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W.P.(MD)No.20178 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.20178 of 2015

K.Veerachamy

... Petitioner

vs.

1.The Managing Director,
Tamilnadu State Transport Corporation
(Madurai) Limited,
Bye Pass Road, Madurai-625 016.

2.The General Manager,
Tamilnadu State Transport Corporation
(Madurai) Limited,
Dindigul Region, Dindigul 624 004.

3.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Pallavan Salai, Chennai.

(R3 impleaded as a party of the respondent,
***vide Court order, dated 11.12.2019, made
in W.M.P.(MD)No.22598 of 2019***)

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records connected with the impugned order of rejection of pensionary benefits passed by the 2nd respondent in his letter Ref.Parvai Va Vai Nithi 65, dated 23.07.2014 and to quash the same and consequently, to direct the respondents to sanction pension leave salary and other terminal benefits and also to settle the Post Retirement Benefits of Rs.33,750/- under the Post Retirement Benefit Scheme along with interest to the petitioner for his 22 years qualifying service.

For Petitioners : Mr.C.Susi Kumar
For R1 and 2 : Mr.J.Senthil Kumaraiah
For R3 : Mr.S.C.Herold Singh

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order of rejection dated 23.07.2014 and consequently, to direct the respondents to sanction pension leave salary and other terminal benefits and also to settle the Post-Retirement Benefits of Rs.33,750/- under the Post Retirement Benefit Scheme along with interest for 22 years of qualifying service.



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2. The petitioner joined the respondent service on 1988 as Driver and was regularized and has served for 22 years. The petitioner was unable to perform his duty due to frequent medical issues like spinal cord and liver complications. The petitioner sought alternative job employment, vide representation, dated 19.09.2010, but the respondents did not consider the same, However, the petitioner could not bear the medical issues and hence, he resigned the job on medical grounds. The respondents have accepted the resignation on 07.10.2011 and promised to settle the terminal benefits in short time.

3. The contention of the petitioner is that he is entitled to pension, since the Corporation is having a pension scheme from 01.09.1998 onwards. The respondents have settled the gratuity for the entire period of 22 years to the tune of Rs.1,70,000/- and the petitioner is entitled to monthly pension from the retirement benefit fund of Rs.750/- per month under the post retirement benefit



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scheme, as per the 12(3) settlement. The respondents should have paid the above amount of Rs.33,750/- till date for 45 months along with terminal benefits from the date of acceptance of the resignation. Even after the expiry of 4 years of accepting the resignation, the respondents failed to pay the amount. Aggrieved over the same, the present writ petition is filed.

4.The respondents have filed a counter affidavit stating that the petitioner has tendered resignation on family circumstances. Under Rule 16(e) of Tamil Nadu State Transport Pension Fund Rules, on resignation the petitioner's service was forfeited. Hence the respondents vide letter, dated 23.07.2014, had retained the employer's share of Rs.1,12,000/- and had paid less amount. The petitioner submitted resignation for personal reasons and the reason stated in the resignation letter and the affidavit are contradicting each other. The petitioner cannot claim benefits, since the rule is not applicable to grant any benefits. The Rule 19A of



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Tamil Nadu State Transport Pension Fund Rules, will be applicable for those who have compulsory retired from service as measure of punishment. The plea of the petitioner is that restricting the pension for those who are resigning from job is violative of Articles 14 and 16 of Indian Constitution and the said plea cannot be accepted, since the rule is very clear. Therefore, the respondents prayed to reject the petitioner's claim and dismiss the writ petition.

5. Heard Mr.C.Susi Kumar, learned Counsel appearing for the petitioner, Mr.J.Senthil Kumaraiah, learned Standing Counsel appearing for respondents 1 and 2 and Mr.S.C.Herold Singh, learned Standing Counsel appearing for 3rd respondent.

6. The learned Counsel appearing for the petitioner submitted that the petitioner was ill due to spinal cord issues and liver complications. Since the



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petitioner being a Driver, he could not sit and carry on his duty. Therefore, the petitioner sought for an alternative employment in the year 2010 itself. The respondents have not considered the same. Since his illness resulted in severe pain, the petitioner could not continue his service. Due to this reason, the petitioner opted to submit his resignation. The respondents have accepted the same with an assurance that the petitioner would be receiving the terminal benefits. However, the respondents have granted a minimum terminal benefits after deducting the employer's share of Rs.1,12,000/-. Since under Rule 16(e) of Tamil Nadu State Transport Pension Fund Rules, on resignation, forfeiture will come in, the respondents have deducted the petitioner's employer's contribution to the tune of Rs.1,12,000/-.

7. It is seen from the records that the petitioner has sought for alternative employment but the respondents have not considered the same. The respondents



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ought to have considered and granted alternative employment. Therefore, the claim of the petitioner is that his service should be considered for granting atleast terminal benefits by taking his resignation as a compulsory retirement and grant all the benefits under Rule 19A of Tamil Nadu State Transport Pension Fund Rules. An employee is entitled to pension, if he is compulsory retired from service. However, the respondents submitted that the said claim can be entertained only for persons who have been imposed with punishment of compulsory retirement. Therefore, the claim of the petitioner cannot be entertained.

8. Whenever an employee is opting for resignation, the said employee would be in distress. In such circumstances, the employer should conduct counselling, ascertain the reason for opting and then consider sympathetically. If the petitioner's grievance can be addressed, the employer should address the



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grievances and retain the employee in service. This may be ethics but it will definitely have a human approach to the persons who are opting for resignation or compulsory retirement.

9. Moreover, in the present case, the petitioner had opted for alternative employment, if the respondent had granted the same in right time, the petitioner would not have resigned.

10. After taking all these into consideration, this Court is directing the respondents to convert the resignation as compulsory retirement. The respondents need not insist the employee's contribution to be deposited in the pension trust. But the respondents who have retained the employer's contribution of Rs.1,12,000/- with them, shall remit the same to the Pension Trust. Thereafter the pension trust shall disburse the pension to the petitioner. If there are any other



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amount applicable to the petitioner as per law, then the same shall also be paid to the petitioner.

11. With the above said observation, the writ petition is allowed. No costs.

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