



W.P.No.9612 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.9612 of 2012

1. S.Kannan
2. Ramayee

... Petitioners

(P2 is substituted as LR of deceased P1 S.Kannan, as per order dated 22.02.2017 by MSJ in M.P.No.1 of 2014 in W.P.No.9612 of 2012)

-VS-

- 1.Government of Tamilnadu,
Represented by its Secretary,
Transport Department,
Fort St. George,
Chennai 600 009.
- 2.Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Represented by its Managing Director,
Vazhudhareddy,
Villupuram.
- 3.Tamilnadu State Transport
Corporations Employees
Pension Fund Trust,
Represented by its Administrator,



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Thiruvalluvar Illam,
Pallavan Salai,
Chennai 600 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Declaration, declaring that the action of the 2nd respondent in refusing to consider the petitioner's claim for pension on the ground that there were two different date of birth entered in his service register as illegal and consequently direct the respondents to sanction and pay him monthly pension for his entire service, including the service rendered in the State Transport Department, with effect from 01.04.1999 with arrears and all other consequential benefits with interest at the rate of 18% per annum and also to continue to pay him pension every month as per the Rules, by taking 17.03.1941 as his date of birth, award costs.

For Petitioners : Ms.S.Sindhumathy
for Mr.V.Ajoy Khose

For Respondent 1 : Mr.S.Arumugam,



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Government Advocate

WEB COPY For Respondent 2 : Mr.M.Aswin

For Respondent 3 : Mr.P.Paramasivadoss

ORDER

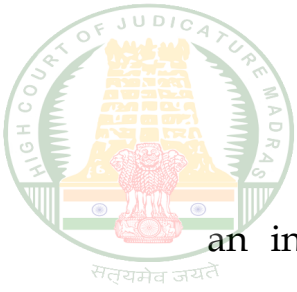
The issue that arises for consideration in this writ petition is the eligibility and entitlement of the original writ petitioner namely S.Kannan, S/o.Subbarayan, for payment of pension who worked as a driver in the second respondent's corporation and retired from service on attaining the age of superannuation on 31.03.1999. During the pendency of the writ petition, the original writ petitioner died on 01.03.2014 and consequently, his legal heir namely, the second petitioner was brought on record.

2. The brief facts, that are necessary for disposal of the present writ petition, are as under:



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WEB COPY The original petitioner was initially appointed on a daily wage basis in Tamilnadu State Transport Department on 13.04.1967 and thereafter, his service was regularized in the said Department on 01.09.1969. Thereafter, the service of the petitioner was absorbed to Thanthai Periyar Transport Corporation DR0 106 with effect from 01.05.1975. While working as such in the second respondent's corporation, the petitioner was discharged from service, on medical grounds, on 15.07.1989. Thereafter, in terms of the settlement arrived at under Section 18(1) of the Industrial Disputes Act, the petitioner was reinstated the as entrant without continuity of service on 15.09.1989 in terms of G.O.Ms.No.746, Transport Department, dated 02.07.1989 and thereafter, the petitioner was retired from service on attaining the age of superannuation on 31.03.1999. Subsequently, the petitioner made a claim for payment of pension before the 1st respondent as well as the 2nd respondent. The 1st respondent has not processed the pension papers. Thereafter, the petitioner sought for



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an information under RTI Act. In response, the 1st respondent through Letter No.10667-2009/பொது/தநாஅபோக(வி)/2009, dated 14.10.2011 informed the petitioner that there is a confusion with regard to the date of birth of the petitioner and required the petitioner to clarify on that aspect. At that stage, the petitioner has approached this Court by way of a present writ petition making a claim of payment of pension for the service rendered in the State Transport Department as well as the 2nd respondent's corporation.

3. The first respondent filed a counter affidavit and it is categorically admitted that the petitioner has completed 10 years of service in the State Transport Department from 01.09.1969 to 31.03.1982 and therefore, he is eligible for Government Pension. However, no pension is paid to the first petitioner on the ground that there is some confusion with regard to the date of birth of the petitioner as per the records available in the first respondent's corporation. Admittedly the petitioner was allowed to retire on

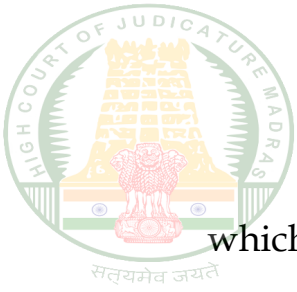


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attaining the age of superannuation on 31.03.1999 and therefore, the

birth year of the petitioner to be taken into consideration is only the year corresponding to the year 1999. The case of the petitioner is that they have not considered the birth year of the petitioner as 1949. In terms of superannuation, 1949 would be the date of birth year of the petitioner and therefore, the first respondent ought to have taken into consideration the service rendered by him in the first respondent's State Transport Department by taking the year 1949 as birth year of the first petitioner and ought have released the pension eligible for Government service.

