BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.01.2022

Pronounced on : 25.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.18381 of 2013

N. Sundaram Nadar :Petitioner

..vs..

1.The Government of Tamil Nadu,
Rep. By its Special Commissioner and
Secretary to Government,
(Transport) Department,
Fort. St. George,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli.

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

4.The Principal Accountant General for
Tamil Nadu,
No.261, Anna Salai,
Teynampet, Chennai - 600 018. : Respondents

(R4 Suo motu impleaded vide Court
order dated 20.07.2021 in WP(MD).NO.;18381/13)

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 3rd respondent pertaining to its order Letter No.13140/Aa4/Thu. A Po Ka (Thili) Nagar / 95 dated 08.03.2013 and to quash the same and consequently, direct the respondents to pay pension recognizing his service from 07.04.1972 to 31.12.1995 and to fix his pension based upon the last drawn salary as on 31.12.1995 within a stipulated time as may be fixed by this Court.

For Petitioner : Mr. S. Sivakumar
For R1 : Mrs. D. Farjana Ghoushia
Special Government Pleader
For R2 and R3 : Mr. K. Sathiya Singh
For R4 : Mr. P. Gunasekaran

O R D E R

The Writ Petition is filed to quash the records on the file of the 3rd respondent pertaining to its order Letter No.13140/Aa4/Thu. A Po Ka (Thili) Nagar / 95 dated 08.03.2013 and consequently, direct the respondents recognizing his service from 07.04.1972 to 31.12.1995 and to fix his pension based upon the last drawn salary as on 31.12.1995 within a stipulated time as may be fixed by this Court.

2. The petitioner was appointed as a Driver in the Tamil Nadu State Transport Department on 07.04.1972 temporarily. Thereafter, he was confirmed on 01.06.1973. The State Transport Department was wound up on 15.09.1975 and all its employees are absorbed permanently in the Transport Corporation. The cutoff date to calculate the pensionable service was fixed earlier as 01.05.1975 / 15.09.1975 as per the orders issued in G.O. Ms. No. 1028, dated 20.09.1985. According to that order, the Government employees, who had put in not less than 10 years of net qualifying Government Service as on 01.05.1975 / 15.09.1975 are entitled to get pension with effect from the date of absorption in the Transport Corporation. Accordingly, settlement was made to more than 5000 employees during 1986 - 1989. Some of the employees who had put in less than 10 years filed Writ Petition before this Court and the Hon'ble Supreme Court has pleased to allow the Writ Petitions setting aside the fixation of the cut off dates as 01.05.1975 / 15.09.1975 following the Judgment of the Division Bench of this Court in W.A.No.522 of 1992 and 962 of 1993. The respondents Government preferred the Civil Appeal Nos. 1446 to 1452 of 1999 before the Hon'ble Supreme Court and the same was dismissed by fixing the cutoff date as 01.04.1982. The Hon’ble Supreme Court has also directed the Government to pay arrears of pension to all the persons retired from the respondent's service from 01.01.1988 and fixed the cut of date as 01.04.1982 and the Government preferred the review and the same was also dismissed. Therefore, in pursuance of the order of the Supreme Court the Government issued G.O.Ms.No.42, dated 27.05.2005 thereby fixing the outer limit of 01.04.1982 for eligibility to receive pension irrespective of their qualifying service and retiring after 1988 who are eligible to get pension. The petitioner was seeking pension and the same was not granted. Since the petitioner is lesser than 2 months and 15 days for the qualifying service of 10 years, he has filed Writ Petition in W.P. (MD). No. 3517 of 2008 and the same was allowed directing the respondents to grant pension. The respondents preferred W.A.No.381

of 2011 and the same was dismissed and the respondents preferred SLP before the Hon'ble Supreme Court and the same was dismissed. Thereafter, the respondents have issued pension to the petitioner.

3. The grievance of the petitioner is that the entire service period was not taken into account for granting pension. Therefore, the petitioner submitted a representation to include the service from 01.04.1982 to 31.12.1995 along with the service of 07.04.1972 to 01.04.1982 but the same was rejected vide impugned order dated 08.03.2013. Hence, the petitioner has filed the present Writ Petition before this Court.

