



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
20.04.2021	30.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.410 of 2020

and

C.M.P. (MD) No.2806 of 2020

The Administrator
TNSTC Employees Pension Fund Trust
Thiruvalluvar House
Pallavan Salai
Chennai-600 002 ... Appellant/2nd Respondent/3rd Respondent/
Respondent/1st Respondent/Petitioner

-vs-

1.S.Moorthy

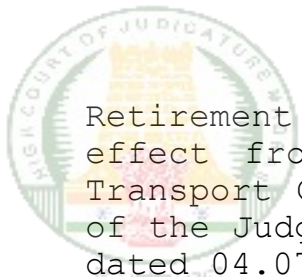
2.The Managing Director
Tamil Nadu Transport Corporation
(Madurai) Ltd.,
Byepass Road, Madurai

3.The General Manager
Tamil Nadu Transport Corporation
(Madurai) Ltd.,
Dindigul Region
Dindigul-4 ... Respondents/Petitioners/Respondents 1&2

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 19.08.2019, passed in Rev.Apl.W(MD) No.35 of 2019, on the file of this Court.

Prayer in WP(MD). 4140/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to sanction Pension and other



Retirement benefits along with applicable rate of Interest with effect from 05.07.2014 as per Rule 19 of the Tamil Nadu State Transport Corporation employees Pension Fund Rules and in the light of the Judgement of this Honourable Court in WA.No.855 & 856 of 2017 dated 04.07.2017.

Prayer in REV.APLW(MD). 35/ 2019 :

To Allow the Review Application and review the order passed in W.P(MD)No. 4140 of 2018 dated 04.06.2018 on the file of this Honourable High Court and thus render justice.

For Appellant : Mr.A.Swaminathan

For Respondents : Mr.S.Govindan for R1
No appearance for R2 & R3

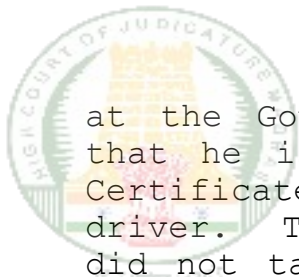
J U D G M E N T

The Administrator, TNSSTC Employees Pension Fund Trust, is the appellant before us challenging the order dated 19.08.2019, passed in Rev.Apl.W(MD) No.35 of 2019 in W.P.(MD) No.4140 of 2018.

2. The first respondent herein is the writ petitioner in W.P.(MD) No.4140 of 2018, which was filed for issuance of a writ of mandamus to direct the appellant and the respondents 2 and 3 herein / his employers, to sanction pension and other retirement benefits along with applicable rate of interest with effect from 05.07.2014 as per Rule 19 of the Tamil State Transport Corporation Employees Pension Fund Rules (in short, "the Rules") and taking note of the Judgment in W.A.(MD) Nos.855 & 856 of 2017, dated 04.07.2017.

3. The first respondent / writ petitioner was appointed as Driver in the second respondent - Transport Corporation on 27.01.1999. His services were regularized by the third respondent by order dated 01.02.2000. Subsequently, he was promoted as Senior Grade Driver and was continuing in service. The first respondent had a peculiar problem as his height was 186 cms., which is much above the height of the normal person, consequently, he was unable to sit in the driver seat in normal position and on account of his duties, he had developed severe back pain and had applied for medical leave.

4. The first respondent would state that as he was continuously availing leave, the second respondent - Transport Corporation initiated disciplinary proceedings against him and to avoid the disciplinary proceedings and the consequential punishment, he submitted his resignation on medical grounds on 23.08.2012 with a fond hope of getting the retirement benefits. The first respondent also gave an undertaking that he will not claim alternate employment. The first respondent was referred to the Medical Board



at the Government Headquarters Hospital, Periyakulam, who opined that he is suffering from diffuse annular bulge. But, in the Certificate, it was mentioned that he is fit to perform duties as a driver. The first respondent would contend that the Medical Board did not take note of the fact that the back pain was due to the annular bulge at L4-L5 and that he cannot perform duty as driver by sitting continuously for eight hours and driving bus. The first respondent would further state that after two years from his resignation on 23.08.2012, the same was accepted by the third respondent herein on 05.07.2014.

5. The first respondent made a request for settlement of retirement benefits and since it was not settled for a period of three years, he filed the writ petition for the aforementioned relief. In support of his contentions, the first respondent placed reliance on the Judgment of this Court in W.A.Nos.855 & 856 of 2017, dated 04.07.2017 and submitted that the case is identical to his case and he is entitled for retirement benefits.

