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W.P.(MD).No.15585 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.15585 of 2022

S.Kannan

... Petitioner

Vs.

1.The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Represented by its Managing Director,
Kumbakonam.

2.The General Manager,
The Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Kumbakonam Region,
Kumbakonam.

3.The Administrator,
The Tamil Nadu State Transport Corporation
Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 2.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in Ref.No.TNSTC/KUM/Legal/L2/24194/2017 dated 15.06.2021, quash the same and consequently direct the respondents



W.P.(MD).No.15585 of 2022

to pay the petitioner's monthly pension together with arrears payable from 28.09.1998 along with interest at the rate of 18% per annum from the date of his retirement to till the date on which the amounts are settled to him within the time stipulated by this Court.

For Petitioner	: Mr.A.Rahul
For RR 1 & 2	: Mr.K.Jegadeesh Balan Standing Counsel
For R – 3	: Mr.S.C.Herold Singh Standing Counsel

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the second respondent, dated 15.06.2021 and consequently direct the respondents to pay the petitioner's monthly pension together with arrears payable from 28.09.1998 along with interest at the rate of 18% per annum from the date of his retirement to till the date on which the amounts are settled to him within the time stipulated by this Court.

2.Heard Mr.A.Rahul, learned counsel appearing for the petitioner, Mr.K.Jegadeesh Balan, learned Standing Counsel appearing



W.P.(MD).No.15585 of 2022

for the respondents 1 and 2 and Mr.S.C.Herold Singh, learned Standing Counsel appearing for the third respondent and perused the materials available on record.

3.The petitioner joined the service of the first respondent Corporation as Conductor on 20.08.1977. He is also a member of the Employee's Provident Fund Scheme. On health grounds, he submitted an application to go on voluntary retirement at the age of 52 years. On the basis of which, on 27.09.1998, under the Voluntary Retirement Scheme, he was relieved from service. But to his shock and surprise, his terminal benefits were not paid by the third respondent. Several representations were made by the petitioner seeking to sanction his pension. On considering his representation, the impugned order came to be passed by the second respondent, on 15.06.2021, rejecting his claim for pension for the reason that he did not work after 01.09.1998. Assailing the same, this Writ Petition came to be filed.

4.The learned Standing Counsel appearing for the respondents 1 and 2 filed a counter-affidavit along with a paper book containing the complete service details of the petitioner.



W.P.(MD).No.15585 of 2022

5.On perusal of the leave history which was produced by the learned Standing Counsel appearing for the respondents 1 and 2, it is clear that the petitioner had availed leave and he was on medical leave from the month of February, 1998 to September, 1998.

6.The Hon'ble Division Bench of this Court in ***W.A(MD)No.419 of 2016, dated 21.03.2016 (The Management of Tamil Nadu State Transport Corporation (Madurai) Limited Vs. V.Siva Kumar and another)*** while dealing with a similar case has passed favourable orders to the employee. The relevant portion of which is extracted as follows:-

"15.Reading of Letter No.11352/D/2005-10, dated 07.11.2007 of the Secretary to Government, Transport (D) Department, Chennai-9, shows that based on the audit observation made by the Tamil Nadu State Transport Corporation Employees Pension Fund Trust, in respect of certain death cases, the Transport Corporations of Metropolitan Transport Corporation Ltd., and State Express Transport Corporation, Tamil Nadu Limited, have stopped family pension to the legal heirs of the deceased (6 cases in MTC and one case in SETC), due to the reason that they have not performed even a single duty on or after 01.09.1998, but they were on the rolls of the Corporations from 01.09.1998 till 14 their death, under proper



