



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.04.2022
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.22553 of 2013
and M.P.No.2 of 2013 & M.P.Nos.2 & 3 of 2014

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

...Petitioner

Vs.

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

2.The Secretary,
Transport Department,
St.George Fort,
Chennai - 600 009.

3.E.Vasudevan

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the order passed by the first respondent in Claim Petition in C.P.No.651 of 2010 dated 02.05.2013 and to quash the same as illegal and by holding that the third respondent is not entitled for any pensionary benefits for the services rendered in the erstwhile Tamil Nadu State Transport Department.

For Petitioner : Mr.K.Kathiresan

For Respondents : R.1 - Court,

Mr.P.Ganesan,

Government Advocate [for R2]

Mr.K.Malaikkannu

for Mr.V.Balamurugan [for R3]

ORDER

The third respondent herein, had joined the services of the Tamil Nadu State Transport Department on 30.12.1966 and his services were regularised on 01.01.1968. On 15.09.1975, the third respondent was deputed to the newly formed State Express



Transport Corporation, wherein, he was subjected to departmental action and consequently dismissed from service on 20.12.2000. The third respondent had filed a Claim Petition under Section 33-C(2) before the first respondent/Labour Court, seeking for pensionary benefits for his service rendered in the State Transport Department, which came to be computed through the impugned order dated 02.05.2013 in favour of the third respondent, together with interest. The petitioner/Management has challenged this order in the present Writ Petition.

2. Under Section 33-C(2) of the Industrial Disputes Act, the Labour Court would be entitled to adjudicate the incidental questions that arise at the time of computation of the claim. In this connection, it is the case of the third respondent that since the original cut off date for claiming the pensionable service under the Transport Department was 01.05.1975/15.09.1975, came to be replaced by the Hon'ble Supreme Court with 01.04.1982, as the final cut off date. By taking this final cut off date, the petitioner would have completed more than 10 years of service and therefore, entitled for pension.

3. The subsequent dismissal of service under the Corporation has no relevance to the service rendered by him under the Transport Department and this aspect has been clarified by the Government themselves in Letter No.18834/Tpt./TBC-1/2005-1, dated 13.02.2006 that even in cases where the employees who had dismissed or removed from services between 01.05.1975 to 01.04.1982, they would be eligible for pension.

4. In identical circumstances, the Division Bench of this Court, had taken into account the 10 years completed service of an employee under the Transport Department, who had gone on voluntary retirement and held that he would be entitled for pension under the Transport Department. This finding in the case of the 'The Managing Director, Metropolitan Transport Corporation Ltd., Vs. P.G. Venugopal & others passed in W.A.Nos.28 & 29 of 2017 dated 24.07.2017, reads as follows:-

"..... 6. The factual position is not in dispute. It is beyond any cavil that the first respondents in both the appeals joined duty on 29.12.1971 and 17.10.1971 respectively. They were absorbed into monthly cadre with effect from 1.11.1972. Their probation was declared on 1.1.1973 and 18.3.1975 respectively. The said individuals opted for voluntary retirement and retired from service on 31.5.1995 and 31.12.1994 respectively.



WEB COPY

7. A person claiming qualifying service should have been working as a full-time employee in a job, for which a regular post has been sanctioned, and the payment of salary - either on a monthly or daily basis, from the contingency should have been continuous and without any break. In the instant appeals, it is beyond any demur that the first respondents were continuously discharging their duties without any break from the date of their initial appointment. Therefore, in our considered opinion, the qualifying service must be reckoned from the date of their initial entry into service.

8. In *M.Brindavanam v. The Secretary to Government Transport Department & another*, 2012 Supreme (Madras) 3150, which was relied upon by the learned Single Judge in the orders under challenge, a learned Single Judge has quashed G.O.Ms.No.42, Transport (RW) Department, dated 27.5.2005, as violative of Article 14 of the Constitution of India insofar as denial of daily paid service for counting the qualifying service for pension and held that the daily paid service should be reckoned for counting the service of ten years for the purpose of pension.

9. We are, thus, of the firm view that the Labour Court and the learned Single Judge, rightly held that the first respondent in both the appeals have put in more than ten years of qualifying service as on 1.4.1982, from the date of entry into service as daily paid employees."

5. Thus, the entitlement of the third respondent to claim pension for his service under the Transport Department, is not in dispute and therefore, the Labour Court had also rightly computed his claim. It is needless to point out that since the third respondent herein, was subsequently dismissed from the services of the Tamil Nadu State Transport Corporation, he will not be entitled for any pensionary benefits for his service rendered in the Tamil Nadu State Transport Corporation.

6. At this juncture, the learned counsel for the petitioner/Management submitted that the entire amount computed by the Labour Court under the impugned order dated 02.05.2013, has been deposited before the Labour Court and the same had also been withdrawn by the third respondent.

7. Though this Court has found that the amount computed by the Labour Court does not requires interference, it is



brought to the notice that the Transport Department in G.O. (Ms).No.33 Transport (RW1) Department dated 04.03.2016, has ordered that interest on belated payment of pensionary benefits should be calculated @ 9% p.a.

WEB COPY

8. It is now seen that the Labour Court had computed the pensionary benefits from 01.01.1988 to 31.07.2010. Now that this Court has found that the third respondent herein, would be entitled for the pensionary benefits for his service under the Transport Department and by taking into account that the third respondent is now aged about 79 years, it would not be appropriate to grant liberty to the third respondent to once again approach the Labour Court to file a Claim Petition for a pensionary benefit after 31.07.2010. In this background, this Court in exercise of its powers under Article 226 of the Constitution of India, feels it fit and appropriate to direct the petitioner/Management to continue paying the pension after 31.07.2010, which shall also include the arrears.

9. By taking into account this Government Order, the order of the Labour Court dated 02.05.2013, insofar as it levies the interest @ 12% p.a., is reduced to 9% p.a. All other observations and findings in the impugned order dated 02.05.2013, shall remain intact. It is further ordered that the petitioner/Management shall pay the arrears of pension, together with 9% interest p.a. from 01.08.2010 till date and continue to pay the monthly pension, as ordered above. The petitioner/Management shall pay the arrears of pension within a period of six weeks from the date of receipt of a copy of this order.

10. With the above directions, this Writ Petition stands ordered accordingly. No costs. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Sni



To

1.The Presiding Officer,
I Additional Labour Court,
Chennai.

2.The Secretary,
Transport Department,
St.George Fort,
Chennai - 600 009.

+1 CC to Mr.K.Kathiresan, Advocate sr 27011
+1 CC to Mr.K.Malaikkannu, Advocate sr 26819.

W.P.No.22553 of 2013

AD(CO)
SP(09/05/2022)