



WEB COPY



W.P.No.10235 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.10235 of 2013

K.Paramasivam

...Petitioner

-Vs-

1.The Secretary to Government,
Transport Department,
Fort St. George, Chennai – 9.

2.The Managing Director,
Metropolitan Transport
Corporation Limited,
No.2, Pallavan Illam,
Anna Salai, Chennai – 2.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Mandamus, to directing the respondents to sanction the petitioner monthly pension by counting his service from the date of his initial appointment with effect from 01.01.1988 with all arrears and all other consequential benefits.

For Petitioner : Mr.V.Ajoy Khose

For R1 : Mr.M.Murali
Government Advocate



WEB COPY



W.P.No.10235 of 2013

For R2 : Mr.C.Gowthamaraj
Standing Counsel

ORDER

This writ petition is filed for issuance of a Writ of Mandamus directing the respondents to sanction the petitioner monthly pension by counting his service from the date of his initial appointment with effect from 01.01.1988 with all arrears and all other consequential benefits.

2. The case of the petitioner is that he joined the services of the erstwhile Transport Department as Driver on 17.10.71 and were regularized pursuant to the appointment order dated 11.10.1971 and brought to time scale of pay from 01.11.72. The Government of Tamil Nadu decided to wind up the Transport Department and to vest all the transport services together with the employees in the newly formed Transport Corporations. The Government also assured that if the employees of the Transport Department were willing to give up their Government Service and willing to get absorbed in the Corporations, the employees would be entitled to pension even during the service from their date of absorption in the Corporations. The Government also fixed two cut-off dates, namely, 01.05.1975 and 15.09.1975 for absorption in various Corporations.



W.P.No.10235 of 2013

3. Learned counsel for the petitioner submitted that he was sent on deputation to the Pallavan Transport Corporation initially and later he was absorbed therein with effect from 01.05.1975. The Government went back from their assurance and came with a modified scheme and informed that the employees who gave up their Government Service and who got Government absorbed in the Corporations would be entitled to pension only after their retirement/superannuation. Further, there was also a dispute with regard to the cut-off date and absorption. Therefore, the employees challenged the Government Order changing the original assurance and also filed cases. The matter went up to the Hon'ble Supreme Court. The Hon'ble Supreme Court settled the issue with regard to the right and eligibility of pensioners who got absorbed in the Transport Corporations as stated above by a judgment reported in 2003 (10) SCC Page 503. In the said judgement, the Hon'ble Supreme Court held that the employees would be entitled to pension from the date of their absorption as per the original assurance given by the Government. The Hon'ble Supreme Court also revised the cut-off date for absorption from 01.05.1975/15.09.1975 to 01.04.1982. Further, the Hon'ble Supreme Court also issued directions to pay the monetary benefits to all the eligible employees with effect 01.01.1988. However, the Government filed a



W.P.No.10235 of 2013

Review against the said judgment. However, the Review Petition was dismissed by the Hon'ble Supreme Court by an order dated 01.02.2005, which was reported in 2005 (1) LLN Page 1104.

4. Learned counsel further submitted that the Government issued G.O.No.42, Transport dated 27.05.2005 for implementation of the above said judgment and called for applications from all the employees who got absorbed in various Corporations. In the meantime, he retired from service under VRS. He was relieved from service by an order dated 25.09.1993 with effect from 30.09.1993. After collecting the application from the 2nd Respondent, he submitted his filed up application together with all other supporting records and documents. Though he completed 10 years of qualifying service from 17.10.1971 to 01.04.1982 and though he submitted his pension application, the Respondents did not issue any orders but orally told him that since he did not complete 10 years of qualifying service according to them, he was not eligible for pension. Only after he came to understand that they had counted his service only from the date of regularization/permanency, instead of taking his service from the date of his initial appointment. The temporary service followed by confirmation without