4. It is admitted that the service rendered with effect from 01.04.1982 in the second respondent's corporation is required to be taken into consideration for the purpose of ascertaining the eligibility of the petitioner for payment of pension in terms of the Tamilnadu State Transport Corporation Employee Pension Fund. It is not in dispute that all the existing members as on 01.09.1998, i.e. the date on



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which the pension Rules came into force, are eligible for pension in terms of the State Pension Fund Rules subject to satisfying the requirement of rendering eligible service. The eligible service in terms of the said Rules is 10 years. Then the question that needs to be answered has whether the petitioner is completed 10 years of service in terms of the Employee Provident Fund Pension Rules in the respondent's corporation.

5. The second respondent filed a counter affidavit and stated that the first petitioner has only completed 8 years 5 months and 1 day service in the second respondent's corporation and therefore he is not eligible for pension in terms of the Employee Provident Fund Pension Rules. But in the calculation made in the counter affidavit and as per the memo dated 21.01.2025, the second respondent has not taken into consideration the service rendered by the petitioner from 01.04.1982 to 15.07.1989 the date on which the petitioner was discharged from service on medical grounds. If the said service was



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taken into consideration, the petitioner would have completed the minimum 10 years service. In order to acquire the eligibility for Payment of Pension in terms of Employees Provident Fund Rules of the respondent's corporation, whether the service rendered from 01.04.1982 to 15.07.1989 is to be taken into consideration or not is the question required to be examined. In terms of Rule 19(1) of the Rules Governing the Employees Provident Fund of the respondent's corporation, the employees are re-employed, after they are discharged from service on medical grounds, he is eligible for continuity of membership and however, the benefits will be allowed only at the time of normal retirement from service. The relevant clause (c) of Rule 19 reads as under:

“(c) Medically Discharged Cases

In the case of employee who are medically discharged and are not re-employed, they are eligible for benefits under clause 19(a) above. If they are re-employed, they are eligible for continuity of membership and the benefits will be allowed only at the time of normal retirement by counting the



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past service also."

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6. In terms of the above clause (c) of Rule 19, it is evident that in case employee is discharged from service on medical grounds and re-employed, the past service rendered by such re-employed person shall be taken into consideration and then ascertain his entitlement for payment of pension in terms of the Employee Provident Fund Rules. In the instant case, admittedly, the first petitioner was discharged from service on 15.07.1989 only on medical grounds and thereafter, he was re-employed. Hence under clause (c) of Rule 19, the service rendered from 01.04.1982 to 15.07.1989 is bound to be taken into consideration to ascertain his eligibility for payment of the pension in terms of the Employee Provident Fund Rules of the respondent's corporation. It is not in dispute that, once the first petitioner fulfill the requirement of 10 years of minimum service, the petitioner is eligible for pension in terms of the Employee Provident Fund Rules applicable to respondent's corporation.



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WEB COPY 7. In the light of the above, the petitioner fulfills the requirement of completing 10 years of qualifying service by duly taken into consideration the service rendered by him from 01.04.1982 to 15.07.1989 and thereafter from the date of reinstatement till the date of superannuation excluding the absence period and hence the claim of the first petitioner for payment of pension in terms of the Employee Provident Fund Rules cannot be denied.

8. In view of the above, the writ petition is allowed directing the first respondent to forthwith take steps of payment of pension payable to first petitioner with effect from 31.03.1999 and pay the same to the second petitioner together with arrears within a period of *three months* from the date of receipt of a copy of this order. In case the second petitioner is entitled for family pension on the death of the first petitioner, the same shall also be paid within the above stipulated time. Further the respondents 2 and 3 are directed to



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count the service rendered by the first petitioner from 01.04.1982 to 15.07.1989 and from 15.11.1989 to 31.03.1999 and process the case of the petitioner for payment of pension in terms of the Employee Provident Fund Rules applicable to the respondent's corporation and complete the entire exercise as expeditiously as possible, at any rate, within a period of *three months* from the date of receipt of a copy of this order. In case the petitioner was already paid back any amount of pension contribution at any point, the second respondent is at liberty to adjust the same from out of the amounts payable to the petitioners. No costs.

21.01.2025

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No



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To

- 1.The Secretary,
Transport Department,
Government of Tamilnadu,
Fort St. George,
Chennai 600 009.
- 2.The Managing Director,
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Vazhudhareddy,
Villupuram.
- 3.The Administrator,
Tamilnadu State Transport
Corporations Employees
Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai 600 002.



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MUMMINENI SUDHEER KUMAR,J.

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