BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 24.07.2023

ORDERS PRONOUNCED ON : 07.08.2023

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THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.16684 of 2019

P.Latha ... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Transport Department and
Chairman of State Transport Undertakings
Fort St. George, Chennai-9.

2.The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Rep., by its Managing Director,
Bye Pass Road, Madurai.

3.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Madurai Region,
Bye Pass Road, Madurai.

4.The Tamil Nadu State Transport Corporations
Employee's Pension Fund Trust,
Rep., by its Administrator,

Thiruvalluvar Illam, Pallavan Salai,
Chennai-2. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration, declaring that the action of the respondents in not paying the monthly family pension of the petitioner under Tamil Nadu State Transport Corporations Employee's Pension Rules/Schemes, 1998 as illegal and unconstitutional and consequently direct the respondents to pay the family pension of the petitioner under the TNSTCE Pension Scheme, 1998, from 01.06.2018, with arrears as revised from time to time, together with interest at the rate of 12% per annum, and also to diret the respondents to pay all other terminal benefits payable to her including grantuity, social security scheme amount, the petitioner's husband's PF accumulations, Refund of contribution made by her husband towards Medical, Engineering, Polytechnic Colleges and Institute of Road Transport with interests at 12% per annum, award costs.

For Petitioner	:	Mr.A.Rahul
For R1	:	Mr.A.Kannan Additional Government Pleader
For RR2 & 3	:	Mr.J.Senthil Kumariah Standing Counsel
For R4	:	Mr.S.C.Herold Singh Standing Counsel

ORDER

This writ petition has been filed for issuance of Writ of Declaration to declare that the action of the respondents in not paying the monthly family pension to the petitioner under Tamil Nadu State Transport Corporation Employee's Pension Rules/Schemes, 1998, as illegal and unconstitutional and for a consequential direction to the respondents to pay the family pension under the 1998 Scheme from 01.06.2018 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 her including gratuity, social security scheme amount, Provident Fund accumulations and refund of contribution made by her husband towards Medical, Engineering, Polytechnic Colleges and Institute of Road Transport with interest at the rate of 12% per annum and award costs.

2. The facts of the case are that the husband of the petitioner was appointed as Driver on daily wage basis on 10.04.2002 by the 3rd respondent. He worked at Thiruppuvanam Branch, Madurai Region and completed 240 days of service within a period of one year on 08.02.2003.

The 2nd respondent ought to have regularised his services with effect from 08.02.2003. As per the settlement signed under Section 12(3) of the Industrial Disputes Act of the year 1986, the services of Drivers and Conductors shall be regularised on completion of 240 days of service within a year. The petitioner's husband completed 240 days of service from May, 2002 to 08.02.2003. After March, 2003 also, he was continuously engaged as Driver without any break. His services were regularised only with effect from 01.09.2005. Though his service was regularised with effect from 01.09.2005, he became the member of Tamil Nadu State Transport Corporation Employee's Provident Fund Trust as early as on 25.05.2002, on the date on which he was originally appointed. The Provident Fund contributions were also deducted from the salary. The employer contribution was also remitted from the date of his initial appointment to the accounts of the 4th respondent-Trust.

3. The husband of the petitioner passed away on 28.05.2018, after completion of 16 years of service in the post of Driver leaving behind three legal heirs, i.e., (i) wife; (ii) daughter; and (iii) son. The 2nd respondent has

not paid the petitioner family pension. On enquiry, the officials of the 2nd respondent informed the petitioner that since her husband's services were confirmed only after 01.04.2003, i.e., only from 01.09.2005, he was not entitled to pension in the Tamil Nadu State Transport Corporation Employee's Pension Scheme, 1998. They informed the petitioner that he was covered only by the Contributory Pension Scheme, which came into force from 01.04.2003. But since the Rules were not framed and notified in the New Contributory Pension Scheme, they told that they cannot even pay pension under the New Contributory Pension Scheme and they would pay only the entire Provident Fund Contributions available in the petitioner's husband's account.

