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The Government of Tamil Nadu Rep. by Its Special Commissioner and Secretary to Government, (Transports) Department, Vs. Tamil Nadu Government Transport, Retired Employees Welfare Association (Formerly Known as Tamil Nadu Transport Employees Urimagal Sangam) Rep. by Its General Secretary, Mr. M. Rajagopal and ors.

The Government of Tamil Nadu Rep. by Its Special Commissioner and Secretary to Government, (Transports) Department, Vs. Tamil Nadu Government Transport, Retired Employees Welfare Association (Formerly Known as Tamil Nadu Transport Employees Urimagal Sangam) Rep. by Its General Secretary, Mr. M. Rajagopal and ors.

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Court : Chennai

Decided On : Jan-09-2008

Reported in : (2008)1MLJ817

Judge : S.J. Mukhopadhaya and ;K. Suguna, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 12(3); Tamil Nadu Pension Rules, 1960; ;Tamil Nadu State Transport Corporation Employees Pension Fund Rules - Rules 2, 7, 9, 13, 14 and 16; [Constitution of India](#) - Article 142

Appeal No. : W.A. Nos. 111 to 113 of 2007

Appellant : The Government of Tamil Nadu Rep. by Its Special Commissioner and Secretary to Government, (Transpor

Respondent : Tamil Nadu Government Transport, Retired Employees Welfare Association (Formerly Known as Tamil Nadu

Advocate for Def. : D.S. Rajasekaran, Adv. for R-1 in WA 111/07, ;K.Vasudevan, Adv. for R-2 in WA 111/07, ;D. Sadhasivam, Adv. for R-1 in WA 112/07, ;Ravi Bharathi, Adv. for R-2 in WA 112/07, ;R.Vaigai, Adv. for R-1 in W

Advocate for Pet/Ap. : R. Viduthalai, AG assisted by D. Srinivasan, AGP

Disposition : Appeal dismissed

Judgement :

S.J. Mukhopadhaya, J.

1. The State Transport was originally under the Transport Department of the State of Tamil Nadu. Subsequently, in the year 1972, the State Government created Transport Corporations for various districts and transferred the assets and liabilities of the Transport Department to the respective Corporations. The service of the State Government employees, who were in the transport department were also transferred and placed under the respective Corporations, where they were posted. They were absorbed in their respective Corporations.

The employees, who were under the State Government and were eligible, were entitled for pension from the State under the rules after their absorption in the corporation. A settlement was arrived with the corporation and separate provision for pension for the corporation employees were also made. Circulars were issued from time to time allowing the benefits. As certain benefits were limited to a class of employees by prescribing cut-off date, they were challenged and the matter was finally settled by the decision of the Supreme Court.

In the year 2005, the State Government issued G.O. ms. No. 42 dated 27th May, 2005, in the light of the different decisions of this Court and Supreme Court, but a cut-off date of 1st Sept., 1998 was fixed under Clause 5(b). Retired Employees Welfare Associations of different corporations challenged the cut-off date as was prescribed in the Government Order by filing different writ petitions in this Court and relief having granted, the State of Tamil Nadu has preferred writ appeals against common judgment dated 27th Sept., 2006, passed by learned single

Judge. They were heard together and disposed of by this common judgment.

2. As the matter stands settled in view of the earlier decisions of this Court and Supreme Court, it is not necessary to discuss all the facts, except the relevant ones, as mentioned hereunder:

As stated above, the State Transport was under the control of the Transport Department of the State. In the year 1972, the State Government created different Transport Corporations for various districts; transferred assets and liabilities of transport department to the concerned corporations. The service of the State Government employees were also placed under those corporations, who were later on absorbed in the respective corporations.

The State Government employees, who were working prior to creation of the corporation in the transport department of the State and completed the requisite period of service were eligible for pension under the Tamil Nadu Pension Rules, 1960. Options were called for from the State Government employees for their absorption in respective corporation, but it took long period and the formalities of absorption were completed between the year 1975 and 1982. On 18th April, 1975, the State Government, from Finance (FR-II) Department, issued G.O. ms. No. 378 relating to terminal benefits such as pension, gratuity, PF, for the employees, who were to be absorbed permanently in all public sector undertakings of the State. In respect of pension and gratuity, the following provision was made:

Pension and Gratuity:

In addition to pay in the public undertaking, an optee will be entitled to pension/gratuity earned by him in Government service prior to such absorption. If the qualifying service under Government is less than ten years, gratuity and Death-cum-Retirement Gratuity alone will be payable. They are permitted to draw their pension/gratuity immediately on absorption in the Corporation.

