

(2011) 08 MAD CK 0275

In the Madras High Court

Case No : Writ Petition (MD) No. 3390 of 2006

M. Nagarajan

APPELLANT

Vs

Tamil Nadu State Transport Corporation

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Employees Provident Fund Trust Rules — Rule 13, 16

Citation : (2011) 08 MAD CK 0275

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant;

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioners pray for issuance of writ, in the nature of Mandamus, directing the Respondent, Tamil Nadu State Transport Corporation to pay pension to the Petitioner along with arrears etc.

2. The Petitioner served in the Tamil Nadu State Transport Corporation for a period of 20 years, and thereafter, sought voluntary retirement. The pension scheme was introduced by the Respondent on 01.09.1998. The Petitioners claimed that they fell within the pension scheme and were entitled to pension even on, Voluntary Retirement, under the scheme.

3. The writ petitions are highly belated, however, keeping in view of the fact that the pension is recurring cause of action, the writ petitions cannot be dismissed on the ground of delay and laches, as arrears benefits can be restricted to 3 years and two months, prior to filing of the writ petitions.

4. The action of the Respondent, in not granting pension, is challenged on the ground that the Respondent cannot discriminate between the employees, who retired from service and those who sought voluntary retirement, after putting in pensionary service. The Petitioners have also raised the plea of legitimate

expectations.

5. No counter has been filed to controvert the averments made in the writ petitions, nor anybody has put in appearance on behalf the Respondents.

6. The learned Counsel for the Petitioners, in support of the plea raised in the petitions, placed reliance on the judgment of this Court, in the case of C. Nagarajan v. The Management, Tamil Nadu State Transport Corporation, rep. by its Managing Director (Kumbakonam Division-I), Ltd., Kumbakonam-1 and another, in W.P.27156 of 2005, decided on 02.09.2010, wherein this Court has been pleased to lay down as under:

15. It is an admitted fact that the Petitioner joined the service on 23.08.1976 and was regularised on 23.08.1998 without any break in service. Learned Counsel appearing for the Petitioner submitted that only considering the age of the Petitioner and the qualifying service rendered by him more than 20 years, after deducting the period of loss of pay, the Petitioner was permitted to get voluntary retirement (VRS) by the Respondents. Only after making payments under the VRS Scheme, by way of cheque, the Respondents turned round and took a different stand that he has shortage of qualifying services against law and principles of natural justice.

16. Only after making considering the date of joining, date of retirement and also the details of loss of pay of the Petitioner, he was permitted to retire under VRS, on the ground that he had completed twenty years of service and also attained the age of fifty years. Based on the view taken by the Respondents, a cheque for a sum of Rs. 53,071/- was also issued under the Employees Pension Scheme to the Petitioner. Hence, the Respondents are estopped from raising the new plea, totally contradictory to the view already taken, while permitting the Petitioner for getting voluntary retirement. According to the learned Counsel for the Petitioner, having considered the age and the qualifying service, the Petitioner was permitted to retire voluntarily and cheque was also given for the amount payable under VRS Scheme. However, against law and principles of natural justice, the Respondents instruct the Bank to stop payment for the cheque. It was further argued on the side of the Petitioner that the Respondents cannot take two different stands one for permitting the Petitioner to get voluntary retirement under VRS and another for denying the benefits under the VRS.

17. The Honourable Supreme Court in S.K. Dua Vs. State of Haryana and Another, has held that "Interest of delayed payment of retirement benefits legally sustainable in view of Articles 14, 19 and 21 of the Constitution which reads as follows:

In the circumstances, prima facie, we are of the view that the grievance voiced by the Appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the Appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the

Appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14,19 and 21 of the Constitution.

18. A Division Bench of this Court in D.P. Selvaraj Vs. The Government of Tamil Nadu, has held that when there has been a delay in disbursing the arrears of the retiral benefits, the Government servant is entitled to interest on the belated payment of retiral benefits, particularly when the delay is not caused due to the employee.