4. Under these circumstances, the petitioner submitted a representation dated 15.03.2019 to the respondents stating that though her husband's services were regularised only from 01.09.2005, he joined as Driver on 25.05.2002, which is long prior to the introduction of New Contributory Pension Scheme and also he was enrolled as a member to the Provident Fund Trust from the date of his appointment and hence, the same

could not be taken as a fresh or new recruitment so as to cover him under the New Contributory Pension Scheme. It is informed by the petitioner that her husband was covered only under the 1998 Penion Scheme and requested to settle the family pension. As the respondents did not reply to the said representation and did not make the payment of pension, aggrieved by their action, the present writ petition has been filed.

5. On behalf of the respondents, a counter affidavit has been filed, wherein it is stated that while the petitioner's husband was working as daily wage employee during the year 2002, the Provident Fund was deducted from his salary during the period. Even though the Provident Fund was deducted from his salary at the time of his daily wage employment, the petitioner's husband was not eligible for pension under the Tamil Nadu State Transport Corporation Employee's Pension Scheme, 1998 for the reason that as the petitioner's husband was regularised only on 01.09.2005, he was not eligible to get pension as per the said Scheme. It is also averred in the counter that the petitioner's husband is covered under Contributory Pension Scheme only and sought to dismiss the writ petition.

6. Heard the learned counsel for the petitioner, the learned Additional Government Pleader appearing for the 1st respondent and the learned Standing Counsels appearing for respondents 2 to 4.

7. Learned counsel for the petitioner would submit that the issue arises in the present writ petition is no longer *res integra* and already several writ petitions were allowed by this Court relying upon Rule 2(q)(iii) of the Tamil Nadu State Transport Corporation Employee's Pension Fund Rules in W.P.(MD) No.3675 of 2009, dated 26.10.2009 and the same was also confirmed by a Division Bench of this Court in W.A.(MD) No.387 of 2010, dated 25.08.2010. By following the same, writ petitions in W.P.No.21085 of 2010 and W.P.(MD) No.4887 of 2020 were also allowed by this Court. Accordingly, he prayed to allow this writ petition.

8. Learned counsels for the respondents advanced their arguments basing on the averments in the counter affidavit and sought to dismiss the writ petition.

9. The facts in the present case are not in dispute. Admittedly, the petitioner's husband entered into service on daily wage basis on 25.05.2002. From that date, he continuously worked as Driver and he completed 240 days of service within a year, i.e., from 25.05.2002 to 08.02.2003. But his services were regularised only with effect from 01.09.2005. Hence, the claim of the petitioner is in accordance with the relevant Rules and the terms of the orders passed by this Court.

10. For proper adjudication of the case, Rule 2(q)(iii) of the Tamil Nadu State Transport Corporation Employee's Pension Rules/Scheme, 1998 is extracted hereinunder:

> *"2(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."*

11. On careful perusal of the above provision, it is clear that 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. The Rule makes it clear that when the person makes a contribution for pension, he is entitled to receive pension from the date of contribution. In the present case, the husband of the petitioner has completed 240 days of continuous service by 8th February, 2003 and passed away on 25.05.2018 on completion of 16 years of service. Therefore, he is entitled to receive pension from 08.02.2003 on which date, he completed 240 days of service within a year in terms of the settlement signed under Section 12(3) of the Industrial Disputes Act of the year 1986. As the petitioner's husband passed away on 28.05.2018, the petitioner is entitled for the family pension and all other monetary benefits, she sought in the present writ petition.

12. The opinion of this Court is fortified by order of this Court in W.P.(MD) No.3675 of 2009, dated 26.10.2009, which was confirmed by the Division Bench in W.A.(MD) No.387 of 2010, dated 25.08.2010, the order

dated 30.08.2013 of this Court in W.P.No.21085 of 2010 and the order of this Court in W.P.(MD) No.4887 of 2020, dated 10.02.2023. The relevant paragraphs of the above mentioned orders are extracted hereinunder:

<u>(i) W.P.(MD) No.3675 of 2009</u>:

