BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)Nos.13232 of 2017 & 22238 of 2019
and
W.M.P.(MD)No.19008 of 2019

AL.Kadappan ...Petitioner in W.P.(MD)No.13232 of 2017
R.Manoharan ...Petitioner in W.P.(MD)No.22238 of 2019

/vs./

1.The Management of
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director,
Kumbakonam.

2.The Management of,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Pudukkottai Region,
Rep. by its General Manager,
Pudukottai.

3.The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai – 2. ...Respondents in W.P.(MD)No.13232 of 2017

1.The Management of
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director,
Kumbakonam.

2.The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai – 2. ...Respondents in W.P.(MD)No.22238 of 2019

PRAYER in W.P.(MD)No.13232 of 2017**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, declaring that the action of the respondents in not taking into account the service period of the petitioner from 11.06.98 to 30.04.99 for calculating his pensionable service period as illegal and consequently to direct the respondents to pay him pension under the Tamil Nadu State Transport Employees Pension Fund Rules, arrears of the same from November 2008 and commutation of pension, together with 18% interest p.a.

PRAYER in W.P.(MD)No.22238 of 2019**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent dated 16.07.2019 passed in TNSTC/Kum/Legal/L2/20107/18, quash the same and consequently direct the respondents to pay the petitioner pension, along with arrears of the same from the month of April, 2016 and commutation of pension, under TNSTCE Pension Fund Rules, together with 18% interest per annum, within a time frame as may be fixed by this Court.

For Petitioners : Mr.S.Arunachalam (In both W.Ps)

For Respondents : Mr.D.Sivaraman
Standing Counsel
(for R1 in W.P.(MD)No.13232/17 &
for R1 & 2 in W.P.(MD)No.22238/19)

For Respondent No.2 : Mr.S.C.Herold Singh
Standing Counsel
(for R2 in W.P.(MD)No.13232/17 &
for R3 in W.P.(MD)No.22238/19)

COMMON ORDER

In both these writ petitions, the pensionary benefits to the petitioners have been denied on the ground that they have not completed 10 years of continuous service in the respondent Corporation.

2.The petitioners herein, are erstwhile employees of the respondent Corporation, who are governed by the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, 1971, [hereinafter referred to as “the aforesaid Rules” for brevity], insofar as it relates to entitlement of pensions.

3.Rule 16(a) of the aforesaid Rules provides that a member shall be entitled to superannuation pension, if he has rendered a qualifying service of ten (10) years or more and on attaining the age of retirement, that may be fixed by the employer or that the member voluntarily retires after rendering a qualifying service of twenty (20) years or more and on attaining the age of fifty years.

4.For the purpose of calculating the eligible service, Rule 13 of the aforesaid Rules provides that total actual service shall be rounded off to the nearest year and fraction of service for six months or more shall be treated as one year. Service less than six months shall be ignored.

5.Rule 2(p)(iii) prescribes the procedure for calculating pensionable service from the date of regular employment or becoming the member of the Employees Pension Fund in the State Transport Undertaking (STU).

6.In both the present writ petitions, the petitioners claim that they have put in more than ten years of service, as required under Rule 16(a) of the aforesaid Rules, by reckoning the service period from the date, on which the Employees Pension Fund (EPF) Contribution was deducted from their salaries. The respondents, on the other hand, have calculated the actual service period commencing from the date of their regularization.

7.The learned counsel appearing for the petitioners submitted that the actual service requires to be reckoned from the date, on which EPF deductions were made, as held by the Hon'ble Division Bench of this Court, in the case of **the Management of State Express Transport Corporation (Tamil Nadu) Ltd., Represented by its Managing Director, Chennai and another vs. P.Rajarathinam** in **Writ Appeal No.663 of 2007** dated **04.07.2008,** as well as in the case of **The Managing Director, Tamilnadu State Transport**

(Kumbakonam) Ltd., Kumbakonam vs. N.Jothi and another passed in **Writ Appeal (MD) No.94 of 2010** dated **20.04.2010**.

8.On the other hand, the learned Senior Standing Counsel appearing for the Transport Corporation placed reliance on a Government Letter, in Letter No. 11785/D/2003-2, dated 08.09.2003 and submitted that as per the instructions of the Transport Department, the period of actual service will not include the services under the daily paid wages or consolidated wages, even if the PF recovery has been made from the employee during that period.

9.Rule 2(p)(iii) of the aforesaid Rules provides for the procedure in calculating the pensionable service, whereby such service is required to be reckoned, either from the date of regular employment or from the date, on which the employee becomes the member of the Employees' Pension Fund in the State Transport Undertaking (STU). This procedure seems to have been deviated by the respondents in the present cases, whereby the pensionable period has been given effect to, from the date, on which the employee was regularized in service.

