



W.P.(MD)No.27352 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.02.2023

DELIVERED ON : 07.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.27352 of 2019

S.Krishnamurthy

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Limited,
Madurai – 16.

2.The Administrator,
Tamil Nadu State Transport Corporation Employees 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 Writ of Mandamus, directing the respondents for grant of Pensionary benefits with other consequential benefits including monthly pension along with interest for the service rendered by the petitioner for the period from 25.07.1980 to 29.12.1998 for 19 years in the light of the judgment of this Hon'ble High Court in W.P.(MD).No.461 and 106 of 2013 dated 02.03.2015 which was confirmed by the Division Bench of this Hon'ble High Court by order dated 04.07.2017 and the



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dismissal of the SLP filed by the respondent before the Hon'ble Supreme Court on 19.02.2018 and the same was complied by the respondent in terms of G.O.Ms.No. 115 Transport Department dated 27.11.2018.

For Petitioner : Mr.S.Govindan

For R-1 : Mr.J.Senthil Kumaraiah

For R-2 : Mr.S.C.Herold Singh

ORDER

This Writ Petition is filed for Writ of Mandamus directing the respondents for grant of pensionary benefits with other consequential benefits including monthly pension along with interest for the service rendered by the petitioner for the period from 25.07.1980 to 29.12.1998 for 19 years.

2. The petitioner entered into the service of the respondent Corporation as a Clerk on 25.07.1980 and was promoted as Assistant and continued in the said post till 29.12.1998. Since the petitioner is qualified for P.G. Assistant Post, based on the educational qualification of M.A., M.Ed., degree, the petitioner's name was sponsored by the Employment Exchange. Considering the petitioner's seniority



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in the Employment Exchange, the petitioner was appointed as P.G. Assistant. Hence, the petitioner submitted representation to relieve him from the said post so as to join the P.G. Assistant post. But the petitioner was informed that the respondents would take some more time to relieve the petitioner and he was instructed to submit his resignation. Accordingly, the petitioner submitted his resignation letter on 28.12.1998 and immediately, he was relieved on the next day vide order dated 29.12.1998. On 30.12.1998, the petitioner joined as P.G. Assistant and continued to work as P.G. Assistant till the date of his superannuation and retired on 30.06.2010. The contention of the petitioner is that he has rendered the pensionable service in the respondent corporation for the past 19 years and the petitioner is seeking to add the said period along with P.G. Assistant post and grant pensionary benefits. The petitioner submitted representation to the Educational Department to count 19 years of his service in the Transport Department along with the 11 years service 6 months rendered in the P.G. Assistant post, but the same was denied. Hence, the petitioner filed a Writ Petition and the same was dismissed on 05.02.2019 on the ground that the petitioner's earlier service is a Corporation service which is having a separate pension scheme and hence, Corporation service cannot be counted along with the Government service. The contention of the petitioner is that in terms of Rule 16



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of the Tamil Nadu State Transport Corporation Pension Fund Rules, resignation shall entail forfeiture of the past service, but it cannot be forfeited if it has been submitted to take up with proper permission for another appointment, under Government Department/State Public Sector undertaking/Board. In such circumstances, the pensionary benefits shall be transferred to the New Employers Pension Fund/EP Scheme 1995 and such benefits shall not be directly paid to the individual. Even though, there is provision for transferring the funds in the P.F account to the new employer (Education Department), but the respondents denied on the ground that Rules do not permit transferring the Corporation P.F account along with G.P.F account. Hence, the petitioner's request to count earlier service along with later service for pensionary benefits was denied. The petitioner further submitted that under similar circumstances, the Writ Petition filed by Rajeswaran and Murugesan in W.P.No.461 and 106 of 2013 for grant of pensionary benefits after resignation from service on completion of 14 years of service was allowed by this Court vide order dated 02.03.2015 and the Writ Appeal in W.A.No.855 and 856 of 2017 was dismissed vide order dated 04.07.2017 and the SLP was also dismissed on 19.02.2018 and the issue of pension on resignation reached finality by complying the order in terms of G.O.Ms.No.115 Transport Department dated 27.11.2018. The very same issue of pension on resignation was decided by this



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Court in W.A.No.1658 of 2018 vide order dated 26.06.2019 for some other employees case. The Hon'ble Division Bench relied on the judgment of the Hon'ble Supreme Court reported in AIR 1990 SC 1808 dated 27.07.1990 and held that, when an employee resigns his office, as per the dictionary meaning, it is also retirement. Hence, the employee is entitled to get pensionary benefits. Therefore, by relying on these orders passed by the Courts, the petitioner is seeking pensionary benefits.

3. The contention of the respondents is that the petitioner submitted a resignation letter on 28.12.1998 and the petitioner was immediately relieved on the next day that is on 29.12.1998. As per Rule 16 of the Tamil Nadu State Transport Corporation Pension Fund Rules, resignation shall entail forfeiture of the past service. However, if it is taken with the proper permission, then resignation shall not entail forfeiture of past service. In the present case, the respondents have not granted any such permission. The respondents have simply relieved the petitioner in order to join the other post in the Education Department. Since the petitioner was not granted prior permission as per Rule 16 proviso, the petitioner's claim cannot be entertained. Moreover, the petitioner had filed this petition after retirement in the Education Department and the claim is belated



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claim and the Writ Petition is hit by the principles of delay and laches. Therefore, the respondents prayed to dismiss this Writ Petition.