3. As the procedure for absorption started since 1975 and it took long period (upto 1982) for completion, no cut-off date of absorption was prescribed under G.O. Ms. No. 378 dated 18th April, 1975. Subsequently, on 31st March, 1980, the State

Government from Finance (CFC) Department issued G.O. ms. No. 284 dated 31st March, 1980. By the said Government Order, two significant changes were made, viz.,

a) The pension of employees payable by State Government, who got themselves absorbed in the State owned Corporations/Boards were ordered to be calculated at the time of transfer, but it was ordered to be payable only on retirement of the employee from the public sector corporation. Thereby, payment of pension was suspended during the employment of the employee under the corporation.

b) A cut-off date of absorption of 1st May, 1975 was prescribed for the first time for calculating the terminal benefits.

The option for absorption, which the State Government called for since 1975, finally came to an end on 20th June, 1982, which was the last date for calling for such option. Another G.O. Ms. No. 1028 was issued from Transport Department on 23rd Sept., 1985, giving reference to earlier Government Orders dated 18th April, 1975 and 31st March, 1980 followed by letter of the Finance (Pension) Department dated 5th June, 1985, whereby the Government re-examined the whole issue and decided that in respect of absorption of all erstwhile Tamil Nadu State Transport Department employees in the various transport corporations, their terminal benefits should be settled as per G.O. Ms. No. 378, Finance Department, dated 18th April, 1975 with procedural modification set out in the said order.

4. A large number of employees were absorbed under different corporation much after 1st May, 1975, upto 1982. Though they had completed more than ten years of service under the State, having absorbed under the corporation later on, and in view of cut-off date of 1st May, 1975, as they became ineligible to get the benefit of pension from the State Government, they challenged the same before this Court. Learned single Judge allowed the writ petitions declaring the cut-off date of 1st May, 1975 as illegal. Writ appeals were preferred by the State Government against such judgment reported in 1998 (1) LLN 205 - Govt. of Tamil Nadu v. M.Ananchu Asari and the Division Bench confirmed the order passed by learned single Judge declaring the cut-off date of 1st May, 1975, as illegal and dismissed the appeals.

The State Government, being not satisfied, moved before Supreme Court. The Supreme Court, vide judgment reported in : (2004)11LLJ 1041 SC Government of Tamil Nadu v. M.Ananchu Asari, while observed that there was no merit in the appeal, upheld the judgment of this Court, but made following observation and direction:

16. For the reasons aforesaid, we find no merit in these appeals. The judgment of the High Court is upheld. However, the High Court while indicating that the last date for submitting the options finally should have been taken as the basis for fixation of date, gave a direction to the Government to fix the relevant date in the light of the observations made in the judgment. The High Court proceeded on the basis that it was only on 20-6-1982 and thereafter, that the options were called for. We are of the view that in view of the long lapse of time and in order to avoid further delay and the scope for possible controversies, instead of leaving it to the Government to fix a fresh cut-off date as per the directions of the High Court, in exercise of our powers under Article 142 of the Constitution, we direct that the date 1-4-1982 shall be adopted as the cut-off date in modification of what was prescribed in GO No. 1028 dated 23-9-1985 and GO No. 250 dated 18-11-1996. The reason for selecting the said date is th at the Commissioner and Secretary to Government, Transport Department by his letter dated 5-1-1982 addressed to the Managing Directors of all State transport undertakings requested them to obtain fresh options by 28-2-1982. The memo issued by the Managing Director of KTC Ltd. dated 11-1-1982 makes it clear that the last date for exercise of options was fixed as 28-2-1982 in conformity with the Government's directive. The respective Corporations were supposed to finalise the options sometime thereafter. It is reasonable to presume that PTC Ltd. and other Corporations would have also adhered to the same date. The High Court has referred to the note dated 20-6-1982 issued by the Managing Director of PTC (Metro) Ltd. But it does not fix the last date for submitting the options. It purports to give certain instructions as to the follow-up action to be taken with reference to the options received. Hence, the fixation of the cut-off date as 1-4-1982 would, in our view, be appropriate. Taking into account the aforementioned date for the purpose of assessing the requisite length of service, we direct the appellants to take steps to extend the pensionary benefits to the eligible employees. Having regard to the conduct of the

