IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE P.DHANABAL

W.A.No.18 of 2024

V.Govindarajulu ..Appellant

Vs.

1. The Secretary,
   State Transport Department,
   Fort St.George,
   Chennai - 600 009.

2. The Managing Director,
   Metropolitan Transport Corporation,
   Anna Salai,
   Chennai - 600 002. ..Respondents

Writ Appeal filed under Section 15 of Letters Patent Act, against the order passed by this Court in W.P.No.21564 of 2023 dated 21.07.2023.

For Appellant : Mr.S.Senthilnathan

For Respondents : Mr.V.Ravi,
Special Govt.Pleader for R1
Mr.C.Gouthamaraj,
Standing Counsel for R2.

JUDGMENT

(The judgment of the Court was delivered by J.Nisha Banu,J.)

This writ appeal has been filed as against the order passed in W.P.No.21564 of 2023 dated 21.07.2023, by which, the learned Judge has dismissed the writ petition which was filed challenging the order passed/ by the Labour Court in the claim petition in C.P.No.43 of 2018. The said claim petition was filed claiming arrears of pension from 01.01.1985 to 30.11.2017 along with interest. The Labour Court has dismissed the claim petition filed by the appellant herein .

2. The case of the appellant is that he joined the erstwhile State Transport Department on 05.08.1971 and was absorbed permanently on 30.04.1975 in Pallavan Transport Corporation. He retired from service on 30.06.2002. For treating the services rendered in the Transport Department as pensionable service, the Hon'ble Supreme Court in C.A.No.1444 & 1445 of 1999 fixed the cut off date as 01.04.1982. Since

the pension is denied to the appellant, he filed C.P.No.43 of 2018 before the II Additional Labour Court, Chennai. The Labour Court dismissed the said claim petition. The writ petition filed, challenging the same was also dismissed. Hence, the present writ petition.

3. Learned counsel for the appellant would state that the Hon'ble Supreme Court , by order in C.A.No.1444 & 1445 of 1999 has fixed the cut off date as 01.04.1982, at that time, the appellant was in service in the erstwhile Tamilnadu State Transport Corporation and thus, the service rendered by him is a pensionable service. Learned counsel would state that the learned Judge has given the findings that the cut off date was fixed as 01.04.1982 for the service rendered in the Tamil Nadu State Transport Corporation and the appellant is not entitled to pensionable service as his date of joining as fresh entrant was after the cut off date i.e., 31.01.1985 and that the claim petition was filed in the year 2018, after a lapse of nearly two decades and dismissed the writ petition. Learned counsel would state that when the cut off date was fixed, the appellant was in service in the erstwhile Tamilnadu State Transport Corporation i.e., on 01.04.1982 and that the question of laches does not

arise in petition under Section 33(C)(2) of the Industrial Disputes Act as there is no limitation prescribed for filing petition under the said section. Hence, he would pray to allow the appeal.

4. Per contra, the learned counsel for the respondents would state that the appellant worked with the 1st respondent only for four years and then opted for OSSR system and obtained a sum of Rs.345/- towards gratuity. The appellant was appointed under Section 18(1) of the I.D. Act as a new entrant in the Corporation service from 01.05.1985. As per the decision of the Hon'ble Supreme Court, an employee who has worked for a continuous period of 10 years are eligible to claim pension. The petitioner was appointed in the erstwhile State Transport Department on 08.05.1971. He was absorbed permanently in Pallavan Transport Corporation on 30.04.1975. At that time, the Government had given option to avail either to adopt OSSR System or pension system and the appellant gave his consent for OSSR system. Therefore, the appellant cannot claim pension.

5. Heard the learned counsel for the appellant, the learned Special

Government Pleader appearing for the 1st respondent, the learned Standing Counsel appearing for the 2nd respondent and perused the materials available on record.

6. It is seen from the records that the appellant was appointed in the erstwhile Transport Department and he was absorbed in the Pallavan Transport Corporation permanently. While he was absorbed from the erstwhile Transport Department to the Pallavan Transport Corporation, there was an option obtained from the appellant for the retirement benefit scheme of Government Service., i.e., the workers shall give the option either to remain in the existing system (OSSR) or to be governed by the Madras Liberalized Pension Scheme. The petitioner had opted for OSSR Retirement benefit scheme for the Government Service. Based upon his option, the benefits for his service rendered in the erstwhile TamilNadu State Transport Department for the period upto 30.04.1975 was settled as service gratuity of Rs.345/-. The appellant had received the same vide Indian Overseas Bank cheque dated 24.02.1990. Thus, the service benefits of the Government service had already been settled by the 1st respondent. Therefore, as per Rules 21 and 22 of the Tamil Nadu

Pension Rules, 1978, which deals with cases of termination and recounting of service, the appellant is not entitled for Government pension.

7. As per the order of the Hon'ble Supreme Court in C.A.Nos.1444 & 1445/1999, the cut off date for treating the service rendered in Tamilnadu State Transport Department as pensionable service has been fixed as 01.04.1982. Thus, as per the order of the Hon'ble Supreme Court, the employees who had put in service of 10 years and above are eligible for Government Pension. The appellant was appointed in the erstwhile Transport Department on 08.05.1971 and was absorbed permanently in Pallavan Transport Corporation on 30.04.1975. At that time, the appellant has given option for OSSR system. The appellant was removed from service for unauthorized absence from duty with effect from 26.10.1982. Thereafter, he was reinstated into service under 18(1) settlement as a fresh entrant in Pallavan Transport Corporation at Vadapalani Depot with new staff number D13115 and he retired from service on 30.06.2002. He has rendered most of the service in the 2nd respondent Corporation only and is getting pension of Rs.8339/- per

month through Tamil Nadu State Transport Corporation Employees Pension Fund Trust vide PPO.No.A01089. The appellant is not having any pre-existing right to claim for arrears of pension from the 1st respondent as he was transferred to Pallavan Transport Corporation permanently vide order dated 01.04.1983 and gave an option to remain in OSSR retirement benefits scheme. The option given by the appellant was also entered in his service register. Therefore, he is not having locus standi to claim Government pension as he is getting pension from the 2nd respondent through Tamilnadu State Transport Corporation Employees Pension Fund Trust. Thus, the appellant is not eligible to claim pension arrears from 01.01.1985 to 30.11.2017.

8. In view of the above, we find no infirmity or illegality in the order passed in W.P.No.21564 of 2023 dated 21.07.2023 to interfere with. Therefore, the Writ Appeal fails and the same is dismissed. No costs.

(J.N.B,J.) **(P.D.B., J.)**

01.07.2024

Index : Yes / No
Internet : Yes
vsi

To

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   Metropolitan Transport Corporation,
   Anna Salai,
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J. NISHA BANU, J.
and
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