



W.A.No.1302 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 01.08.2024

PRONOUNCED ON : 19.08.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.No.1302 of 2022

and

CMP.No.8243 of 2022

1. The State of Tamil Nadu
Rep. by its Secretary,
Transport Department,
Secretariat, Chennai-600 009.
2. Tamil Nadu State Transport Corporation (Vellore) Ltd.,
(Old Name Pattukottai Azhagiri Transport Corporation Ltd.,)
Rep. by its Managing Director,
Vellore.

... Appellants

Vs.

R.Narayanasamy (Deceased)
(Deceased represented by its legal heirs)

1. N.Vimala
2. S.Sujatha
3. N.Saravanan
4. N.Sathish

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 03.09.2020 passed in W.P.No.10846 of 2013 and allow this writ appal.

For Appellants : Mr.S.John J. Raja Singh
Additional Government Pleader
for first appellant
Mrs.S.Pavithra for 2nd appellant

For Respondents : No Appearance

J U D G M E N T

[Judgment of the Court was made by **C.KUMARAPPAN, J.**]

The appellants, who are the respondents before the Writ Court, assailed the order passed in WP.No.10846 of 2013 dated 03.09.2020 filed by the respondents in the present writ appeal. After the demise of the writ petitioner Narayanaswamy, his legal heirs were arrayed as petitioners 2 to 5 before the Writ Court and they are the respondents in the present Writ Appeal.

2. For the sake of convenience, the parties will be referred to according to their litigative status before the writ Court.



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3. The short facts, which are necessary for adjudicating the instant writ appeal is that, the petitioner was appointed as a Driver on 25.10.1971 in the erstwhile State Transport Corporation. His service was regularized on 25.11.1972. Subsequently, on formation of various Transport Corporation, the petitioner was transferred and absorbed in the newly formed M/s.Pattukottai Azhagiri Transport Corporation on 01.05.1975. While so, in the year 1990, he opted to avail Voluntary Retirement Scheme implemented by the 2nd respondent. It appears that the petitioner has voluntarily retired on 31.08.1990.

4. It is the submission of the petitioner that by virtue of the Government Order in G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005, he was put on net qualifying service of 10 years as on 01.04.1982. Accordingly, he prayed to sanction the Pension and payment of arrears of pension. The petitioner stated that he has completed 10 years 5 months and 7 days qualifying service between 25.10.1971 to 01.04.1982. In support of his contention, he would also rely upon Rule 11 (1), and Rule 43(2) of “The Tamil Nadu Pension Rules, 1978” [hereinafter shall be referred to as “Pension Rules”]. The petitioner further submits that similarly placed persons were already sanctioned pension and such order has been confirmed



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by the Hon'ble Supreme Court in SLP(CC) No.1660 of 2012. Therefore, he being the similarly placed person, prayed to issue a writ of Mandamus directing the respondent-Corporation to pay the pension to him.

5. The respondents resisted the petitioner's contention and would submit that the net qualifying services of the petitioner was only 8 years 11 months and 22 days. Whereas, to avail the benefits under G.O.Ms.42 dated 27.05.2005, he should have 10 years of net qualifying service as on 01.04.1982. Since the petitioner did not have required net qualifying service, there is no scope for the respondent to invoke Rule 11(1) and 49(2)-A of Pensions Rules. Hence, prayed to dismiss the writ petition.

6. The Writ Court, after having considered the submissions on either side and on the basis of the documents submitted before the Writ Court has arrived at a conclusion that the petitioner has got qualifying service of 9 years 4 months and 6 days. Further, while calculating 50% service of the daily wages period, he has put on 6 months and 15 days. Thus, the petitioner has total net qualifying service of 9 years 10 months and 21 days. The Writ Court, by invoking Section 43(2) of the Pension Rules, held that the fraction of 10 months and 21 days should be reckoned as one year service, thereby held that the petitioner is eligible to be brought under G.O.Ms.No.42 dated



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27.05.2005. The Writ Court has also found that the case of the respondent regarding availing of leave on loss of pay by the petitioner cannot be believed, as it was not informed to the petitioner, and also on account of no departmental proceedings initiated against him. Thus, the Writ Court ultimately held that the petitioner is entitled for a pension as per G.O.Ms.No.42 dated 27.05.2005.

7. The learned Additional Government Pleader for the first appellant would vehemently contend that the actual calculation made by the petitioner and the respondents are not in serious variance. However, the learned AGP would contend that the Writ Court, without assigning any reason has neglected to take into consideration of leave taken by the petitioner on loss of pay. The learned Additional Government Pleader would further submit that, while calculating the net qualifying service, the period spent on leave such as extraordinary leave granted on medical certificates, and paid leave shall be counted as a qualifying service. Whereas, in the case of the petitioner, it was the leave on loss of pay. Therefore, the leave on loss of pay period of 308 days from 01.11.1972 to 31.03.1982 and 65 days between 26.10.1971 to 01.11.1972 has to be excluded. If that being the case, according to the Government, the petitioner will not have 10 years of net qualifying service,



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and thereby, not entitled for pension as provided in G.O.Ms.No.42 dated 27.05.2005.

8. The learned counsel for the 2nd appellant supports the case of the first appellant.

9. Despite the names of the respondents printed in the cause list, there is no representation for the respondents.

10. From the perusal of the writ petition, the defence of the writ petitioner is that the leave on loss of pay has not been proved and the same is fictitious one. The above defence would manifest through the absence of disciplinary proceedings initiated against the petitioner for the long leave on loss of pay. It was also the defence that there are some discrepancies between the service register of the petitioner vis-a-vis counter statement filed by the respondents/appellants.

