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W.P.Nos.45 & 5635 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.45 & 5635 of 2018

and

WMP.Nos.48 & 7164 of 2018

The Managing Director,
Metropolitan Transport Corporation (Chennai Division-I),
Pallavan House, Anna Salai,
Chennai – 600 002.

...Petitioner in both W.P's.

Vs.

1. The Presiding Officer,
III Additional Labour Court,
City Civil Court Annexure Building,
High Court Compound, Chennai – 600 104.

2. P.Panchatcharam

3. The Government of Tamil Nadu,
Rep. by the Commissioner & Secretary,
Transport Department,
Fort St. George, Chennai-09.

...Respondents in W.P.No.45/2018

Vs.

1. The Presiding Officer (FAC),
II Additional Labour Court,
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W.P.Nos.45 & 5635 of 2018

WEB COPY

2. T.N.Krishnamurthy
3. The Government of Tamil Nadu,
Rep. by the Commissioner & Secretary,
Transport Department,
Fort St. George, Chennai-09. ...Respondents in W.P.No.5635/2018

Prayer in W.P.No.45 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the order passed in C.P.No.12 of 2015 dated 19.09.2017 on the file of the 1st Respondent herein and quash the same.

Prayer in W.P.No.5635 of 2018: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the order passed in C.P.No.300 of 2015 dated 31.08.2017 on the file of the 1st Respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.V.Chinnasamy
for R2 in W.P.No.45 of 2018
: Mr.M.S.Prem Kumar, GA,
for R3 in W.P.No.45 of 2018 &
for R1 in W.P.No.5635 of 2018

ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.



W.P.Nos.45 & 5635 of 2018

2. These Writ petitions have been filed seeking quashment of the orders of the 1st respondent dated 19.09.2017 and 31.08.2017 made in C.P.No.12 & 300 of 2015 respectively.

3. For brevity, the petitioner in both the Writ petitions are hereinafter referred to as management and the respective 2nd respondents are hereinafter referred to as workmen.

4. The facts leading to filing of these writ petitions are stated as hereunder:

The workmen herein joined the services of the management on 23.04.1974 and 14.09.1974 respectively and they subsequently retired from service on 31.12.1994 and 31.01.1998 respectively. While so, in 1975, the Government of Tamil Nadu created several transport corporations by absorbing the employees of the erstwhile Transport Department. At the time of creating the transport corporations, the Government of Tamil Nadu assured the employees of the Transport Department that those employees, who completed 10 years of service in the Transport Department and transferred to the transport corporation could get pension on par with



W.P.Nos.45 & 5635 of 2018

government employees. Pursuant to that, some of the employees, who put in less than 10 years of service in the Transport Department, filed a writ petition seeking to sanction pension duly reckoning the service rendered by them in the transport corporation beyond 01.5.1975 for the purpose of arriving at the net qualifying service of 10 years to earn pension and the matter went upto the Supreme Court and by judgment dated 29.10.2003 made in Civil Appeal Nos.1444-1445 of 1999, the Supreme Court directed that the cut off date for the purpose of assessing the requisite length of qualifying service of 10 years to get the Government Pension should be adopted as 01.4.1982. The Government of Tamil Nadu implemented the said judgment of the Supreme Court vide G.O.Ms.No.42 dated 27.5.2005. In such circumstances, after about 2 decades of retirement, the workmen filed computation petitions before the 1st respondent seeking to compute the money value of the service benefits due to them and the said computation petitions were allowed by the 1st respondent by the impugned orders and the management was directed to pay a sum of Rs.7,98,000/- and Rs.18,63,000/- to the respective workmen. Challenging the same, the management is before this Court.



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5. Learned counsel appearing for the submitted that even within a period of eight years from the date of joining into the Transport Department, the workmen were transferred to transport corporation and that they did not complete 10 years of qualifying service in the Transport Department for the purpose of availing Government pension on par with the other Government employees. Further, the workmen have no pre-existing right to file the claim petitions either by award or by any settlement and therefore the claim petitions itself are not maintainable. However, without properly appreciating the above facts, the 1st respondent had mechanically held in favour of the workmen and arrived at the computed amount to be paid by the management corporation to the workmen. Hence the respective impugned awards passed by the 1st respondent requires interference.