10. It is not in dispute if the period of pensionable service is reckoned from the date of EPF contribution, both the petitioners herein would have crossed ten years of service and hence, would be entitled for payment of superannuation pension in accordance with Rule 16(a) of the aforesaid Rules. The Hon'ble Division Bench of this Court in the case of **P.Rajarathinam** (supra), has upheld this proposition in the following manner:

> *"5. According to the respondent, the employees of the corporation are entitled for pension being they are covered by the Employees Pension Fund Scheme framed by the respondent corporation. For calculating the qualifying service as per clause (iii) of Sub Rule (p) of 2, of the Tamil Nadu Transport Corporation Employees' Pension Fund, the date of regular employment or the date on which, the concerned employee becoming a member of the Employees' Provident Fund will be reckoned."*

11. Similar view has been taken in the case of **N.Jothi** (supra) as follows:

> *"4.The learned Judge has held that once the first respondent's service came to be regularised, his service would count from the date of his original appointment. In any event, the learned Judge took the date of the respondent's enrolment as a member of the Provident Fund from 1.6.1981 for the purpose of calculation. Based on that, it was found that the actual period of*

service was 19 years 7 months and 18 days. With that actual detail, by applying the Division Bench decision of this Court, in respect of the State Express Transport Corporation rendered in W.A.No.663 of 2007 dated 4.7.2008, the learned Judge held that 19 years 7 months and 18 days should be construed as 20 years of actual service.

5.The above calculation of the learned Judge is perfectly in order. In the Division Bench Judgment, it has been categorically stated that once a person became a member of the provident fund and he has put in 19 years and 7 months and the actual service as per rule 13(a) of the relevant rules, fraction of service of six months or more has to be treated as one year.

6.Applying the above said ratio, since the first respondent has put in 19 years, 7 months and 18 days of service, the learned Judge was well justified in holding that the first respondent satisfied the required qualification of actual service and also the minimum period of service for the purpose of pension as stipulated in pension rule 2 (o) and 16(a)(ii) of the relevant rules."

12. This apart, in the case of the petitioner, Mr.R.Manoharan (WP(MD)No. 22238 of 2019) is concerned, it is the claim of the respondents that he had put in pensionable service of nine (9) years, nine (9) months and seven (7) days. Rule 13 of the aforesaid Rules provides that the fraction of service for six months or more shall be treated as one year. If that be so, the reason assigned by the respondents that the petitioner had not completed ten years, since his total service was only nine (9) years, nine (9) months and seven (7) days cannot be sustained, in view of Rule 13 of the aforesaid Rules. In other words, the fraction of period of nine (9) months and seven (7) days requires to be treated as one year and consequently, the respondents ought to have treated the petitioner, Mr.R.Manoharan's actual service as ten years.

13. Insofar as the case of the petitioner, Mr.A.C.Kadappan (WP(MD)No. 13232 of 2017) is concerned, though the respondents claim that his service was nine (9) years five (5) months and thirty (30) days, it is stated that if the actual service period of this petitioner is reckoned from the date of his EPF contribution, he would have crossed ten years of service and hence would be entitled for superannuation pension. The objection of the respondents in this regard is that in view of the Government Letter, in Letter No.11785/D/2003-2, dated 08.09.2003, the Transport Corporation had adopted the procedure for reckoning the period of actual service, by deducting the service of daily paid wages or consolidated wages. The aforesaid letter came to be considered by a learned Single Judge of this Court, in the case of **S.Jenova Mary vs. the Management of Tamilnadu State Transport Corporation (Kumbakonam) Ltd., Trichy Region and Another** in **WP.(MD)No.9815 of 2013** dated **13.06.2016**, wherein the learned Single Judge had placed reliance on the earlier orders of this Court and held that such a Government Letter shall not be a bar to reckon the employee's actual service period, from the date of his EPF contribution. The relevant portion of the order reads as follows:

> "*9.While considering a similar case in Writ Petition Nos. 5774 of 2012, 19297 of 2008,19806 of 2009, 4800 of 2010, 18106 of 2010 and 26922 of 2008 dated 06.03.2014 (A.Subramani vs. The Tamilnadu State Transport Employees Pension Trust, Chennai, and two others), I have held that the petitioners therein are entitled to pension by calculating pension from the date on which they became members in the Employees' Provident Fund in S.T.U. It is useful to extract paragraphs 28 to 31 of the abovesaid order, which are given as under:-*
>
> > *"26. The two questions raised in the present batch of Writ Petitions are pertaining to mode of calculating the period of service for pension. Firstly, the first question needs adjudication as to whether the services of the petitioners rendered in the Transport Department should be calculated from the date they became permanent employee of the Corporation or the date they became member of the employee's Provident Fund in the STU for*

the purpose of calculating the Net Qualifying services to get the 8 superannuation pension and the voluntary retirement pension.

27. The second question is whether the respondent is entitled to issue any clarification letter dated 8.9.2003 stating that the period of service put in by the employee on daily paid wages or on consolidated wages cannot be construed as pensionable service when Rule 2(p)(iii) of the Tamilnadu State Transport Corporation Employees' Pension Fund Rules makes it clear as to how the services of the individual should be calculated for the purpose of pension.