W.P.No.10235 of 2013

any break in service in a pensionable service/establishment shall also be counted as qualifying service for pension. The Government itself issued G.O.No.408 Finance (Pension) Department dated 25.08.2009 for counting half of the daily paid, consolidated pay and honorarium pay service for the employees who were already regularized prior to 01.04.2003. He made representations to the 2nd Respondent on 07.01.2010 and he requested to sanction him pension at least by taking into account the above said G.O. and at least by counting half of his daily paid service. Further, he also made a representation dated 29.12.2010 to the Hon'ble Deputy Chief Minister's Special Grievance Cell since no order was passed by the 2nd Respondent to his representation dated 07.01.2010. The Hon'ble Chief Minister's Special Grievance Cell directed the 2nd Respondent to redress his grievance regarding pension in a letter dated 19.01.2011. Thereafter, the 2nd Respondent by their letter dated 05.09.2011 asked him to furnish them a copy of his representation which was addressed to the Hon'ble Chief Minister's Special Grievance Cell along with the supporting documents. Accordingly, he submitted a copy of the representation which he addressed to the Hon'ble Chief Minister's Special Grievance Cell as directed by the 2nd Respondent in their letter dated 05.09.2011. However, till date, no action has



W.P.No.10235 of 2013

been taken by the Respondents and no orders have been passed sanctioning him pension.

5. Learned counsel further submitted that his pension application was made as early as 2005. The Respondents have not considered his application and they have not passed any orders till date, that is, even after about 8 years (as on date of filing the writ petition), and in spite of his representations, and also in spite of the directions issued from the Hon'ble Chief Minister's Special Grievance Cell. Therefore, the inaction on the part of the Respondents is arbitrary and violative of Article 14 of the Constitution. As per the Tamilnadu Pension Rules, he has completed more than 10 years of qualifying service so as to get pension. Therefore not sanctioning his pension is contrary to the Tamilnadu Pension Rules. Already this Court and the Tamilnadu Administrative Tribunal have held that the temporary service on daily rated wages shall also be counted to calculate the qualifying service as per rules 11 and 3 (0) of the Tamilnadu Pension Rules. As per G.O.No.408 dated 25.08.2009, if half of his temporary service on daily wages from 17.10.1971 to 31.10.1972 is added to his regular service from 01.11.1972 to 31.03.1982 read with Rule 43 (3) of the Tamilnadu



W.P.No.10235 of 2013

Rules, and he will also have more than 10 years of qualifying service. He retired from service under Voluntary Retirement Scheme as early on 30.09.1993. For the past 20 years, he has been struggling for livelihood since he has no other source of income and also since he retired from service long prior to the introduction of Employees Pension Scheme, 1995 brought under the PF Act and the Corporation Pension Scheme which was brought with effect from 01.09.1998, he was not able to get pension under those schemes. The petitioner was aged about 70 years at the time of filing the writ petition and now, he is 81 years as on date.

6. A counter affidavit was filed on behalf of the 1st respondent dated 07.03.2024 and the relevant portion is extracted hereunder for better appreciation and understanding:

“8. The 1st Respondent denies all the averments found in para 8 to 11 of the Writ Petition as false and frivolous except that those are specifically admitted herein under. The Period of service spent and the qualifying period for the payment of pension as per the GO. (Ms.) No:378, Finance (F.R.II.) Department dated: 18.04.1975 and G.O.Ms.No.42, Transport (RW) Department, dated: 27.05.2005 and calculation is given below:

	<i>Y</i>	<i>M</i>	<i>D</i>
<i>Last date of Govt. Service</i>	82	04	01
<i>Date of Appointment</i>	72	11	01



W.P.No.10235 of 2013

Total Length of Service	09	05	00
LESS: Non Qualifying Service	00	07	02

Net Qualifying Service	08	09	28

LLP Details:			
	Y	M	D
As per G.O. 1208	00	04	02
As per G.O.42	00	03	00

	00	07	02

9. The 1st Respondent denies all the averments found in para 12 to 14 of the Writ Petition as false and frivolous except that those are specifically admitted herein under. It is submitted that the Petitioner was requested to sanctioned lifetime arrears of pension and family pension under G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005. As per the G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005. TNSTC Employee who were absorbed in corporation and retired before or after 01.01.1988 but before 01.01.1998 be paid pension if they period of daily paid service leave on loss of pay and suspension treated as specific punishment should be excluded while arriving the Net Qualifying service. The service rendered by the Petitioner falls short by 10 years and he has actually worked only for 8 years 9 months 28 days. Hence he is not entitled for the grant of pension.”