6. The appellant - Trust, which was impleaded as third respondent in the writ petition, submitted that the first respondent's resignation was accepted and therefore, all past services stand forfeited and he cannot claim pension or other benefits.

7. The learned Single Bench held that the letter of resignation submitted by the first respondent was only on medical grounds and that it was submitted as early as on 23.08.2012, but belatedly accepted on 05.07.2014 and that resignation on health grounds cannot be construed as an act of voluntary retirement and similar issue was dealt with in W.P.(MD) No.106 and 461 of 2013, dated 02.03.2015, wherein, a direction was issued to settle the pensionary benefits and the Management of the Transport Corporation filed in W.A.(MD) Nos.855 & 856 of 2017, which was dismissed by Judgment dated 04.07.2017.

8. Further, the learned Writ Court observed that the first respondent's height was above normal and he developed health complication due to the same and this impelled to submit his letter of resignation and therefore, the Court held that the first respondent shall be considered to have voluntarily retired on 05.07.2014, even though he submitted a letter of resignation and it shall be considered as a request seeking voluntary retirement. The appellant and the respondents 2 and 3 herein were directed to pass orders in this regard within a time frame

9. The respondents 2 and 3, namely, the Managing Director and the General Manager of the Transport Corporation, the writ

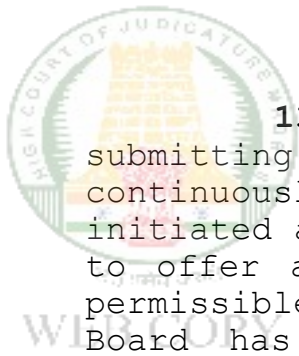


petitioner's employers, filed Rev.Aplc.W(MD) No.35 of 2019 to review the order dated 04.06.2018, passed in the writ petition.

10. The appellant before us was not one of the review applicants and it is the Management alone, which had filed the review application. In the review application it was contended that the Regional Medical Board of the Government Rajaji Hospital, Madurai, certified that the first respondent is fit to perform the existing duty and based on the fitness report, he was directed to discharge duties as driver. However, he did not report for duty and was continuously absent and disciplinary proceedings were initiated and the period of absent was treated as leave on loss of pay. Subsequently, the first respondent submitted that a representation on 11.03.2014 resigning from his employment due to health and family circumstances. Based on the said representation, dated 11.03.2014, the Transport Corporation accepted his resignation on 05.07.2014. On acceptance of the resignation, the Transport Corporation settled the provident fund, gratuity, earned leave salary and IRT contributions and all payments were paid by account payee cheques.

11. Further, it is submitted that the first respondent is not eligible to go on voluntary retirement as he has not completed 20 years of service and not attained the age of 50 years as per the conditions stipulated in the Scheme in G.O.(Ms).No.2010, Transport Department, dated 03.11.1987. Further, Rule 16(a)(ii) of the Rules stipulates that a member of the service will be entitled to voluntary retirement pension, if he has rendered a qualifying service of 20 years or more and attained the age of 50 years. On these grounds, the Management sought for review of the order passed in the writ petition.

12. The learned Writ Court did not agree with the Management for the reason that the letter of resignation should not be viewed in isolation and that the first respondent was suffering from medical problems and he was on leave for three years and therefore, out of depression, he had submitted the letter of resignation and it is not necessary that a letter of resignation should be treated only as such in all circumstances. Further, in the order passed in W.P.(MD) Nos.461 and 106 of 2013, it was held that resignation on health grounds can be constructed as an act of voluntary retirement as also the Judgment in W.A.(MD) No.1658 of 2018. Thus, the Court held that there is no error, which is apparent on the face of the order for being interfered with in a review application. Further, the Court observed that the first respondent cannot be denied minimum pension as he had rendered 11 years of service and accordingly, modified the order passed in the writ petition by observing that the first respondent would be entitled to only minimum pension by taking his period of service as 11 years and accordingly, the review application was partly allowed.