4. Heard Mr.S.Govindan, the Learned Counsel appearing for the petitioner, Mr.J.Senthil Kumaraiah, the Learned Standing Counsel for the 1st respondent and Mr.S.C.Herold Singh, the Learned Standing Counsel for the 2nd respondent and perused the records.

5. It is an admitted fact that the petitioner joined the respondent Corporation service on 25.07.1980 and he was relieved from the service on 29.12.1998. In fact, the petitioner has disclosed to the respondent corporation that he intended to take up another employment and sought prior permission from the respondent corporation. The respondents have granted prior permission through letter dated 27.02.1984, wherein, the respondents have stated as under:



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Pandiyan Roadways Corporation Limited

(A Government of Tamilnadu Undertaking)

Ref: PLO/G:15828

Gram: 'PANROADCO'
Phone: 32112 (H Lines)
Telex: 0446-247
Registered and
Administrative Office
Bye-Pass Road,
MADURAI-625 016.

Date: 27-2-84

Thiru S. KRISHNAMURTHY is employed as CLERK in the Office of the Pandiyan Roadways Corporation Limited, Theni Branch from 1.8.1982 and is in continuous employment.

He is a permanent employee in our Corporation.

He possesses the following qualification which entitles him for consideration against higher posts.

M.A., M.Ed.,

We have no objection for his seeking employment through the Employment Exchange for the posts of viz., any Executive or Supervisory or Officer rank which is higher than that held by him. He is drawing a basic pay of Rs.465/- in the scale of pay of Rs.420-7½-480-10-540, on date.

for PANDIYAN ROADWAYS CORPORATION LTD.

S. Lakshminarayana

ASSISTANT MANAGER
PERSONNEL & LEGAL DEPARTMENT

GP



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6. Subsequently, the petitioner has received a communication based on his employment seniority, that he is selected for the P.G. Assistant post in the Education Department. Immediately, the petitioner has brought to the knowledge of the respondents and sought to relieve him. The respondents have not acted immediately and they forced the petitioner to submit resignation letter in order to take up other post. The reason for not granting permission is that the petitioner has taken up the P.G. Assistant post which is not higher than the post he was rendering in the Corporation. The contention of the respondents is that the P.G. Assistant post is not a higher post. Even if the permission granted in the year 1984, the petitioner was granted permission to take any higher post like the Executive, Supervisory or officer rank, since the P.G. Assistant is not coming under any of the categories and the respondents have refused to grant permission to take up the subsequent post.

7. This Court is of the considered opinion that the respondents have no power to direct any employee that he should take the higher post than the post he was holding in the present employment. Choosing any post is a prerogative right



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of the individual. If the individual is seeking lesser post, so that he is not burden with any job stress, then the petitioner cannot be forced to take up the higher post. If the petitioner is seeking any post which is relaxed or not stressful the petitioner is at liberty to take up. Therefore, the reasons stated by the respondents cannot be accepted.

8. The next contention of the respondents is that the petitioner had submitted resignation and resignation would forfeit the past service. When the petitioner has sought permission to take up another post, the proviso to Rule 16 of the Tamil Nadu State Transport Corporation Pension Fund Rules would save the petitioner. Moreover, it cannot be considered that the petitioner has not taken any permission. If any employee is expressing and has openly declared that he is intended to taking up another job and resignation is submitted, then the respondents are not having any right to decline permission. The pension rules of the respondent corporation as well as the pension rules of the State Government only states that if another post is taken up based on the permission, then the past service will not be forfeited. The said rules are not empowering the employer to adjudicate and decline the permission. Once the resignation is submitted with a declaration to take up another post, then the respondents are bound to relieve and



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they cannot treat such application as resignation and decline permission. Therefore, the reasons cited by the respondents is not acceptable.

9. Now, the next contention of the respondent corporation is that the corporation service was not a pensionable service. It is seen earlier the State Transport Department was wound up on 15.09.1975 and all its employees are absorbed permanently in the Transport Corporation, hence from 1975 onwards the said corporation service is not pensionable service. Thereafter, based on the persistent agitation of the employees, the pension scheme was formulated and “Pension Trust” was formed and the scheme was issued in the year 2000, but it came into effect from 01.09.1998. The petitioner had served in the corporation service from 25.07.1980 to 29.12.1998. In such circumstances, the petitioner is entitled to the pensionary benefits from the date the scheme came to effect i.e. from 01.09.1998. The petitioner was in service for 118 days after the introduction of the new Pension scheme. In such circumstances the petitioner may be entitled to the “new pension scheme” payable from Pension Trust.

10. In the new pension scheme, the Provident Fund amount would be transferred to Pension Trust, thereafter from the said amount a portion would be



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paid as monthly pension. The corporation would deduct a portion of amount from the salary of the employee and equal amount would be contributed by the employer and the two amount would be transferred to pension trust. In the present case, since neither the employee contribution was not deducted nor the employer contribution was added, because at the time of issuing the said G.O. the petitioner was not in corporation service (left the service on 29.12.1998). The petitioner would have received the EPF amount alone which cannot be considered as an amount deducted under the new pension scheme, moreover the said amount would be meager.

11. Therefore this Court is of the considered opinion that the even though the reasons cited by the respondents is not sustainable, the petitioner is not entitled to pension, since the petitioner is not coming within the purview of the new pension scheme and hence the claim of the petitioner cannot be granted. Hence the present writ petition is liable to be dismissed.



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12. For the above reasons, this Writ Petition is dismissed. There shall be no order as to costs.

07.07.2023

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

Nsr

To

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S.SRIMATHY, J

Nsr

Pre-delivery Order made in
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