respondents in seeking the remedy long after the options were exercised, we consider it just and proper to direct that the respondent employees whoever have retired should get the arrears of pension only from 1-1-1988, which date is fixed with reference to the year of filing the first writ petition, namely, WP No. 7012 of 1988. The fixation of pension and payment of arrears should be done accordingly within a period of four months from today. The appellants are entitled to adjust the monetary benefits which the employees would not have received if they were to receive the pension.

From the aforesaid judgment, it will be evident that in exercise of power conferred under Article 142 of the Constitution, the Supreme Court directed that the date of 1st April, 1982 shall be adopted as cut-off date in modification of what was prescribed in G.O. ms. No. 1028 dated 23rd Sept., 1985 and G.O. Ms. No. 250 dated 18th Nov., 1996. Thus, the pensionary benefit to which the State Government employees were entitled from the State Government after their absorption in the corporation stood finally settled by aforesaid decision of the Supreme court.

5. So far as retiral benefits under the corporation is concerned, there was no specific scheme prescribed earlier. Pursuant to an industrial dispute, on 13th Feb., 1999, a settlement under Section 12(3) of the [Industrial Disputes Act, 1947](#), was arrived at between the State Transport Corporation, its employees and the State. As per Clause 18, a new pension scheme was to be formulated for the employees of the State Transport Corporations, including those recruited after 1st Sept., 1998. Pursuant to the settlement under Section 12(3), G.O. Ms. No. 135 was issued from Transport (D) Department of the State on 15th Dec., 2000, approving the 'Tamil Nadu State Transport Corporation Employees Pension Fund Rules'. Rule 2 (p), while defined 'actual service', under Rule 2 (p) (i) provision was made in respect of employees taken over at the time of nationalisation (formation of corporation) in 1972. under Clause (ii) of Sub-rule (p) to Rule 2, provision was made in respect of erstwhile State Transport Department employees, who were not eligible for pension for the service under the State, but absorbed under the Corporations as evident from the said provision and quoted hereunder:

(ii) In respect of erstwhile Tamil Nadu State Transport Department Employees, who were not eligible for pension for the service rendered in State Transport Department, such service will be counted taking a compassionate view for arriving pensionable service, provided they remit back service gratuity or any benefit in lieu of pension together with interest at 12% compounded annually, to provide pension and other benefits for TNSTD service. In respect of erstwhile TNSTD employees who were eligible for pension for service rendered in TNSTD, such service will not be counted for arriving pensionable service under this Scheme.

6. Rule 9 relates to joining the pension fund, including the employees, who were transferred/absorbed from Government department. It was mentioned that their past service will be counted, provided they remit the difference between the capitalist value of the pensionary benefits arrived as per the rules of the Pension Trust and the amount received from the former employer. Rule 13 relates to determination of eligible service. Clause (a) relates to new entrants entering into service on or after 1st Sept., 1998 (not concerned in the present case); Clause (b) relates to existing members as on 1st Sept., 1998 and Clause (c) relates to non-contributory period, which is not to be counted, as evident from the provisions and quoted hereunder:

13. Determination of Eligible Service

The eligible service shall be determined as follows:

(a) In the case of a 'New Entrant' entering into service on or after 1.9.1998, the 'actual service' shall be treated as eligible service. The total actual service shall be rounded off to the nearest year. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored.

(b) In the case of the 'existing member' as on 1.9.1998, the aggregate of actual service as indicated para 2 (p) shall be treated as eligible service.

(c) If there is any non-contributory period during the service, it shall not be counted for arriving the actual service.

The determination of pensionable service is prescribed under Rule 14, as quoted hereunder:

14. Determination of Pensionable Service

a) The pensionable service of the member shall be determined with reference to the contributions received or are receivable on his behalf in the Employees' Pension Fund, subject to the conditions stated in para 13. The pensionable service shall be restricted to 30 years for the purpose of calculation of pensionary benefits.

b) If a member is eligible for pension under any other scheme, pension payable under the scheme shall be calculated as follows: Gross pension shall be calculated notionally including the period of pensionable service rendered with the previous employer. Total eligible service shall be restricted to 30 years. The difference between the gross pension and the amount already received by the individual for the service rendered with the previous employer or the pension eligible under the scheme which ever is less shall be the eligible pension under the scheme.