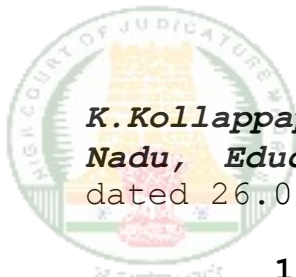


13. The Pension Fund Trust is the appellant before us submitting that the first respondent on his own volition was continuously absent from duty and disciplinary proceedings were initiated against him. Further, the request of the first respondent to offer alternate employment was considered and found to be not permissible by order dated 27.02.2014 on the ground that the Medical Board has declared him fit to carry on the existing duties. Therefore, the first respondent had misrepresented the facts and stated that he was discharged on medical grounds. Further, there is no delay in accepting the resignation as the resignation letter is dated 11.03.2014, which was accepted on 05.07.2014 and his earlier request dated 23.08.2012 was to relieve him on medical grounds, which was rejected taking note of the fitness certificate given by the Medical Board. Further, the question of treating the resignation as voluntary retirement is not permissible under the Rules. Further, it is submitted that though the counter affidavit was filed in the Registry on 26.03.2018, the learned Writ Court proceeded to decide the writ petition without considering the counter filed by the Transport Corporation. The appellant places reliance on the decision of the Honourable Supreme Court in **Life Insurance Corporation of India vs. Shree Lal Meena [2019 (4) SCC 479]**, wherein the Apex Court explained the difference between "retirement" and "resignation".

14. Further, the appellant placed reliance on the Judgment of the Division Bench in **2016 (3) CTC 87**, wherein, it has been held that resignation leads to forfeiture of service as per the statute and rules. Further, the benefit of voluntary retirement cannot be extended to the first respondent as he does not fulfill the mandatory requirement of 20 years of service and attaining the age of 50 years.

15. Further, the appellant placed reliance on the decision of the Honourable Supreme Court in **BSES Yamuna Power Ltd., vs. Ghanshyam Chand Sharma and another [2020 (1) CTC 335 (SC)]**; and the Judgment of the Division Bench of this Court in **T.Dhanaraj vs. TNSTC, EPFR Department, Chennai and another** [W.A.(MD) Nos.368 of 2018, dated 03.08.2018].

16. The first respondent seeks to sustain the order impugned before us by placing reliance on the decision in **D.Padmini vs. Registrar General, High Court, Madras [2008 (3) MLJ 241]**, **D.Vijayarangan vs. Secretary, Sales Tax Appellate Tribunal, Madurai and others [2009 (3) MLJ 1005]**; **E.Jebamani vs. Government of Tamil Nadu [2015 (1) CWC 268]**; **M.K.Sivakami vs. Principal District Judge [2017 (4) MLJ 329]**; **The Managing Director, TNSTC, Madurai and two others vs. A.Murugesan** [W.A.Nos.855 & 856 of 2017, dated 04.07.2017, which was affirmed by the Honourable Supreme Court SLP (Civil) Diary No.4256 of 2018, dated 19.02.2018 and the Judgment in



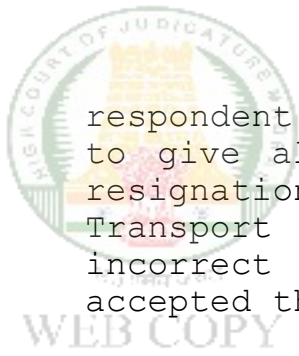
K.Kollappapillai vs. The Principal Secretary to Government of Tamil Nadu, Education Department and two others [W.A.No.1658 of 2018, dated 26.06.2019].

17. Heard Mr.A.Swaminathan, learned counsel appearing for the appellant and Mr.S.Govindan, learned counsel appearing for the first respondent / writ petitioner.

18. The subtle difference between "voluntary retirement" and "resignation" has been lucidly elucidated in the decision of the Honourable Supreme Court in the case of **BSES Yamuna Power Ltd.**, (supra). It was pointed out that where an employee has resigned from service, there arises no question of whether he has in fact voluntarily retired or resigned. The decision to resign would be materially distinct from a decision to seek voluntary retirement. The decision to resign results in the legal consequences that flow from a resignation under the applicable provisions. These consequences are distinct from the consequence flowing from voluntary retirement and that two may not be substituted for each other based on the length of an employee's tenure.

19. Noting the facts in the said case, it was held that the employee was denied voluntary retirement, but he did not challenge the said decision, but resigned from service and the denial of voluntary retirement does not mitigate the legal consequence that flow from resignation and on facts, it was held that denial of voluntary retirement cannot be invoked before the Honourable Supreme Court to claim pensionary benefits when the employee had admittedly resigned.

20. The learned Writ Court proceeded on the basis that the appellant had resigned on medical grounds. If this fact is not in dispute, then the first respondent's case would be covered by the Judgment in the cases of **D.Padmini, D.Vijayarangan, M.K.Sivakami and A.Murugesan** (supra). Therefore, we need to ascertain from the facts of the case as to whether the resignation submitted by the first respondent was on medical grounds or otherwise. This aspect of the matter has been specifically brought out by the appellant. It is not in dispute that the first attempt of the first respondent to wriggle out of the disciplinary action initiated against him for unauthorized absence was by submitting a letter, dated 23.08.2012 permitting him to resign on medical grounds. This request was rejected and the first respondent has not challenged the same. Subsequently, he submitted a representation stating that he should be offered alternate employment as he is not in a position to discharge his duties as driver. This request was rejected and intimated to the first respondent by communication dated 27.02.2014 on account of the fact that the Medical Board had certified that the first respondent is fit to discharge the exiting duties. The first