WEB COPY



W.P.(MD).No.15585 of 2022

medical intimation for their leave. Referring to rule 8 of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, the Government in the abovesaid letter, have ordered as hereunder:- "2.I am to state that as per Rule 8 of TNSTCEPF Rules, the pension scheme is applicable to all the employees who are on rolls of the Corporation as on 1.9.1998. In as much as the employees in the instant cases have been on rolls on 1.9.98, the Government after careful examination direct the Managing Directors of MTC and SETC to sanction family pension in respect of death cases, who have not performed duty even for a single day on or after 1.9.98 due to sickness under proper medical intimation as was done in the case of Tmt.Kokila W/o. late Thiru Nagapushnam vide Government letter first cited. 3.The Managing Directors of other STUs may also be requested to consider similar cases on the same analogy, subject to the condition that the deceased employee was on roll as on 1.9.98." 16.Thus, it is clear from the abovesaid Government order, suffice if the employee was on the rolls of the corporation as on 01.09.1998, the date on which, the pension scheme came to be introduced and implemented and that there is no necessity that the employee should perform duty on or after 01.09.1998 due to 15 sickness under proper medical intimation. Material on record discloses that respondent No.1 was sick, due to stroke and his case was referred to medical board. All the grounds of challenge made by the Tamil Nadu State Transport Corporation (Madurai) Ltd., do not merit any consideration, warranting interference with the impugned order.



W.P.(MD).No.15585 of 2022

7.In another writ petition in W.P(MD)No.7156 of 2011, dated 28.11.2018 (P.Papathi Vs. The Management of Tamil Nadu State Transport Corporation (Madurai) Limited), in a similar case, this Court passed a favourable order to the employee. The relevant portion of which is extracted as follows:-

"14. Admittedly, the petitioner's husband was very much an employee of the Transport Corporation of the said date. Of course, on account of physical disability, he was not in a position to report for duty since May 1997. That would not mean that he was not on roll as on 01.09.1998. Even though Rule 12 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules authorised the Government to interpret the provisions of the scheme, the beneficial effect of the rule cannot be rendered nugatory in the guise of interpretation. The services of a disabled employee cannot be dispensed with. His promotion cannot be denied on that ground. Then his pension also cannot be denied on the ground that he did not report for duty on the cut-off date. Therefore, I hold that the petitioner's husband was entitled to the benefits of the pension scheme, since he was very much on roll as on 01.09.1998.

15. In this view of the matter, the order dated 23.03.2010 passed by the first respondent is set aside.



WEB COPY



W.P.(MD).No.15585 of 2022

The respondents are directed to disburse the pensionary benefits payable to the petitioner."

8.This Court is fully in consonance with the aforesaid orders passed by this Court and though those cases dealt with a case of an employee, who was dead and dealing with the application seeking pensionary benefits by the legal heirs, this is a case wherein the petitioner himself who was an employee is denied with pensionary benefits, who availed retirement on the basis of voluntary retirement scheme and who is denied with pensionary benefits for the reason that he did not perform duty after 01.09.1998. Since the leave history produced by the learned Standing Counsel appearing for the respondents 1 and 2 would reveal that the petitioner was on medical leave during that particular period of time, following the mandates of this Court in the aforesaid orders, this Court is inclined to observe that the petitioner was on the rolls of the Corporation as on 01.09.1998 and hence, he is entitled to the benefit of pension under Rule 12 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules.



W.P.(MD).No.15585 of 2022

9.For the aforesaid reasons, the impugned order, dated 15.06.2021 passed by the second respondent is quashed and this Court directs the respondents to pay the petitioner with monthly pension together with arrears payable from 28.09.1998 with interest at the rate of 6% per annum from the date of his retirement till the date on which the amounts are likely to be settled, within a period of twelve weeks from the date of receipt of a copy of this order.

10.Accordingly, this Writ Petition stands allowed. There shall be no order as to costs.

03.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
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W.P.(MD).No.15585 of 2022

WEB COPY

To

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(Kumbakonam) Limited,
Represented by its Managing Director,
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- 2.The General Manager,
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(Kumbakonam) Limited,
Kumbakonam Region,
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WEB COPY



W.P.(MD).No.15585 of 2022

L.VICTORIA GOWRI, J.

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W.P.(MD)No.15585 of 2022

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