7. In view of the aforesaid provision, apart from pension to which erstwhile State Government employees were entitled from State Government under the Tamil Nadu Pension Rules, 1960, who had completed requisite years of service, they also become eligible for pension from the corporation under the Tamil Nadu State Corporation Employees Pension Fund Rules, if he has rendered qualifying service.

8. As noticed, the Supreme Court decision was rendered on 29th Oct., 2003, (reported in . Having lost before the Supreme Court, the State Government preferred Review Petition No. 648 and 649 of 2004 reported in . It appears that the said review petition was preferred in view of the fact that in the meantime a settlement under Section 12(3) was arrived at between the employees of the corporation, the corporation and the State pursuant to which the pension rules for the corporation employees was framed. Supreme Court, by its judgment dated 1st Feb., 2005, dismissed the review applications with the following observations:

3. Certain contentions are raised on the merits, especially, in regard to the conclusion of this Court that the process of absorption did not take place in 1975.

We are not inclined to rehear the arguments on merits. If the petitioners failed to furnish the necessary material even during the pendency of appeal in this Court, that is no ground to review the judgment. There is also nothing to be clarified insofar as the operative part of the judgment is concerned. It is not necessary for us to express any view on the question whether the Transport Corporation employees who were erstwhile government servants retiring after 1-1-1988 would be eligible to get the pension in addition to the salary drawn by them in the Corporation, as per the Rules and GOs applicable to them. It is the contention of the learned Counsel for the respondent employees that the GOs issued by the Government themselves contemplated such payment and in fact those who were parties to the earlier writ petitions were given that benefit. This issue cannot legitimately form the subject-matter of either review or clarification. Hence the review petitions are dismissed with the above observations. Time for implementation of judgment is extended by four months from today.

9. It is just after about few months, the State Government issued impugned G.O. Ms. No. 42 on 27th May, 2005, from its transport department, taking away the right of those, who were entitled for pension from the State Government and Corporation on the ground that they are not eligible for second pension as per G.O. Ms. No. 1028 dated 23rd Sept., 1985. Such order was passed giving reference to Supreme Court order, though, in fact, Supreme Court dismissed the SLP as also the review applications. The relevant portion of the order is quoted hereunder:

5. The Government after re-examination of the whole issue have decided to implement the orders of the Supreme Court of India, referred in the judgement seventh read above and accordingly issue the following orders:

The Government fix the cut off date as 1.4.1982 in respect of the erstwhile Tamil Nadu State Transport Department employees who had put in less than 10 years of government service as on their permanent absorption in State Transport Undertakings, only for the limited purpose of assessing the requisite length of service of 10 years to earn pension. The eligible erstwhile Tamil Nadu State Transport Department employees whoever have retired shall get the arrears of

pension only from 1.1.1988 which date is fixed with reference to the year of filing the first writ petition. The fixation of pension and payment of arrears shall be done accordingly as ordered by the Hon'ble Supreme Court of India as per the rules and Government Orders applicable to them in the following manner:

a) The erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil Nadu State Transport Corporations and retired before 1.1.1988 or after 1.1.1988 but before 1.9.1998 be paid pension if they had put in the qualifying service of 10 years as on 1.4.1982. Period of Daily paid services, leave on loss of pay and suspension treated as specific punishment should be excluded while arriving the net qualifying service.

b) As per the Clause 2 (p) (ii) & Clause 14 (b) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules issued in G.O. Fourth read above and with reference to Rule 7 of the Tamil Nadu Pension rules, the erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil Nadu State Transport Corporations and retired after 1.9.98 be paid pension as per the Pension Scheme of the State Transport Corporations brought into force by the settlement under Section 12(3) of the [Industrial Disputes Act, 1947](#) and they are not eligible for the second pension as per the G.O. third read above.

