



WP.No.4948 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4948 of 2018
& WMP.No.6101 of 2018

The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Ramanathapuram Division,
formerly Marudhu Pandiar
Transport Corporation Ltd.,
Ramanathapuram-623503.

...Petitioner

Vs

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

2.Mr.A.Jayaseelan

3.The Government of Tamil Nadu,
rep.by the Commissioner &
Secretary, Transport Department,
Fort St.George, Chennai-9.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the order dated 30.11.2017 made in C.P.No.306 of 2015 on the file of the first respondent and quash the same.



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For Petitioner : Mr.Murali Vinoth
For R2 : Mr.R.Radha Pandian
For R3 : Mr.M.S.Prem Kumar, GA

ORDER

This is a petition filed by the petitioner seeking to quash the order dated 30.11.2017 in C.P.No.306 of 2015 on the file of the first respondent.

2. The facts leading to filing of this case are as follows :

(i) The second respondent joined in the Transport Department of the Government of Tamil Nadu as a driver on 24.5.1973. Thereafter, in 1975, the Government of Tamil Nadu created several transport corporations by absorbing the employees of the erstwhile Transport Department. The second respondent opted to join in the transport corporation and as such, he joined in Palani Branch. Subsequently, he was transferred to Cheran Transport Corporation. Further, he went on voluntary retirement service on 31.12.1994 from the petitioner.

(ii) 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



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Department and transferred to the transport corporation could get pension on par with government employees. As such, the petitioner did not complete 10 years of service in the Transport Department and hence, he was not eligible to get pension.

(iii) 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. The matter went upto the Supreme Court and by judgment dated 24.10.2013 in Civil Appeal Nos.1444 and 1555 of 1999, the Supreme Court directed that the cut off date for the purpose of assessing the requisite length of service 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.

(iv) After 21 years of retirement, the second respondent filed a computation petition before the first respondent seeking money value of the service benefits to the tune of Rs.21,96,000/- due to him. In that, the petitioner filed a counter. The said computation petition was allowed by the



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first respondent by the impugned order. Challenging the same, the petitioner is before this Court.

3. When the matter came up for admission on 06.3.2018, this Court granted an order of interim stay until further orders.

4. Learned counsel appearing for the petitioner management would submit that even within a period of three years from the date of joining into the Transport Department, he was transferred to transport corporation and that he 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 petitioner has no pre-existing right to file the claim petition either by award or by any settlement and therefore the claim petition itself is not maintainable. However, without properly appreciating the above facts, the Labour Court has mechanically held in favour of the 2nd respondent arriving at the computed amount to be paid by the petitioner corporation to the 2nd respondent. Hence the impugned award of the Labour Court requires interference.



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5. Per contra, learned counsel appearing for the 2nd respondent would submit that admittedly, the 2nd respondent entered into the service in the Government Transport Department in the year 1973. However, in the year 1975, the 2nd respondent 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 Corporation. After completing long service of twenty two years, upon voluntary retirement, he was relieved from service on 31.12.1994. If the 2nd respondent was not absorbed by the corporation, he would have retired as a Government employee and that he 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 2nd respondent had rendered more than nine years of service in the Government Department, however, he has 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



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perversity in the findings rendered by the Labour Court. Accordingly, he prayed for dismissal of this Writ Petition.

6. On the above contention, this Court heard the learned Government Advocate appearing for the third respondent and perused the materials available on record.

7. Admittedly, the 2nd respondent entered into the services of the Government Transport Department in the year 1973 and thereafter in the year 1975 he was transferred to Transport Corporation. It is the case of the petitioner management that as per G.O.No.42 dated 27.05.2005, the 2nd respondent is not eligible to avail Government Pension and other retirement benefits on par with the other Government employees as he has not completed the mandatory requirement of 10 years of service in the Transport Department. It is even the case of the petitioner that even as on the cut off date i.e., 31.05.1982 which was fixed by the Hon'ble Apex Court for the purpose of assessing the requisite length of services of the employees, the petitioner has not completed 10 years of service in the Government



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Department and therefore, the 2nd respondent is not eligible for availing such benefits.

8. A perusal of G.O.No.42 issued by the Transport Department reveals that the cut off date has been fixed as 01.04.1982 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 limited purpose of assessing the requisite length of qualifying service of 10 years to earn pension and that the eligible employees whoever has retired shall get the arrears of pension only from 01.01.1988.

9. However, a perusal of the entire materials available on record reveals that the 2nd respondent has not completed the qualifying service of 10 years in the Government Department even if his service is taken upto 01.04.1982 and hence, he is not eligible for availing Government Pension and other retirement benefits in terms of G.O.No.42. Further, the petitioner has no pre-existing right to file the claim petition under Section 33C-(2)



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unless there is an award or any settlement in his favour. However, without properly appreciating the said G.O as also the facts and circumstances of the case, the Labour Court has mechanically passed the present impugned award and hence, the findings rendered by the Labour Court is perverse and the same is liable to be set aside.

10. Accordingly, the impugned award in C.P.No.306 of 2015 dated 30.11.2017 is set aside and this Writ Petition is allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

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To

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