28. The two issues are directly covered by a Judgement of this Court reported in P.Krishnasamy vs. Deputy Secretary to Government Transport Department, Fort St.George, Chennai, 2013-IV-LLJ 139 (Mad) wherein when a similar and identical issue as to how to calculate the pensionable service of an employee under Rule 2(p)(iii) of the Tamilnadu Transport Corporation Employee's Pension Fund came up for consideration, this Court has ruled that as per Rule 2(p)(iii), the date of regular employment on the date on which the employee concerned had become a member of the employee's provident Fund, would be reckoned for the calculation of the pensionable service of the employee.

29. With regard to the Government letter No. 11785/D/2003-2, dated 08.09.2012 also the above said Judgment has answered the issue holding that the Government cannot amend the Rule 2(p)(iii) by way of a letter of clarification, in as much as, a letter of clarification cannot override the rule to take away the benefits granted to the employees. On these reasonings, *this Court has declared the said letter dated 8.9.2012 as arbitrary, illegal and void and consequently directed the Respondents to grant pensionary benefits to the petitioner making it clear that after allowing the employee to go on voluntary retirement the Respondents are estopped from claiming that the employees not rendered minimum service for getting pension. Similarly, in the case on hand also some of the petitioners were allowed to go on voluntary retirement accepting their applications therefor, subsequently, thereafter the pensions paid were stopped on their calculation that some of them have not rendered minimum service for getting pension. As mentioned above, if any of the petitioners failed to render minimum pensionable service, the same should have been informed while scrutinising their applications then and there itself. Having allowed them to go on VRS, the respondents are estopped from claiming that the petitioners not rendered the minimum pensionable service. For better appreciations, it is useful to extract paras 14 and 15 of the said judgment as follows:*

> "14.It has been further stated that the petitioner would be entitled to the payment of pension, as per the Rule (2)(p)(iii), as it exists, until it is amended in accordance with the procedures prescribed for the said purpose. The Government cannot amend the said rule, by way of a letter of clarification. The impugned letter of clarification cannot override the rule to take away the benefits granted to the employees. Even otherwise, the rule could be amended only prospectively. Unless such amendment is beneficial to the employees concerned, the benefit which had already

accrued to the petitioner cannot be taken away, by way of a letter of clarification. The letter of clarification cannot restrict the qualifying service by counting it only from the date of the regularization of the service of the employees, when contributions have been received from the employees concerned, from the date of their enrollment to the provident fund.

15.In such circumstances, this Court may be pleased to declare that the clarification issued by the first respondent,in his letter dated 08.09.2003, is arbitrary, illegal and void and consequently direct the respondents to grant pensionary benefits to the petitioner, from 01.12.2003, along with interest."

30. A close reading of the above ratio clearly shows that the case of the petitioners are squarely covered by the said decision.

31. In such view of the matter, the impugned orders are set aside. All the petitioners are entitled to pension by calculating the pension from the date they became member in the employee's provident fund in the S.T.U. With regard to the other claims made by the employees seeking Voluntary Pension, as this Court has held that for the purpose of getting net qualifying service to get the pension, the services should be calculated only from the date of becoming member in the E.P.F., the respondents are directed to calculate the twenty years of service also only by adopting the same method of calculation indicated as above.

With the above directions, all the Writ Petitions are allowed. No costs.""

14. In light of the above discussions, I do not find any justification on the part of the respondents in reckoning the petitioners' pensionable service period from the date of their regularization. On the other hand, the date of EPF contribution ought to have been taken as the reckoning date, and had it been done so, both the petitioners herein would have put in more than ten years of experience and by virtue of Rule 16(a) of the aforesaid Rules, they would be entitled for the pensionable benefits.

15. Accordingly, the impugned order dated 16.07.2019, in the case of Mr.R.Manoharan (WP(MD)No.22238 of 2019) on the file of the first respondent is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, calculating pension of both the petitioners herein, namely, Mr.R.Manoharan (WP(MD)No.22238 of 2019) and Mr.A.C.Kadappan (WP(MD)No.13232 of 2017), by taking into account the date of EPF contribution made by both the petitioners herein as the date of commencement of their actual service period and thereby determine the pension payable to each of these petitioners herein and disburse the same, within a period of twelve (12) weeks from the date of receipt of a copy of this order. Both the Writ Petitions stands allowed accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

01.08.2022
(1/2)

Index : Yes
Internet : Yes
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To:

1.The Principal Secretary,
State of Tamil Nadu,
Environment and Forest Department,
Secretariat, Chennai.

2.The Principal Chief Conservator of Forests,
(Head of Department),
Panagal Maligai, Saidapet, Chennai – 15.

3.The Additional Principal Chief Conservator of Forest,
O/o. The Additional Chief Conservator of Forest Office,
Madurai District, Madurai.

M.S.RAMESH, J.

Sm

4.The District Forest Officer,
O/o. The District Forest Officer,
Megamalai Wildlife Sanctuary,
Theni District.

5.The Wildlife Warden,
O/o. Wildlife Warden Office,
Megamali Wildlife Division,
Theni District.

Common Order made in
W.P.(MD)Nos.13232 of 2017 & 22238 of 2019
(1/2)

Dated:
01.08.2022