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W.P.Nos. 1020 to 1025 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 1020 to 1025 of 2017

W.P. No. 1020 of 2017

M.A. Subramanian

.. Petitioner

Vs.

1. The Secretary ,
Transport Department,
Secretariat,
Fort St. George,
Chennai – 600009.
2. The Director,
Directorate of Pension,
259, Anna Salai 3rd Block,
2nd Floor,
Teynampet,
Chennai – 600006.
3. The Managing Director,
Tamilnadu State Express Transport Corporation,
Pallavan Salai,
Chennai – 600002.
4. The Pension Administrator,
Tamilnadu State Express Corporation Pension Fund,
Pallavan Illam,
Pallavan Salai,
Chennai – 600002.

... Respondents



Prayer: Writ Petitions filed Under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the second respondent to pay appropriate pension for the service rendered in the erstwhile Tamilnadu State Transport Department from 1956 to 1982 and direct the fourth respondent to pay pension from 1982 to 1995 for the service rendered in the Transport Corporation as per the judgment in W.A.No. 3265 of 2022 dated 16.04.2008.

For Petitioners	: Ms. Sreela for Ms. D. Geetha
For Respondents	: Mr. Yogesh Kannadasan Special Government Pleader for R1 and R2 Mr. K. Kathiravan for R3 R4- No appearance

COMMON ORDER

The relief sought for in the present writ petition is to direct the the second respondent to pay appropriate pension for the service rendered in the erstwhile Tamilnadu State Transport Department from 1956 to 1982 and direct the fourth respondent to pay pension from 1982 to 1995 for the service rendered in the Transport Corporation as per the judgment in W.A.No. 3265 of 2022 dated 16.04.2008.



2. The petitioner has crossed almost 80 years of age and filed this writ petition after a lapse of about 29 years from the date of his respective retirement.

3. The grievances of the writ petitioner is that the pension has not been fixed properly taking into consideration the services rendered by him as an employee of the Transport department of the Government of Tamil Nadu.

4. The learned counsel for the petitioner made a submission that the petitioner has rendered 10 years of service in the transport corporation of the Government of Tamil Nadu and therefore the services rendered by him in the transport Department also is to be taken into consideration for the purpose of calculating the qualifying services for grant of pensionary benefits.

5. The learned counsel for the respondents made a submission that the petitioner cannot claim service gratuity and employees provident fund etc. at the one hand and pensionary benefits on the other of the same period of his services in the corporation, if he did not opt for the corporation services he could not have got such promotion. The petitioner had opted for



corporation services and enjoyed all the benefits entitled to the corporation employees and therefore now he is stopped from claiming the benefits of Government employees. In this regard, the respondents have stated as follows in paragraphs 5, 6 & 7 of the counter affidavit, which reads as under:

5. I respectfully submit that the orders of Hon'ble High Court of Madras dated 16.04.2008 in W.A.No. 3265 of 2002 is extended to the Thiru.Jesurethnam. The petitioner contention that the entire period has to be taken for the payment of the pension is against the intent of the Hon'ble Division Bench of the High court of Madras. The learned Division Bench has directed for the payment of the pension on the lines of the Judgment of Government of Tamilnadu vs Anachu Asari (2003) 10 SCC 503. The said judgment is on a different context and is about the fixation of the cut off date. The same deals with the erstwhile TNSTD employees those who were permanently absorbed in Transport Corporation and have rendered less than 10 years of regular net qualifying service as on 30.04.1975/14.09.1975. But they have claimed that they are eligible for



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Government Pension and sanctioned pension with effect from 01.05.1975/15.09.1975 with reference G.O.No. 1028/Transport dated 23.09.1985.

I submit that the petitioner was sanctioned Government Pension for the service rendered by him in erstwhile TNSTD from 01.01.1958 to 14.09.1975 as per G.O. Ms. No. 1028 – Transport – dated 23.09.1985 vide Government letter No. 77326/B6/1985, dated 10.10.1986.

6. As per Rule 37 of Tamilnadu Pension Rules, a Government servant who has been permitted to be absorbed in a service or post in or under a corporation or company be deemed to have retired from service from the date of such absorption and shall be eligible to get retirement benefits up to that period. Accordingly, the petitioner had applied for the settlement of his Terminal Benefits for the portion of Government service rendered by him up to and inclusive of 30.04.1975 and pension and other terminal benefits for which the petitioner was eligible has been settled and arrears of pension from 01.05.1975 has been paid and the petitioner has already received the same without any objection. Further, the petitioner is getting the monthly pension for the service rendered by him up to



30.04.1975 in the Ex-TSTD

7. I submit that the petitioner could not claim service Gratuity and Employees Provident Fund, etc. at one hand and pensionary benefits on the other for the same period of his service in the Corporation up to the cadre. If he did not opt for Corporation service he could not have got such promotions. Having opted for Corporation service and enjoyed all benefits entitled to the Corporation employees, he is stopped from claiming the benefits of Government employees'

6. The learned counsel for the petitioners made a submission that several representations were sent to the respondents and the respondents have not passed any orders considering such representations. This Court is of the considered opinion that such grievances regarding the eligibility of the petitioners are to be decided within the reasonable period of time. The petitioners themselves have approached this Court after a lapse of about 29 years from the date of retirement from the corporation services and they have served in the transport corporation of Government of Tamil Nadu long back and if at all there is any discrepancy in the matter of fixation or calculation of services, the petitioners have to submit all the relevant



records to the competent authorities for the purpose of consideration. Even the Corporation may not have all such records at this length of time. In the absence of relevant service records, the authorities may not be in a position to verify the correctness of the pension sanctioned to the writ petitioners. Thus, the petitioners, in the event of producing all the relevant records relating to their services, the authorities may verify the same with reference to the rules in force and take a decision. In the event of not submitting any records, the petitioners are not entitled for the relief as such sought for in the present writ petitions.

7. With these clarifications, the writ petitions stand disposed of. No costs.

14.11.2022

mrn

Index : Yes / No

Speaking order / Non-Speaking order



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S.M.SUBRAMANIAM, J.

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