4. The third respondent has filed counter stating the petitioner has not completed 10 years of service as on 01.04.1982 and hence, the petitioner was not sanctioned pensionary benefits in terms of G.O.Ms.No.42, Transport Department, dated 27.05.2005 and as per the orders of this Court the petitioner was sanctioned pension vide G.O. No. (3D).19, dated 25.06.2012. The petitioner has already been sanctioned pension for the services rendered by the petitioner from 07.04.1972 to 01.04.1982 in compliance with the orders of this Court, dated 31.03.2010 passed in W.P. (MD). No.3517 of 2008. Now, the petitioner is requesting to disburse pension including his service in the Corporation which is non pensionable establishment from 01.04.1982 to 31.12.1995. The Kattabomman Transport Corporation was formed with effect from 01.01.1974 and all the employees of the Tamil Nadu State Transport Department served in Kanyakumari District were considered to be employees on deputation with Kattabomman Transport Corporation Limited. Subsequently, they were absorbed in the above newly formed Corporation as per their willingness to serve in the Corporation. The petitioner opted to serve in Kattbomman Transport Corporation Limited with effect from 01.05.1975 and his option was accepted as per the conditions. As per the policy decision of the Tamil Nadu Government, the entire erstwhile Tamil Nadu State Transport Department was wound up on 15.09.1975 and all its employees were absorbed permanently in the Transport Corporation. The cutoff date was fixed earlier as 1.05.1975 / 15.09.1975 as per the orders issued in G.O.Ms.No.1028, dated 20.09.1975. According to the order, the employees who had put in not less than 10 years of net qualifying Government service as on 01.05.1975 / 15.09.1975 are entitled to get pension with effect from the date of their absorption in the Transport Corporation. The employees who had put less than 10 years of net qualifying Government Service as on 01.05.1975 / 15.09.1975 filed Writ Petition and in continuation of that the cutoff date for reckoning the 10 years of qualifying service in respect of the above employees was fixed as 01.04.1982. The petitioner was granted pension by taking cutoff date as 01.04.1982 for calculating 10-year service. The petitioner is seeking pension for the Corporation service which he has been accepted on his own willingness, but the said corporation is non pensionable undertaking. Hence, the petitioner is not

entitled to pension for the service rendered from 01.04.1982 to 31.12.1995.

5. Heard Mr. S. Sivakumar, learned counsel appearing for the petitioner, Mrs. D. Farjana Ghoushia, learned Special Government Pleader appearing for first respondent, Mr. K. Sathiya Singh, learned counsel appearing for the respondents 2 and 3 and Mr. P. Gunasekaran, learned counsel appearing for fourth respondent.

6. The petitioner was taken into service in the Transport Department on 07.04.1972 temporarily and he was confirmed on 01.06.1973 and he was serving until 15.09.1975. Thereafter, the petitioner was taken into Transport Corporation service which was non pensionable service. While the Transport Department was wound up the employees were absorbed in the Corporation vide G.O.No.1028, dated 20.09.1985 with condition the pension for Department service will be calculated by taking service as on 01.05.1975 / 15.09.1975. However the cutoff date was put to challenge and the same was fixed as 01.04.1982. Since the petitioner was not granted pension he has filed Writ Petition and this Court directed the respondents to pay pension by taking the extended cutoff date i.e., 01.04.1982. The petitioner would be entitled to from 01.06.1973 to 01.04.1982. Since the petitioner was confirmed in the Transport Department on 01.06.1973, it was not 10 years of service, in order to implement the order of this Court the respondents have taken the temporary period also i.e. from 07.04.1972 to 31.05.1973 and has taken the 10 years of service and has granted pension.

7. Now, in this writ petition the petitioner is seeking pension for the Corporation service. When the Corporation was formed in the year 1975 it was not pensionable service. Since repeated demands were raised by the employees in the Corporation, the "Pension Trust" was formed on 01.11.1998. Thereafter, the pension was disbursed from the "Pension Trust". Since the petitioner has attained superannuation on 31.12.1985, after the lapse of 13 years the "Pension Trust" was formed, the petitioner cannot be included in the Pension Trust. In other words, there was no Pension Trust when the petitioner retired from Corporation service. Since there was no Pension Trust, the petitioner cannot seek pension for the Corporation service from 01.04.1982 to 31.12.1995. Therefore, this Court is convinced that the petitioner is not entitle to any pension for the period from 01.04.1982 to 31.12.1995. In fact earlier pension was granted, is based on this Court order by including the temporary service, where he was not confirmed from 07.04.1972 to 01.06.1973. The petitioner cannot seek another equity, more so when there is no such scheme available for the said period. If the claim of the petitioner is allowed, then it will be opening of pandora box and the persons who have retired prior to 01.11.1998 would come forward claiming the same and the Corporation will be in serious financial trouble. Already the Corporation is under deep financial crisis.

8. Therefore, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (AE)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

trp

To

1. The Special Commissioner and
Secretary to Government,
(Transport) Department,
Fort. St. George,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli.

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

4.The Principal Accountant General for Tamil Nadu,
No.261, Anna Salai,
Teynampet, Chennai - 600 018.

+1 CC to M/s.K.SATHYASINGH, Advocate (SR-2418[F] dated 25/01/2022)

+1 CC to M/s.S.SIVAKUMAR, Advocate (SR-2649[F] dated 27/01/2022)

+1 CC to M/s.SPL.GP (SR-2605[F] dated 27/01/2022)

Order made in
W.P(MD) No.18381 of 2013
25.01.2022

SVS(CO)
GC(21.02.2022) 5P 8C