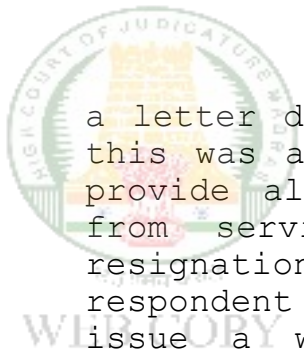


respondent did not challenge the order, dated 27.02.2014, declining to give alternate employment. This was followed by a letter of resignation simpliciter dated 11.03.2014, which was accepted by the Transport Corporation on 05.07.2014. Therefore, it is factually incorrect to state that the Transport Corporation had belatedly accepted the resignation letter.

21. Secondly, it has to be noted in the facts and circumstances that the resignation is not on medical grounds. This request was rejected much earlier and attained finality and the resignation, which was accepted, was a resignation simpliciter. If such is the factual position, then by operation of law, all past services stand forfeited.

22. The learned Single Bench, while allowing the writ petition, by order dated 04.06.2018 had directed the resignation to be treated as voluntary retirement. This was not permissible because the first respondent did not fulfill the mandatory condition prescribed under the relevant rules to go on voluntary retirement. Therefore, the review application, which was filed by the Management, was partly allowed. But, however, the learned Judge had modified the order passed in the writ petition by directing minimum pension to be paid to the first respondent. Aggrieved by the same, the appellant is before us as it is the appellant - Trust, which has to sanction pension. If the learned Writ Court was satisfied that the first respondent cannot be permitted to go on voluntary retirement on account of non-fulfillment of the mandatory conditions in the relevant rules, then the question of issuing direction to grant minimum pension would not arise. Unless and until the Writ Court is convinced on facts that the letter given by the first respondent on 11.03.2014 was not a resignation, then and then alone consequential directions could have been issued for payment of pension. The review application filed by the Management of the Transport Corporation was partly allowed and the learned Writ Court modified its earlier order since the first respondent cannot be permitted to go on voluntary retirement. In such circumstances, the only order, which remains is an order accepting the resignation of the first respondent, which was a resignation simpliciter.

23. It appears that the factual position was not placed before the learned Writ Court at the first instance and before us it is stated by the appellant that the counter affidavit was filed before the Registry on 26.03.2018. In all probabilities, if the facts were on record in the form of counter affidavit, it would have established three factual aspects. First being the request made by the first respondent for alternate employment, this was rejected on 27.02.2014. The request for resignation on medical grounds by representation, dated 23.08.2012 was rejected based on the fitness certificate issued by the Regional Medical Board, Government Rajaji Hospital, Madurai. It is thereafter the first respondent submitted



a letter dated 11.03.2014, which was a resignation simpliciter and this was accepted on 05.07.2014. The rejection of the request to provide alternate employment, rejection of the request to resign from service on medical grounds and the acceptance of the resignation simpliciter have not been challenged by the first respondent and he approached the learned Writ Court with a prayer to issue a writ of mandamus to sanction pension, which is not permissible as the orders rejecting his request for alternate employment and resignation on medical grounds and acceptance of resignation simpliciter remain intact. In such circumstances, Rule 16(3) of the Rules would come into operation and resignation from service entails forfeiture of past services. This rule is para materia with Rule 23 of the Tamil Nadu Pension Rules, which rule was interpreted by the Division Bench of this Court in the case of **A.L.Agnel Ilangovan vs. The Government of Tamil Nadu and others [2016 (3) MLJ 839]**, wherein it was held that in the light of the express provisions, on resignation, the concerned employee is not entitled to pension. This decision has been taken note by the Division Bench of this Court in the case of **T.Dhanaraj** (supra).

24. For all the above reasons, we are of the considered view that the order and directions issued by the learned Writ Court in the Rev.Apl.W(MD) No.35 of 2019, dated 19.08.2019, are not sustainable.

25. In the result, the writ appeal is allowed and the order, dated 19.08.2019, passed in Rev.Apl.W(MD) No.35 of 2019 directing payment of minimum pension is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



1.The Managing Director
Tamil Nadu Transport Corporation
(Madurai) Ltd.,
Byepass Road, Madurai

2.The General Manager
Tamil Nadu Transport Corporation
(Madurai) Ltd.,
Dindigul Region
Dindigul-4

JUDGMENT

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