10. Learned single Judge noticed the aforesaid fact as also different working sheets produced by parties to suggest as to what the actual pension to which one or other employee may be entitled to, if they are provided pension from two different employers and if one compounded pension is given from the corporation. Learned single Judge allowed the writ petitions holding G.O. ms. No. 42 dated 27th May, 2005, particularly in relation to Clause 5 (b) as unconstitutional and, thereby, set aside Clause 5 (b) with direction to the State Government to pay pension to all the employees of the State Transport Corporation retired after 1st Sept., 1998 for the service rendered in the Tamil Nadu State Transport Department as per G.O. Ms. No. 378 dated 18th April, 1975 read with G.O. Ms. No. 1028 dated 23rd May, 1995 and as held by Supreme Court in its judgment reported in 2003 (10) SCC 503.

11. Learned Advocate General, while placed the relevant facts, submitted that a person is not entitled for two pensions under the rules and, thereby, allowing one pension from the State Government and another pension from the Corporation will go against the Tamil Nadu Pension Rules, 1960 and in that background, the impugned order G.O. Ms. No. 42 dated 27th May, 2005, particularly Clause 5 (b) was issued. The aforesaid submission, in fact, has no legs to stand, as Rule 7, as referred to by learned Advocate General, is not applicable in a situation like the present, which reads as follows:

Limitations on number of pensions.- (1) A Government servant shall not earn two pensions in the same service or post at the same time or by the same continuous service.

(2) Except as provided in Rule 16, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed, shall not be entitled to a separate pension or gratuity for the period of his re-employment.

12. From the discussions as made above, the following facts emerge:

a) The employees, who were in the service of the State in its Transport Department and, subsequently, absorbed in different corporations, their cut-off date of absorption was notionally fixed as 1st April, 1982, pursuant to Supreme Court decision reported in in modification of what was prescribed in G.O. Ms. No. 1028 dated 23rd Sept., 1985 and G.O. Ms. No. 250 dated 18th Nov., 1996. Therefore, those who had completed the requisite period of service and become entitled for pension under the Tamil Nadu Pension Rules, they will get only one pension from the State and not two pensions.

b) So far as the eligibility of pension under the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules is concerned, it is another pension, which an employee is earning on completion of requisite period under the transport corporation. Such pension rule has been framed by the corporation pursuant to a settlement made under Section 12(3) of the Industrial Disputes Act, which is binding on all the parties. Apart from transport corporation and its employees, the State Government, being also a party to it, the settlement is

binding on the State Government. As the pension from the corporation has to be paid by the corporation and not by the State Government, it cannot be stated to be a second pension drawn by any employee under the State for the purpose of Rule 7 of the Pension Rules, as quoted above.

13. If the argument as advanced by the learned Advocate General is accepted, it will amount to taking away a right of an employee to get pension under the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules framed pursuant to a settlement under Section 12(3) of the Industrial Disputes Act. The State Government has no jurisdiction to alter the settlement and being bound by the settlement, learned single Judge rightly reversed Clause 5 (b) of G.O. Ms. No. 42 dated 27th May, 2005.

14. There is a difference of pension as is paid by the State Government and the pension as is paid by the Transport Corporation. So far as the State Government is concerned, its expenditure towards pension is made from the consolidated fund of the State Government, but so far as the Transport Corporation is concerned, pension is not paid from the consolidated fund of the State or from the State Government or any other local authority, but is paid from the funds generated by the corporation. A separate budgetary provision is made by the State Government every year to meet the expenditure towards payment of pension to the State Government pensioners. On the other hand, no such budgetary provision is made by State Government for payment of pension to the employees of the transport corporation, which is generated from the earning of the employees' contribution of contributory provident fund under the Pension Fund Trust formed for the purpose of the transport corporation. There is a difference between the two types pension, one paid by the State Government to its employees, which is not contributory in nature, but so far as the corporation is concerned, it is dependant upon contribution of the employee. While the State is bound to pay the pension to the Government employees, it has no liability nor required to give any guarantee to the corporation to pay pension to employees of the corporation.

Thus, it will be evident that the employees, who may earn pension from the State Government, if allowed pension by the Corporation for the service rendered by

them in the corporation, it will not amount to earning two pension in same service or post at the same time or by way of same continuous service and, thereby, not covered under Rule 7 of the Tamil Nadu Pension Rules.

15. For the reason aforesaid, we find no ground made out to interfere with the order passed by learned single Judge and, accordingly, uphold the order and direction as given by learned single Judge vide common judgment dated 27th Sept., 2006. There being no merits, all the writ appeals are dismissed. But there shall be no order as to costs.

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