11. We have given our anxious consideration to the submissions made by the learned Additional Government Pleader for the first appellant, and the learned counsel appearing on behalf of the 2nd appellant.

12. It is not in dispute that if the petitioner completes 10 years of net qualifying service as on 01.04.1982, by virtue of G.O.Ms.No.42 dated 27.05.2005, he will become eligible to have pension. But the issue before us



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is, whether he has 10 years of net qualifying service. Admittedly, on a actual arithmetic calculation, the petitioner did not complete full 10 years service between the relevant period. However, by invoking Rule 43(2) of Pension Rules, and treating the fraction of the year as half year, the petitioner brought within net qualifying service of 10 years. However, the appellant contended that leave on loss of pay has to be excluded from the above qualifying service.

13. Therefore, now, the issue to be adjudicated is, whether the period of leave on loss of pay projected by the respondent qua 308 days between 01.11.1972 to 31.03.1982 and 65 days between 26.10.1971 to 01.11.1972 are to be excluded from the calculation of the net qualifying service or not is to be seen. By virtue of Pension Rule 18, all leaves during service for which leave salary is payable, and extraordinary leave granted on Medical Certificates shall count as a qualifying service. Therefore, it is apparent that the leave on loss of pay cannot be counted while calculating the net qualifying service.

14. However, the Writ Court disbelieved the case of leave on loss of pay on the following ground that there is a discrepancy between the counter statement and the leave extract from service register and also on account of no disciplinary proceeding initiated for such long leave on loss of pay. But,



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this Court cannot countenance such finding of the learned Single Judge for the reason stated infra.

15. It is pertinent to mention here that we are dealing a fact in issue of the period between 1972-1982, after 31 years qua in 2013. But, the learned Single Judge by taking into consideration of the fact that there was no disciplinary action initiated against the petitioner for such a long leave on loss of pay for 308 days, disbelieved the case of the respondent. We should not forget the fact that such 308 days was spread over the period of 10 years. At this length of time, it is impermissible to investigate or to postmortem what had happened about 30 years back. The learned Single Judge has also found that there are discrepancies between the service register extract and the counter statement. Even if there is any discrepancy, it may be only with reference to number of days and not as to there was no leave on loss of pay at all. It is pertinent to mention here that fortunately even after a period of 30 years, the service records are produced. But the Writ Court did not record what was the discrepancy between the service book and the counter statement.

16. To understand the whole gamut of the issue, this Court deems it



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appropriate to extract the mode of calculation made by the respondents.

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“A. IN THE STATE TRANSPORT CORPORATION

<i>Cut of date as per G.O.Ms.No.42, Transport (RW)</i>	<i>D</i>	<i>M</i>	<i>Y</i>
<i>Department dated 27.05.2005</i>	31	03	1982
<i>Date of absorption</i>	01	11	1972

<i>Total days of service from 01.11.1972 to 31.03.1982</i>	30	04	09
<i>Less Non qualifying service (LLP) period (308 days)</i>	08	10	00

Net qualifying service in the Transport Corporation 22 06 08

B. IN THE TAMIL NADU STATE TRANSPORT DEPARTMENT

Date of joining in service 26 10 1971

Date of absorption 01 11 1972

Total days of service from 26.10.1971 to 01.11.1972 05 12 00

Less Non qualifying service (LLP) period (65 days) 05 02 00

Net qualifying service 00 10 00

50% of the net qualifying service period during daily wage working as per G.O.Ms.No.408, Finance (Pension) Depart. dt.25.08.2009

Total period for the purpose of calculating pension of the petitioner (A+B) 00 05 00

Net qualifying service in the Transport Corporation 22 06 08

Net qualifying service in the T.N State 00 05 00

Total qualifying service as per G.O.Ms.No.42, Transport (RW) Department dated 27.05.2005 and G.O.Ms.No.408, Finance (Pension) Depart. Dt.25.08.2009 22 11 8

Since the petitioner has put in a combined net qualifying service of 8 years, 11 months and 22 days, he is not entitled for pension as per Rule



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43(2) of the Tamil Nadu Pension Rules.”

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17. Even according to the petitioner, the total days of service from 01.11.1972 to 31.03.1982 is 9 years 4 months and 30 days. According to 50% of the net qualifying service period during daily wages was 6 months. Thus, both the calculations are tallied with each other. But the only issue is, deduction towards leave on loss of pay.

18. It is pertinent to mention here that the pension is not a bounty and the same is an entitlement of the workman according to the Rules prescribed under the Statute. According to the Pension Rules, while calculating the net qualifying service, the leave on loss of pay has to be excluded. If the leave on loss of pay is excluded as per the calculation, the petitioner had only net qualifying service of 8 years 11 months and 22 days. The reason assigned by the Writ Court for not taking into consideration of leave on loss of pay is irrational, that too when there are no contra evidence submitted by the petitioner. Therefore, this Court is of the firm view that the order of the Writ Court granting pension by simply ignoring the leave availed by the petitioner on loss of pay is against the Pension Rules. Hence, the impugned order of



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the Writ Court is liable to be interfered with.

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19. In the result, this Writ Appeal is allowed by setting aside the order dated 03.09.2020 passed in W.P.No.10846 of 2013. No costs. Consequently, connected CMP is also closed.

[S.M.S., J.] [C.K., J.]
19.08.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes



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S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

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Pre-delivery judgment in
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