BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **10.02.2023**

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THE HONOURABLE MR.JUSTICE M. DHANDAPANI

WP(MD)No.4887 of 2020

M.R.Selvaraju ... Petitioner

Vs.

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

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

3) The Tamil Nadu State Transport Corporations
Employee's Pension Fund Trust,
represented by its The Administrator,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 2. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of declaration, to declare that the action of the respondents in not paying the petitioner's pension under Tamil Nadu

State Transport Corporation Employee's Pension Rules/Scheme, 1998 as illegal and unconstitutional and consequently direct the respondents to pay the petitioner's pension under the TNSTCE Pension Scheme 1998, from 01.02.2019, with arrears as revised from time to time, together with interest at the rate of 12% per annum and also to direct the respondents to pay all other terminal benefits payable to him including gratuity, commuted value of pension, social security scheme amount, his PF accumulations, refund of contribution made by him towards Medical, Engineering, Polytechnic College and earned leave salary with interest at 12% per annum, award costs.

For Petitioner	:	Mr.C.K.Chandrasekaran for Mr.A.Rahul
For R1 & R2	:	Mr.P. Balasubramani Additional Government Pleader
For R3	:	Mr.S.C.Herold Singh

<u>O R D E R</u>

This writ petition has been filed for issuance of a writ of Declaration, to declare that the action of the respondents in not paying the petitioner's pension under Tamil Nadu State Transport Corporation Employee's Pension Rules/Scheme, 1998 as illegal and unconstitutional and consequently direct the respondents to pay the petitioner's pension under the TNSTCE Pension Scheme 1998, from 01.02.2019, with arrears as revised from time to time, together with interest at the rate of 12% per annum and also to direct the respondents to pay all other terminal benefits payable to him including gratuity, commuted value of pension, social security scheme amount, PF accumulations, refund of contribution made by him towards Medical, Engineering, Polytechnic College and earned leave salary with interest at 12% per annum, award costs.

2. The case of the petitioner is that he was appointed as Driver in Cholan Transport Corporation on daily wage basis in the year 1998. He has completed 240 days of service within a period of one year from the date of appointment. The settlement signed under Section 12(3) of the Industrial Disputes Act, 1986 provides that the services of drivers and conductors shall be regularised on completion of 240 days of service within a year. Even though his service was regularised with effect from 01.09.2005, he became the Member of TNSTC Employee's Provident Fund Trust on 26.06.1998, the date on which he was originally appointed. The provident fund contribution also deducted from his salary.

All the contributions viz., entire employer contribution from the date of his initial appointment was remitted to the accounts of third respondent trust. The name of Cholan Roadways Corporation was changed as TNSTC (Kumbakonam) Limited. He retired from service on 31.01.2009. However, the first respondent Corporation has not paid the pension under the TNSTCE Pension Scheme 1998. On oral enquiry, the officials of the first respondent stated that since his service was confirmed only after 01.04.2003 ie., from 01.09.2005, he is not entitled to pension in the Tamil Nadu State Transport Corporation Employee's Pension Scheme, 1998 and he is entitled to receive pension only by the Contributory Pension Scheme, which came into force from 01.04.2003. Therefore, he has submitted a representation to the respondents on 24.06.2019. However, the same was not considered. Hence, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the petitioner would submit that the issue arise in the present writ petition is no longer *res integra* and already the learned single Judge of this Court allowed the writ petition in

W.P.(MD).No.3675 of 2009, dated 26.10.2009, relying upon Rule 2 (q) (iii) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules and the same was also confirmed by the Division Bench of this Court in W.A.(MD).No.387 of 2010, dated 25.08.2010. Accordingly, he prayed for allowing this writ petition.

4. The second respondent has filed a counter stating that the petitioner was appointed as daily wage Driver on 26.06.1998 and within a short period of service, he met with three accidents and the last one was ended with fatal. Hence, he was terminated from service on 21.07.1999. Later on, he was reinstated into service on 08.02.2000 in the same category and he accepted to remit a sum of Rs.10,000/- as fine regarding fatal accident. Hence, his service was regularised on 01.09.2005. For providing pension benefit, the date of regularisation only taken into account. The Employees Pension Fund Trust Rules allowed to provide pension from the date of confirmation only. Therefore, he prayed for dismissal of this writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

6. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service on 26.06.1998 as Driver and due to fatal accident committed by him, his service was terminated on 21.07.1999. Later on, he was reinstated into service on 08.02.2000. From 2000 onwards he is working as Driver. However, his service was regularised only in the year 2005. The issue arise in the present writ petition is the respondents have refused to pay pension to the petitioner under the TNSTCE Pension Scheme 1998, whereas the PF contribution was deducted from 26.06.1998 from his salary. Initially, he was appointed as Driver in the year 1998 and due to fatal accident committed by him, his service was terminated in the year 1999. Thereafter, he was reinstated into service in the year 2000. Hence, undoubtedly the petitioner has rightly made a claim. For better appreciation, Rule 2(q)(iii) of the said Rules reads as follows:

(q) The "Actual Service" as defined below shall be reckoned for calculating pensionable service.

(iii) in respect of all other employees, the date of regular employment or becoming the member of the Employee's Provident Fund in the STU will be reckoned for the calculation of pensionable service.

7. A perusal of the above said provision makes it clear that in respect of other employees, the date of regular employment or becoming the member of the Employee's Provident Fund in the STU will be reckoned for the calculation of pensionable service. In the present case, the respondents have admitted that the petitioner has made a contribution from 2000 onwards. However, they claimed that the contribution is not only a criteria for payment of pension and for providing pension benefit, the date of regularisation only taken into consideration. However, the Rule makes it clear that when the person make a contribution for pension, he is entitled to receive pension from the date of contribution. In the present case, the petitioner become reinstated into service on 08.02.2000 and retired from service on 31.01.2019. Hence, he is entitled to receive pension from 08.02.2000 onwards. Therefore, the respondents

1 and 2 are directed to pay the balance pension amount and the terminal benefits to the petitioner, by calculating the service from 08.02.2000 till the date of retirement. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

8. In the result, this Writ Petition is allowed. No costs.

10.02.2023

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

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

2) The General Manager
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Corporation (Kumbakonam) Limited,
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3) The Tamil Nadu State Transport Corporations
Employee's Pension Fund Trust,
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Thiruvalluvar Illam,
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M.DHANDAPANI,J.

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