BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2023

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD).Nos.1290 to 1294, 1296 to 1298, 1303 to 1305, 1311, 1313, 1314 of 2019, 1402 and 1403 of 2021, 600 of 2022, 646 of 2023 and W.P.(MD) No.3260 of 2018
and
C.M.P.(MD).Nos.11045, 11048, 11049, 11050, 11023, 11025, 11028, 11029, 11070, 11072, 11073, 11081, 11084, 11087 of 2019, 5811 and 5812 of 2021, Nil, 5932 of 2023 and Nil.

W.A.(MD)No.1290 of 2019:

The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai now the Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited. .. Appellant/4th Respondent

Vs.

1.S.Bahuleyan Nair .. 1st Respondent/Writ Petitioner

2.The Government of Tamilnadu,
Rep. by its Commissioner and Secretary,
Transport Department,
Fort St.George,
Chennai.

3.The Government of Tamilnadu,
Rep. by its Secretary,
Finance Department,
Fort St.George,
Chennai.

4.The Principal Accountant General,
Accountants and Entitlements,
361, Anna Salai,
Chennai - 600 018. ... Respondents 2 to 4/Respondents 1 to 3

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 24.01.2018 made in W.P.(MD) No.20634 of 2017 on the file of this Court.

For Appellants : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.K.Sathiya Singh
Standing Counsel

For Respondents : Mr.K.K.Vijayan for R1

Mr.S.Shanmugavel
Additional Government Pleader
for R2 & R3

Mr.P.Gunasekaran for R4

COMMON JUDGMENT

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM,J.***)

These intra-Court appeals are filed against the orders dated 24.01.2018 &

24.10.2019 & 25.01.2022 & 20.03.2019 made in W.P.(MD) Nos.20616, 20623, 20617, 20675, 20662, 20672, 20673, 19921, 20621, 20674, 20618, 20618, 20619, 20620 of 2017 & 20036, 20035 of 2018 & 18381 of 2013 & 22402 of 2017 respectively.

2. W.P.(MD) No.3260 of 2018 has been instituted by the State Transport Corporations Retired Employees Welfare Association challenging the order passed by the Joint Secretary, Transport Department, in Letter No.8375/TPT/TBC-7/2017, dated 28.07.2017, and further direct the respondents to provide pension to the retired employees of the petitioner association by taking into account of their entire service and fix the pension based on the last drawn pay at the time of retirement as held by the Honble Supreme Court in Special Leave to Appeal (Civil) No.19016 of 2008, dated 07.02.2013.

3. The private respondents in W.A.(MD).Nos.1290 to 1294, 1296 to 1298, 1303 to 1305, 1311, 1313, 1314 of 2019, 1402 and 1403 of 2021 and 646 of 2023 were originally appointed in Madras State Transport Department, which was functioning under the control of Transport Department of Government of Tamil Nadu. On formation of various Public Transport Corporation by the Government of Tamil Nadu, the private respondents were absolved in the said Tamil Nadu State

Transport Corporations. All the private respondent employees are admittedly retired from service and received pensionary benefits and presently receiving the monthly pension.

4. Though the respondent employees retired long back, they have instituted writ proceedings seeking a direction against the Transport Corporations and the Government of Tamil Nadu to implement the order of the Supreme Court in S.L.P.No.19016 of 2008, dated 07.02.2013 and order in S.L.A(C)No.10152 of 2016 on 04.04.2016 and G.O.Ms.(3D)No.21, Transport (RW1) Department dated 06.05.2016 and on the basis of their own undertaking given before the Division Bench Contempt Application No.290 to 292 of 2015 dated 24.02.2015 by refixing and remitting the petitioner's pension, arrears with emoluments and with interest at the rate of 18% per annum in his pension pass book order No.A560737 Huzur Treasury, Nagercoil, Kanyakumari District.

5. The issues relating to the pensionary benefits and the cut of date fixed by the Supreme Court of India are not *res integra* and we are not inclined to re-adjudicate those issues, which were concluded by the Apex Court in the above judgments.

6. The very relief sought for to implement the order of the Supreme Court and its entertainability itself is to be considered by us. While seeking implementation of the orders of the Supreme Court, the arguments advanced by providing different interpretation cannot be gone into since the respondent employees retired long back, more so, they have received the pensionary benefits and currently receiving the pension and further the scope of the litigation concluded before the Apex Court cannot be expanded after a lapse of several years.

7. It is not in dispute between the parties that the Supreme Court fixed the cut of date of 01.04.1982 for settlement of pensionary benefits to these employees by exercising the powers under Article 142 of the Constitution. Normally the power of cut of date vests with the Government and the Supreme Court fixed the cut of date taking note of the fact that several years lapsed and the employees are agitating for long time.

8. Learned Additional Advocate General appearing on behalf of the Transport Court Corporation mainly contended that the judgment of the Supreme Court has been implemented scrupulously by the Government of Tamil Nadu and

the Transport Corporation. The date of appointment of the respective employees in Government Transport Department were reckoned as qualifying services and accordingly the State Pension being paid under the Tamil Nadu Pension Rules, 1978. Further, the respondent employees long back received the provident fund settlement from 01.05.1975 upto their date of retirement from the Transport Corporations. Therefore, the Writ Petitions ought to have been rejected by the learned Single Judge.