6. Per contra, learned counsel appearing for the workmen submitted that admittedly, the workmen entered into the service in the Government Transport Department in the year 1974. However, in the year 1975, the workmen and few other employees were threatened to give option letters as if they were willing to join in the Transport Corporation and accordingly, letters were given, pursuant to which, they were transferred to Transport



W.P.Nos.45 & 5635 of 2018

Corporation. After completing long service of about twenty (20) and twenty four (24) years respectively, they retired from service on 31.12.1994 and 31.01.1998 respectively. If the workmen were not absorbed by the corporation, then they would have retired as a Government employee and they would have received the Government pension and other Government benefits on par with the other employees. He further submitted that even as on the cut off date 01.04.1982, the workmen have rendered more than eight years of service in the Government Department, however, they have not been given Government pension and other retirement benefits in terms of G.O.No.42, while the other employees who have completed even less than 10 years of service in Government Department are extended such benefits. Hence, there is no perversity in the findings rendered by the 1st respondent and accordingly, he prayed for dismissal of these Writ Petitions.

7. On the above contention, this Court heard the learned Government Advocate and perused the materials available on record.

8. Admittedly, the workmen entered into the services of the Government Transport Department in the year 1974 and the same is not in



dispute and thereafter in the year 1975 they were transferred to Transport Corporation. It is the case of the management that as per G.O.No.42 dated 27.05.2005, the workmen are not eligible to avail Government Pension and other retirement benefits on par with the other Government employees as they have not completed the mandatory requirement of 10 years of service in the Transport Department. It is even the case of the management that even as on the cut off date i.e.,01.04.1982 which was fixed by the Hon'ble Apex Court for the purpose of assessing the requisite length of services of the employees, the workmen have not completed 10 years of service in the Government Department and therefore, they are not eligible for availing such benefits. For better appreciation, the relevant portion of the G.O.No.42 is extracted hereunder:

5. The Government after re-examination of the whole issue have decided to implement the orders of the Supreme Court of India, referred in the judgment seventh read above and accordingly issue the following orders:-

The Government fix the cut off date as 1.4.1982 in respect of the erstwhile Tamil Nadu State Transport Department employees who had put in less than 10 years of government service as on their permanent absorption in State Transport Undertakings only for the limited purpose of assessing the requisite length of qualifying service of 10 years to earn pension. The eligible erstwhile Tamil Nadu State Transport Department employees whoever have retired shall get the arrears of pension only from 1.1.1988 which date is



WEB COPY



W.P.Nos.45 & 5635 of 2018

fixed with reference to the year of filing the first writ petition. The fixation of pension and payment of arrears shall be done accordingly as ordered by the Hon'ble Supreme Court of India as per the rules and Government Orders applicable to them in the following manner:-

a) The erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil Nadu State Transport Corporations and retired before 1.1.1988 or after 1.1.1988 but before 1.9.1998 be paid pension if they had put in the qualifying service of 10 years as on 1.4.1982. Period of Daily paid services, leave on loss of pay and suspension treated as specific punishment should be excluded while arriving the net qualifying service.

9. A perusal of G.O.No.42 issued by the Transport Department reveals that the erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil State Transport Corporation and retired before 1.1.1988 or after 1.1.1988 but before 1.9.1998 be paid pension if they had put in the qualifying service of 10 years as on 1.4.1982.

10. However, a perusal of the entire materials available on record reveals that the workmen herein have not completed the qualifying service of 10 years in the Government Department even their service is taken upto 01.04.1982 and hence, they are not eligible for availing Government Pension and other retirement benefits in terms of G.O.No.42. Hence, the



W.P.Nos.45 & 5635 of 2018

workmen have no pre-existing right to file the claim petitions under Section 33C-(2) of the Industrial Disputes Act, 1947, and in the absence of any award or settlement or any order in their favour granting such benefit, filing of computation petition u/s 33-C (2) is not maintainable and the award passed in consequence thereof is wholly unsustainable. However, without properly appreciating the said G.O.No.42 and also the facts and circumstances of the case, the 1st respondent had mechanically passed the present impugned awards and therefore, the findings rendered by the 1st respondent is perverse and the same is liable to be set aside.

11. Accordingly, the impugned awards of the 1st respondent dated 19.09.2017 and 31.08.2017 made in C.P.No.12 & 300 of 2015 respectively are set aside and both the Writ Petitions stand allowed in the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

04.09.2023

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Speaking Order : Yes/ No
Index : Yes/ No
NCC : Yes/ No

9/11



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