7. Heard both sides and perused the materials available on record.

8. In the case on hand, the petitioner was initially appointed as Driver on 17.10.71 and his services were regularized and brought to time scale of pay from 1.11.72. Thereafter, the petitioner was sent on deputation



W.P.No.10235 of 2013

to the Pallavan Transport Corporation initially and later was absorbed therein with effect from 01.05.1975. The Hon'ble Supreme Court has also revised the cutoff date for absorption from 01.05.1975 / 15.09.1975 to 01.04.1982 and issued directions to pay monthly benefits to all the eligible employees with effect from 01.01.1988. Subsequently, the Government issued G.O.Ms.No.42, Transport dated 27.05.2005 for the implementation of the aforesaid judgment and called for applications from all the employees who got absorbed in various corporations. The petitioner retired from service under Voluntary Retirement Scheme (VRS) and was relieved from service by an order dated 25.09.1993 with effect from 30.09.1993. Though the petitioner has completed 10 years of qualifying service from 17.10.1971 to 01.04.1982. The services of the petitioner on temporary basis were not taken into consideration as a qualifying service for pension and the respondents have taken only the date of regularization / permanency and not from the date of his initial appointment and rejected them. Hence, the pension was not sanctioned to the petitioner. The Government has also issued G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009 for counting half of the daily paid, consolidated pay and honorarium pay service for the employees who were already regularized prior to 01.04.2003.



W.P.No.10235 of 2013

Thereafter, the petitioner sent representations to the 2nd respondent on 07.01.2010 and 29.12.2010 requesting to sanction pension for him, but no orders have been passed. Hence, he approached this Court by way of filing the present writ petition.

9. According to G.O.Ms.No.408 Finance (Pension) Department dated 25.08.2009, if half of his temporary service on daily wages from 17.10.1971 to 31.10.1972 is added to his regular service from 01.11.1972 to 31.03.1982 read with rule 43(3) of the Tamil Nadu Rules, the petitioner undoubtedly will have more than 10 years of qualifying service. The said G.O. is squarely applicable to the case of the petitioner. There is no dispute in the date of initial appointment of the petitioner i.e. 17.10.1971 and he was later absorbed by the Pallavan Transport Corporation with effect from 01.05.1975. The temporary service on daily rated wages shall also be counted to calculate the qualifying service as per rules 11 and 3(o) of the Tamil Nadu Pension Rules.

10. It is pertinent to note that the petitioner retired from service under the Voluntary Retirement Scheme (VRS) by an order dated 25.09.1993



W.P.No.10235 of 2013

with effect from 30.09.1993. As on date of filing the writ petition, the petitioner was aged about 69 yeas and as on date, he is 82 years old. He has been fighting for the sanction of pension since 2005.

11. It is also pertinent to note that the petitioner retired from service prior to the introduction of the Employees Pension Scheme, 1995 brought under the PF Act and the Corporation Pension Scheme which was brought with effect from 01.01.1998. He is not entitled to get pension under those schemes.

12. Having regard to the admitted fact that the petitioner was appointed as a Driver on 17.10.1971 pursuant to the appointment order dated 11.10.1971, if his services are calculated from 17.10.1971 to 01.04.1982 he has 10 years of qualifying service and is eligible for pension as per the Tamil Nadu Pension Rules.

13. In view of the above factual matrix of the case, the respondents are directed to sanction the petitioner's monthly pension by counting his service from the date of his initial appointment with effect



W.P.No.10235 of 2013

**from 01.01.1988 with all arrears and all other consequential benefits,
with interest at the rate of 5% per annum within a period of eight weeks
from the date of receipt of a copy of the order.**

**In the result, the writ petition stands allowed with the above
observations and directions. No costs.**

28.03.2024

cda

Index : Yes / No

Speaking / Non Speaking Order



WEB COPY



W.P.No.10235 of 2013

To

1.The Secretary to Government,
Transport Department,
Fort St. George, Chennai – 9.

2.The Managing Director,
Metropolitan Transport
Corporation Limited,
No.2, Pallavan Illam,
Anna Salai, Chennai – 2.



WEB COPY



W.P.No.10235 of 2013

J.SATHYA NARAYANA PRASAD, J.

cda

W.P.No.10235 of 2013

28.03.2024