19. A Division Bench of this Court, by judgment dated 04.07.2008 in The Management of State Express Transport Corporation, Chennai # 2 v. P. Rajarathinam held that for calculating the qualifying service as per Clause 3 of Sub Rule (p) 2 of the Tamil Nadu Transport Corporation Employees's Pension Fund, the date of regular employment or the date on which, the concerned employee becoming a member of the Employees' Provident Fund will be reckoned. According to the Petitioner, he had become a member of the provident fund scheme on 01.10.1981 and retired under VRS on 30.06.2002 and as such, the Petitioner had qualifying service of more than 20 years. As per Rule 13(e) of the said Rules, fraction or service for six months or more has to be treated as one year and as such, the Respondent therein was held to have completed 20 years of qualifying service and decided that he was eligible for pension.

20. As per Rule 16(a)(ii) of the Employees Provident Fund Trust Rules, a member shall be entitled to voluntarily retirement pension, only if he had rendered a qualifying services of twenty years or more and also on attaining the age of 50 years.

21. The first Respondent, considering the date of appointment, regularisation, date of voluntary retirement and other factors had permitted the Petitioner to retire under VRS, which cannot be disputed. Therefore, after the retirement, the authority cannot go back and take a contrary version, which is detrimental to the interest of the employee as, it adversely affects his right and such a decision is also against principles of natural justice. Had the Petitioner was informed that his proposal for VRS was accepted only for a limited extent and he was not eligible to certain benefits under VRS due to insufficient qualifying service of twenty years, he would not have opted for voluntary retirement.

22. Learned Counsel appearing for the Respondents submitted that for getting the benefits, one must be a member in the scheme for the employees pension fund. Admittedly, he was a member in the second Respondent Trust. As the first Respondent / management has permitted the Petitioner to get voluntary retirement, both the Respondents have been considered the same before permitting the Petitioner to retire voluntarily under the scheme. According to the Petitioner, he had paid contribution for more than 20 years. Even otherwise, to meet the ends of justice, the amount, if any payable from the date of becoming

the member in the scheme till the date of voluntary retirement, the contribution be calculated and the balance amount payable be deducted.

23. It cannot be disputed that while permitting the Petitioner to retire under VRS, the Respondents have taken a view that the Petitioner had attained the age of 50 years and also got the qualifying service of 20 years, as the same are the prerequisites for permitting an employee under VRS. Having permitted the Petitioner to retire under VRS, the Respondents have made the employee to have hope in getting the benefits, which are available under VRS. Had he been put on notice, he would have selected the option either to continue his service, so as to have twenty years of qualifying service for getting the benefits or otherwise. Without having 20 years of qualifying service, the Respondents could not have permitted the Petitioner to retire under VRS. I am of the considered view that the second Respondent is bound by the view taken by the first Respondent, so far as it relates to the qualifying service is concerned. The second Respondent cannot take a contrary decision, however, harmonious construction is legally possible, whereby if there is any shortage of dues payable to the second Respondent, that alone can be deducted.

24. This Court in the decision reported in Jothi v. Mani and another relating to the order passed in W.P.(MD) No. 1829 of 2008 dated 24.10.2009, took a similar view in D.P. Selvaraj Vs. The Government of Tamil Nadu, has held that the Petitioner is entitled to the amount with interest at 12% p.a. for the arrears of retirement benefits from the date when the amount felt due till the date of its actual payment. The aforesaid decisions are squarely applicable to the facts and circumstances of this case. This Court is of the view that there is No. justification on the part of the Respondents for not disbursing the retirement benefits to the Petitioner as on the date of the amount fell due. However, considering the Bank rate of interest, I hold that the Petitioner is entitled to claim 9% interest from the date when the amount felt due till the date of actual payment being made.

25. In the result, the writ petition is allowed and the Respondents are directed to pay monthly pension, commuted value of pension along with arrears thereon with interest at 9% p.a for the delayed payment from the date of the amount fell due till the date of actual payment. The Respondents are also directed to pay the entire amount within a period of four weeks from the date of receipt of a copy of this order. No. order as to costs.

7. The cases of the Petitioners, are securely covered by the decision referred to above.

8. Consequently, these writ petitions are allowed, the Respondent is directed to pay monthly pension along with arrears to the Petitioners. However, the arrears of pension shall be restricted to three years and two months prior, to filing of the writ petitions. The Respondent is directed to pay arrears of pension within two months of receipt of the certified copy of this order, and shall also fix the monthly pension for payment regularly. No. costs.