9. At the outset, the learned Additional Advocate General contends that from the date of appointment to 01.05.1975 Government Pension has been paid and in respect of certain employees who had not received the Provident Fund settlement, the Government pension has been extended upto 01.04.1982 as per the cut of date fixed by the Supreme Court of India. In respect of the employees who all are receiving Government pension upto 01.04.1982 and already received Provident Fund settlement for the services rendered in Transport Corporations and their Writ Petitions are not even entertainable. The other set of employees who all are receiving Government pension upto 01.04.1975 they are not entitled to claim Government Pension upto 01.04.1982 since all those employees have received Provident Fund settlement from 01.05.1975 till their respective date of retirement

in the Corporation Services and therefore, there cannot be double pensionary benefits to these employees. It is further contended that the issues were settled by the Supreme Court in the year 2013 and all these employees retired long before and received Provident Fund settlements and that being the case, the Corporation Services rendered by those employees, for which the benefits are settled, cannot be converted as Government service for the purpose of extending Government Pension under the Tamil Nadu Pension Rules, 1978.

10. The respective learned counsel appearing on behalf of the respondent employees are of the opinion that all the employees irrespective of their receipt of P.F. settlement are entitled to get Government Pension till 01.04.1982 as per the judgment of the Supreme Court and the Supreme Court has not distinguished the employees and therefore, the employees who all are receiving Government Pension by reckoning the period up to 1975 are entitled to get Government Pension by reckoning the period upto 01.04.1982. It is contended that in respect of certain employees, who have not even received any benefits for the interregnum period from 01.05.1975 to 01.04.1982, those employees are entitled for Government Pension upto 01.04.1982. In respect of those cases, where the interregnum period was not even taken into consideration for settling any of the

pensionary benefits, the said period from 01.05.1975 to 01.04.1982 is to be taken into consideration as qualifying services for payment of pension under Tamil Nadu Government Pension Rules, 1978. In respect of the employees who had already received P.F. settlement for the services from 01.05.2975 to 01.04.1982, they are not entitled for reckoning the said period for Government Pension. In other words, they are not entitled to claim dual benefits nor they can claim Government Pension for the said period.

11. Perusal of the judgment of the Supreme Court would reveal that the cut of date of 01.04.1982 is to be taken into consideration for settlement of pensionary benefits. The Supreme Court directed the Government of Tamil Nadu and the Transport Corporation to take steps to extend the pensionary benefits to the eligible employees. Therefore, the Supreme Court has issued a common direction to ascertain the eligibility of its employees and accordingly settle the pensionary benefits. Therefore, the eligibility of each employee is to be ascertained with reference to their service particulars and the benefits received by them including P.F. Settlement and the Government Pension.

12. In respect of the cases before us, the appellants furnished the details of Government Pension and other benefits. The employees who have received P.F. settlements from 01.05.9175 to 01.04.1982 were granted Government Pension upto 01.05.1975. The employees who have not received P.F. settlements upto 01.04.1982 have been sanctioned Government Pension upto 01.04.1982 and for the rest of the Corporation Services the benefits under the Corporation Service Rules are paid.

13. Learned Single Judge has not considered the fact that some of these employees had already received P.F. settlements for their services rendered in between 01.05.1975 and 01.04.1982. Learned Judge has directed to fix the cut of date of 01.04.1982 to all the employees irrespective of the fact that some of the employees had already received the P.F. settlement for the services rendered by them in between the year 1975 to 1982. Therefore, the order of the learned Single Judge would lead to dual retirement benefits to some of the employees who have already received P.F. settlement for their services rendered with the Corporation from 01.05.1975 to 01.04.1982. Thus, the blanket order and the relief granted by the learned Single Judge is not in consonance with the line of directions issued by the Supreme Court of India.

14. Accordingly, we are inclined to pass the following orders:

i. The orders dated 24.01.2018 & 24.10.2019 & 20.03.2019 made in W.P.(MD) Nos.20616, 20623, 20617, 20675, 20662, 20672, 20673, 19921, 20621, 20674, 20618, 20618, 20619, 20620 of 2017 & 20036, 20035 of 2018 & 22402 of 2017 are set aside and W.A.(MD).Nos.1290 to 1294, 1296 to 1298, 1303 to 1305, 1311, 1313, 1314 of 2019, 1402 and 1403 of 2021 and 646 of 2023 stand allowed.

ii. The Transport Corporation employees who have already received P.F. settlements for their respective services rendered from 01.05.1975 to 01.04,1982 are not entitled for Government Pension for the said period.

iii. The respondent employees who have not received the P.F. settlement or the Government Pension from 01.05.1975 to 01.04.1982 are eligible for Government Pension by reckoning the said period as qualifying service under the Tamil Nadu Pension Rules, 1978.

iv. In view of the orders passed in W.A.(MD).Nos.1290 to 1294, 1296 to 1298, 1303 to 1305, 1311, 1313, 1314 of 2019, 1402 and 1403 of 2021 and 646 of 2023 the order passed in W.P.(MD) No.18381 of 2013 stands confirmed and W.A.(MD) No.600 of 2022 is dismissed and W.P.(MD) No.3260 of 2018 stands disposed of.

v. For the purpose of considering the cases of the employees the respective employees are at liberty to submit a detailed representations to the Transport Corporations along with their service particulars and documents, if any, available within a period of one month from the date of receipt of a copy of this order, thereafter the respective transport Corporation are directed to re-work based on the service details of the respondent employees and inform the results to the respective employees within a period of four months thereafter.

vi. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.,J.) & (V.L.N.,J.)
13.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

To

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai
now the Managing Director,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited.

S.M.SUBRAMANIAM,J.

and

V.LAKSHMINARAYANAN,J.

SJ

2.The Commissioner and Secretary,
Transport Department,
Government of Tamilnadu,
Fort St.George,
Chennai.

3.The Secretary,
Finance Department,
Government of Tamilnadu,
Fort St.George,
Chennai.

W.A.(MD).Nos.1290 to 1294, 1296 to 1298, 1303 to 1305, 1311, 1313, 1314 of 2019, 1402 and 1403 of 2021, 600 of 2022, 646 of 2023 and W.P.(MD) No.3260 of 2018

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