> *"7. The fact remains that the petitioner was admittedly put in a service as a driver on permanent basis for a period of nine years, six months from the date of regularization of his services as driver with effect from 01.05.1997. It is seen that the remaining period of six months, the petitioner was working on daily wages basis. The petitioner placed reliance on the provisions of rule 2(q)(iii). The Rule 2 deals with definite and the said rule 2(q)(iii) reads hereunder:*
>
> > *"2. (*) Definite : (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."*

A reading of the above said provision makes it crystal clear that in respect of the employees including the petitioner, who has worked as driver, the date of regular employment of becoming the member of the Employee's Provident Fund in the State Transport Corporation will be reckoned for the calculation of pensionable service. In the case on hand, it is seen that the petitioner has become the member of the Provident Fund from 17.07.1996 and on that date onwards, periodically amounts were deducted from the wages of the petitioner towards provident fund contribution. This fact is not disputed by the respondents by filing any counter or while making submissions before this Court. The only contention raised by the respondents is to the effect that the position was clarified earlier as per the letter of the Government in Letter No.11785-D/2003-2 dated 08.09.2009 on the effect that the period of daily wages or on consolidated wages services shall not count for pension even though provident fund recovery has been made from the employee during that period and the services of the regular employee from which date, he became the member of the provident fund shall only be considered as pensionable service."

<u>(ii) W.A.(MD) No.387 of 2010</u>:

> *"5. For calculating the period of service for entitlement of pension, Section 2(q)(iii) of the Rules would be relevant which is as follows:*
>
> > *"2. Definition : (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."*
>
> *6. According to the said Rule, in respect of all other employees, the date of regular employment or becoming a member of the Employee's Provident Fund Scheme in STU will be reckoned for calculation of pensionable service. Though as per the said Rule, the minimum period of the years is mentioned as an "Actual Service", in the light of the above provision, the actual period should be calculated from the date when he became a member to the Employees' Provident Fund Scheme, i.e., from 17.07.1996. If the period from 17.07.1996 till*

01.05.1997 is also taken into consideration, the respondent would have more than ten years of pensionable service. In such event, the respondent would be entitled to pension. This finding of the learned Single Judge, in our opinion, requires no interference. The provision of Section 2(q)(iii) of the Rules is also perused and the said provision would, certainly, make the respondent entitled for pension by taking into consideration of the period from when he became the member of Employees' Provident Fund Scheme, i.e., from 17.07.1996. Hence, we find no reason to interfere with the order of the learned Single Judge."

(iii) W.P.No.21085 of 2010:

"31. It is noted from a reading of Rules relating to the Tamil Nadu Transport Corporation Employees Pension Fund, especially, Rule 2(q)(iii), which states that the date of regular employment or the date on which the employee concerned had become a member of the Employee's Providet Fund, in the State Transport Undertaking, would be reckoned for the calculation of the pensionable service of the employee. According to the said Rule, the petitioner had completed more than 20 years of pensionable service, as he had

become a member of the Provident Fund Scheme, with effect from 1.11.1981."

<u>(iv) W.P.(MD) No.4887 of 2020</u>:

"7. ..... 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."

13. For the above mentioned reasons, the respondents are liable to pay the family pension and the terminal benefits to the petitioner by calculating the service of the petitioner's husband from 08.02.2003 till 28.05.2018.

14. In the result, this Writ Petition is allowed with the following directions:

i. The respondents are directed to pay the family pension and the terminal benefits to the petitioner by calculating the service of her husband from 08.02.2003 till 28.05.2018;

(ii) The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order; and

(iii) No costs.

07.08.2023

Note : Issue order copy by 09.08.2023.
NCC : Yes/No
Index : Yes/No
Internet : Yes

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To

1.The Additional Chief Secretary to Government,
Transport Department and
Chairman of State Transport Undertakings
Fort St. George, Chennai-9.

2.The Managing Director,
The Tamil Nadu State Transport
Corporation (Madurai) Limited,
Bye Pass Road, Madurai.

3.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Madurai Region, Bye Pass Road, Madurai.

BATTU DEVANAND, J.

abr

4.The Administrator,
The Tamil Nadu State Transport Corporations
Employee's Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai-2.

Pre-delivery Order made in
W.P.(MD) No.16684 of 2019

07.08.2023