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W.P. No. 482 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 482 of 2018

T. Parthiban

... Petitioner

Vs.

1. Government of Tamilnadu,
rep., by its Secretary,
Finance Department,
Government of Tamilnadu,
Fort St. George, Chennai – 600 009.

2. The Secretary,
Government of Tamilnadu,
Transport (RW1) Department,
Fort St. George, Chennai – 600 009.

3. Metropolitan Transport Corporation,
Rep., by its Managing Director,
Pallavan House, Anna Salai,
Chennai – 600 002.

4. The Senior Deputy Manager (HR),
Metropolitan Transport Corporation,
Pallavan House, Anna Salai,
Chennai – 600 002.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the fourth respondent in Letter No. 16168/ONaThaPi/MaPoKa/2017, dated 05.09.2017, quash the same and consequently direct the respondents to sanction the



petitioner's monthly pension with effect from 01.04.1982 notionally and with monetary benefits with effect from 01.01.1988, with arrears, increase and revision pension and dearness allowance, together with interest at the rate of 12% per annu, by counting his entire daily rated monthly paid service/half of his daily rated monthly paid service along with the petitioner's regular service from 01.11.1972 to 31.03.1982 and by rounding off the fraction of service above 3 months as one completed half year as per Rule 43(3) of the Tamilnadu Pension Rules, 1978, award costs and thus render justice.

For Petitioner : Ms. H. Nandhini
for V. Ajoy Khose
For Respondents : Mr. L.S.M. Hasan Fizal,
Additional Government Pleader for RR1 & 2
Mr. A. Vinothraj, for RR3 & 4

ORDER

Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents 1 and 2 and the learned Standing Counsel for the respondents 3 and 4 and carefully perused the material available on record.

2. Learned counsel for the petitioner would submit that the petitioner joined the service of the second respondent Department, as Conductor on 05.11.1971. He was made permanent with effect from 01.11.1972. The petitioner was sent on deputation to the third respondent Corporation with effect from 01.05.1975. He retired from services of the third respondent Corporation on 31.05.2014, on attaining the age of superannuation. As per TNSTCE Pension Rules, he was sanctioned pension for the service rendered in the third respondent Corporation by order dated



25.01.2005. Later, the third respondent issued a revised pension sanction order dated 07.03.2006.

2.1 Learned counsel further contends that, the Apex Court fixed cut-off date for absorption as 01.04.1982. Therefore, from 01.11.1972 to 31.03.1982, the petitioner had rendered total qualifying services of 9 years 3 months. The petitioner was on daily rated monthly paid service from 05.11.1971 to 31.10.1972, for 30 months and 27 days.

2.2 Learned counsel submits that half of the said daily paid service comes to 7 months. Therefore, if 7 months are added to regular service of 9 years and 3 months, his total service comes to 9 years and 10 months. The petitioner was on loss of pay for 17 days. If the loss of pay is deducted from his total service, the net qualifying service comes to 9 years, 9 months and 13 days.

2.3 Learned counsel further contends that as per G.O.(Ms) No. 24, Finance (Pension) Department, dated 13.01.1986, the fraction of service above 3 months shall have to be taken as one full half year. Therefore, the petitioner had completed 20 full half years and completed 10 years of net qualifying service for getting pension. As such, the action of the fourth respondent in rejecting the representation dated 31.11.2017 of the petitioner on the ground that the petitioner did not complete 10 years of qualifying service so as to get pension, as per the conditions stipulated in para 11(5) of G.O.(Ms) No.96, Transport Department, dated 31.07.2015 and as per



the Government's reply in Government Letter No.10567/Transport/PaMuNa-6/17, dated 21.07.2017, is illegal, arbitrary and against to the judgment of the Apex Court and this Court.

2.4 Learned counsel for the petitioner has placed reliance on the order dated 28.03.2024 in W.P. No. 10235 of 2013 passed by the learned Single Judge of this Court and contends that, in identical circumstances, this Court directed the respondents therein to sanction monthly pension by counting his service from the date of his initial appointment from 01.01.1988 with all arrears and other consequential benefits with interest at the rate of 5% per annum. Accordingly, the learned counsel for the petitioner requested this Court to allow the writ petition by setting aside the order impugned in this writ petition.

3. On the other hand, the learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that the fourth respondent had rightly rejected the demand of the petitioner due to his ineligibility and non qualification and for not rendering the mandatory qualifying service.

3.1 Learned Additional Government Pleader further submits that, by order dated 13.12.2023, a Division Bench of Madurai Bench of Madras High Court in W.A.(MD). Nos. 1290 to 1294 of 2019 and batch has noted that the Apex Court directed the Government of Tamil Nadu and Transport Corporations to extend



pensionary benefits to eligible employees based on the cut-off date of 01.04.1982.

Consequently, the Court directed the assessment of employee eligibility and settlement of pensionary benefits.

3.2 Learned Additional Government Pleader further contends that, each employees eligibility is to be determined based on their service particulars and benefits received, including Provident Fund settlements and Government Pension. Learned Additional Government Pleader further contends that the petitioner's request to round off his service period beyond three months under Rule 43(3) of the Tamil Nadu Pension Rules, 1978, is not applicable for determining the minimum qualifying period for pension, but only for calculating pension amounts after eligibility has been established. Since the petitioner does not meet the 10 year service requirement, this provision cannot be invoked to qualify him for pension. Accordingly, the learned Additional Government Pleader submits that the petitioner is not entitled for the relief sought in this writ petition and accordingly, requested this Court to dismiss the writ petition, as devoid of merits.

4. Having considered the submissions of the respective counsel, it appears that the admitted facts are not in dispute. The only issue is, whether the petitioner is entitled for the pensionary benefits, as per the cut-off date fixed by the Apex Court as 01.04.1982 or not.



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5. Without discussing more about the facts of the case, in our view, it is appropriate to look into the order dated 28.03.2024 in W.P. No. 10235 of 2013 passed by the learned Single Judge of this Court for better adjudication of the issue involved in this case. The relevant paragraphs 9 to 12 of the said order, is extracted herein under: -

“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 with effect from 30.09.1993. As on date of filing the writ petition, the petitioner was aged about 69 years 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.”*

6. In the present case also, the petitioner was appointed on 05.11.1971. If the services are calculated from 05.11.1971 to 01.04.1982 i.e., the cut-off date fixed by the Apex Court, he has 10 years of qualifying service and he is eligible for pension as per Tamil Nadu Pension Rules. The facts of the cases wherein, the learned Additional Government Pleader has placed reliance are different and as such, not applicable to the facts of the present case.

7. For the aforesaid reason, this Writ Petition is allowed with the following direction: -

i) The respondents are directed to sanction the petitioner's monthly pension by counting his service from the date of his initial appointment, with all arrears and consequential benefits with interest



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at the rate of 5% per annum, within a period of eight weeks from the date of receipt of copy of this order.

8. There shall be no order as to costs.

02.12.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To

1.The Secretary,
Government of Tamilnadu,
Finance Department,
Government of Tamilnadu,
Fort St. George, Chennai – 600 009.

2.The Secretary,
Government of Tamilnadu,
Transport (RW1) Department,
Fort St. George, Chennai – 600 009.

3.The Managing Director,
Metropolitan Transport Corporation,
Pallavan House, Anna Salai,
Chennai – 600 002.

4.The Senior Deputy Manager (HR),
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BATTU DEVANAND, J.

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