at all. This was denied by the petitioner and has produced the original certificate, dated 09.06.2008, where the Assistant Director of Ex-servicemen Welfare certified that the petitioner has served in military and he has an "Ex-serviceman bonafide certificate" for the period from 04.10.1962 to 19.10.1968. On perusing the said Rule this Court is of the considered opinion that the said objection may be applicable under the Army rule for the army service but the said Rule is not applicable for the Civil service. Moreover, while relieving from military service the Army itself has certified that the petitioner is entitled to civil service. Therefore, on two accounts, the objections raised by the third respondent is rejected. Therefore, this Court is setting aside the impugned order and directing the respondents to grant minimum pension to the petitioner by calculating the military service (6 years 0 months 15 days) and the civil service (8 years 6 months 23 days) totally 14 years 07 months and 08 days. The petitioner is directed to submit all the available originals before the first and second respondents. Thereafter, the first and second respondents are directed to submit all the service particulars of the petitioner along with the originals of the petitioner available with them and submit a proposal before the third respondent. Thereafter, the third respondent is directed to disburse the pension. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.



11.With the above direction, the Writ Petition is allowed.
No costs.

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Sd/-

Assistant Registrar (AS)

/ /2022
Sub Assistant Registrar(CS)

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To

1.The Managing Director,
The Tamil Nadu State Transport
Corporation,
Madurai Division, Madurai.

2.The General Manager,
The Tamil Nadu State Transport
Corporation,
Ranithottam,
Nagercoil, Kanyakumari District.

3.The Director of Pensions,
No.807, 5th Floor,
Anna Salai, Chennai.

4.The Accountant General (Pension),
Thenampet, Chennai.

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-38428[F] dated
13/12/2021)

+1 CC to M/s.H.THAYUMANASWAMY, Advocate (SR-38153[F] dated
10/12/2021)

W.P.(MD)No.767 of 2013
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MGJ(05.01.2022) 5P 7C