IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.21124 of 2015
and
M.P.No.1 of 2015

1.P.Gnanaseelan (Died)

2.G.Prince Hamlet

(P2 substituted as LR of deceased sole petitioner vide order dated 10.08.2022 in WMP.No.19262/2022 in WP.No.21124/2015) ...Petitioners

Vs

1.The Secretary to Government,
Finance (Pension) Department,
Fort St. George, Chennai - 9.

2.The Director,
Tamil Nadu State Transport Corporation,
No.2, Pallavan Salai, Chennai - 2.

3.Branch Manager,
Nesamony Transport Corporation Limited,
Nagercoil, Rani Thottam Branch-I,
Kanniyakumari District.

4.The General Manager,
Tamil Nadu State Transport
Corporation (Tirunelveli) Ltd.,
Nagercoil Zonal, Rani Thottam,
Nesamani Nagar,
Nagercoil - 629 001.

5.The Accountant General of Tamil Nadu,
Accounts and Entitlement,
Teynampet, Chennai.

(R5 amended vide order dated 10.08.2022 made in WMP.No.19260 of 2022 in WP.No.21124 of 2015) ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation dated 22.05.2014 and further direction to the respondents 1 to 4 to send proposals to the 5th respondent under the Madras Liberalized Pension Rule, 1960 and consequential direction to the 5th respondent to sanction pension with all consequential pensionary benefits from petitioner's date of retirement and arrears with interest.

For Petitioners	: Mr.P.Rajesh
For R1	: Mr.P.Sanjay Gandhi, Government Advocate
For R2	: Mr.M.Aswin
For R3	: No Appearance
For R4	: Mr.A.Sundaravadhanam
For R5	: M/s.Selvarani

ORDER

The prayer sought for in this Writ Petition is to direct the respondents to sanction pension to the petitioner under the Madras Liberalized Pension Rules, 1960.

2. The similar prayer was already considered by me in the case of ***S.Arunachalam Vs. The Secretary to Government, Finance (Pension) Department and others passed in W.P.No.7975 of 2015*** and by order dated 01.06.2022, the Writ Petition was allowed and the respondents were directed to sanction pension to the petitioner therein under the Madras Liberalized Pension Rules. The relevant portion of the order reads as follows:-

> *"The proceedings of the second respondent vide Letter No.16593/C/4/A.V.PO.Ka./2014 dated 27.10.2014 and the fourth respondent vide Letter No.8533/A4/TNSTC (Trivl)/Nagar/92, dated 22.09.2014, are put under challenge in the present Writ Petition.*
>
> *2. Heard the learned counsel for the parties.*
>
> *3. When the Transport Corporation was formed in 1975, the Government Order No.378, dated 18.04.1975,*

was issued to the effect that the employees of the erstwhile Tamil Nadu State Transport Department (TNSTD), who were absorbed in the Transport Corporations and completed 10 years of qualified service, would be entitled for pension from the State Department, in addition to the salary. In this connection, an option was called for from the employees, as to whether they wish to continue under the prevalent rules which is termed as Operational Subordinate Services Rules (OSSR), which is a non-pensionery Contributory Provident Fund Scheme. The cut off date for exercising the option was ultimately fixed by the Hon'ble Supreme Court as 01.04.1982.

4. It is the case of the petitioner that he had not exercised his option for the OSSR and that the respondents had compelled him to sign in the proforma for the new Madras Liberalized Pension Rules, 1960 [MLPR].

5. The issue with regard to the petitioner's entitlement for pension for the qualifying service under the Tamil Nadu State Transport Department has come up for consideration before this Court in various decisions and in one decision of the Hon'ble Division Bench, in the *case of* ***The Tamil Nadu State Transport Corporation and other V. Sankaran and 2 others in W.A.Nos.776 to 778 of 2011 dated 29.09.2015****, the signatures obtained by the employees in the proforma was dealt with and was found that when the proforma has not been counter signed by the Branch Manager under whom the employee was working, it cannot be regarded as an acceptance and therefore, would be entitled for the pension under the New Madras Liberalised Pension Rules, 1960.*

6. The original records pertaining to the proforma claim to be given by the petitioner was called for and perused. In the proforma, it is seen that though the petitioner herein has signed and subscribed the date as 25.06.1974, such a proforma was not counter signed by the concerned Branch Manager or the General Manager of the Tamil Nadu State Tiruvallur Transport Corporation, where the petitioner was working at the relevant point of time.

7. Various other decisions, in line with the Hon'ble Division Bench order have also been passed in the case of ***The Government of Tamil Nadu and others Vs. M.Ananchu Asari and others,*** *as well as by two other* *learned Single Judges in the case of* ***S. Thamburan Vs. The Secretary to Government and others*** *passed in W.P. No.1181 of 2008, dated 08.10.2009 and in the case of* ***A. Ayya Samy Vs. The Secretary to Government and other*** *passed in W.P.(MD) No.7343 of 2018, dated 17.11.2021.*

8. In the background of these decisions and by taking into account that the proforma was not counter signed by the Branch Manager or the General Manager, the petitioner's claim for pension requires consideration.

9. At this juncture, the learned Standing Counsel for the respondent's Corporation submitted that since the petitioner herein had already accepted the gratuity paid to him on 30.01.1989, is estopped from claiming the pension now.

10. I am not in agreement with such a submission. The lis with regard to the claim made by similarly placed persons was pending before the Hon'ble Supreme Court and ultimately the cut off date prescribed in the Government Order came to be replaced through the decision in ***Ananchu Asari (Supra),*** *only on 29.10.2003. When the petitioner had made such a claim in the year 2014, the same came to be rejected though the impugned* *orders, passed only on 22.09.2014 and 27.10.2014 respectively. Thus, merely because the petitioner had accepted the gratuity amount, the same will not operate as an estoppel for grant of pension. In this background, if the petitioner is directed to refund the gratuity amount already received by him to the respondents to enable him to receive the pension, the ends of justice could be secured.*

11. Accordingly, there shall be a direction to the petitioner to refund the entire gratuity amount received by him, during his service under TNSTD, to the first respondent within 30 days from the date of receipt of a copy of this order.

12. The impugned proceedings of the second respondent vide Letter No.16593/C/4/A.V.PO.Ka./2014 dated 27.10.2014 and the fourth respondent vide Letter No.8533/A4/TNSTC (Trivl)/Nagar/92, dated 22.09.2014, are quashed. Consequently, there shall be a direction to the respondents 1 to 4, to a send proposal to the fifth respondent for sanction of pension under the Madras Liberalized Pension Rules, 1960 [MLPR], within one month from the date on which the petitioner refunds the gratuity amount received by him for the service rendered *under TNSTD and on receipt of such a proposal, the fifth respondent shall sanction pension to the petitioner under the MLPR, within one month there from. The Writ Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs."*

4. The aforesaid extract is self explanatory. Since the cause of action in the prayer sought for in this Writ Petition is similar to that of W.P.No.7975 of 2015, the present Writ Petition also deserves to be allowed.

5. In the light of the above observations, there shall be a direction to the respondents 1 to 4 to send a proposal to the fifth respondent herein for sanction of pension under the Madras Liberalized Pension Rules, within a period of one month from the date on which the second petitioner herein, who is the legal heir of the deceased original petitioner, refunds the gratuity amount received by her, if any, for the service rendered under Tamil Nadu State Transport Department and on receipt of such a proposal, the fifth respondent shall sanction pension to the petitioners under the Madras Liberalized Pension Rules, within one month therefrom. Accordingly, the

Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.09.2022

Index:Yes/No
Speaking order/Non-speaking order
hvk

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M.S.RAMESH,J.

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