SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

S.Viswanathan. Vs. the State of Tamil Nadu Rep. and ors.

S.Viswanathan. Vs. the State of Tamil Nadu Rep. and ors.

SooperKanoon Citation : sooperkanoon.com/904918

Court : Chennai

Decided On : Aug-16-2010

Judge : D.Hariparanthaman, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.NO.10089 OF 2009 AND M.P.NO.1 OF 2009

Appellant : S.Viswanathan.

Respondent : The State of Tamil Nadu Rep. and ors.

Advocate for Def. : Mrs.Lita Srinivasan; Mr.G.Munirathnam, Advs.

Advocate for Pet/Ap. : Mr.D.Sadhasivan, Adv.

Judgement :

1. The petitioner was selected in the Competitive Examination conducted by the Tamil Nadu Public Service Commission for the post of Junior Assistant in the Ministerial Service in the Transport Department of Tamil Nadu Government in 1971. Though the Transport Department issued an order dated 31.12.1971 appointing him as Junior Assistant, by an order dated 06.03.1972 he was sent on deputation to work as a Junior Assistant in the Adyar Depot of the then Pallavan Transport Corporation, that was running passenger services in Chennai.

2.The Transport Department of the Tamil Nadu Government operated passenger services all over Tamil Nadu, including Chennai. Later, various Transport

Corporations were formed during 1972 and those Corporations run the passenger services thereafter. Those Corporations are Companies registered under the Companies Act. The workmen employed by the Tamil Nadu State Transport Department were sent on deputation to work in various Transport Corporations.

3.The Government thought of absorbing all the employees of the Tamil Nadu State Transport Department serving in Transport Corporations in those Corporations. The employees of the Transport Corporations are not entitled to pension. Thus, the deputed employees were not willing to get absorbed in the Corporations. In order to persuade the employees to get absorption in the Transport Corporations, the Government issued an order in G.O.Ms.No.378, Finance Department, dated 18.04.1975 providing pension for the services rendered in the Transport Department, while they serve in the Transport Corporations. That is, the workmen would be paid both wages for the services rendered in the Transport Corporations, besides pension for the services rendered in the Transport Department, while they are in service. Pension is payable if the employees rendered 10 years service before 01.05.1975 / 15.09.1975 in the Transport Department, before the absorption. That is, the pension that is normally payable after retirement, was offered during the service itself. The cut off date for absorption was fixed as 01.05.1975 / 15.09.1975. In view of such an attractive offer, the employees opted to get absorbed in the Transport Corporations. However, another order in G.O.Ms.No.284, Finance (CFC) Department, dated 31.03.1980 was passed by the Government withdrawing the benefits given in the aforesaid G.O.Ms.No.378. That is, the offer of pension during service in Transport Corporations was withdrawn. Before the implementation of G.O.Ms.No.378, the aforesaid G.O.Ms.No.284 was passed taking out the rights guaranteed in G.O.Ms.No.378. This led to the workmen challenging the G.O.Ms.No.284 before this Court. This Court set aside the order passed in G.O.Ms.No.284. In these circumstances, the Transport Department issued the order in G.O.Ms.No.1028, Transport, dated 23.09.1985 providing pension as guaranteed in G.O.Ms.No.378. The legal tussle was not over.

4.While so, a section of employees, challenged the fixation of cut off date as 01.05.1975 / 15.09.1975 as they could not get pension, by way of filing writ petitions in W.P.Nos.7012 of 1988 and 6969 of 1990. According to them, the cut

off date was fixed arbitrarily and the decision to absorb them in Transport Corporations with effect from 01.05.1975 / 15.09.1975 was taken unilaterally. According to them, they were deprived to complete 10 years service in the Department so as to get pension. Those writ petitions were allowed by this Court and a Division Bench of this Court also confirmed the same in W.A.Nos.522 of 1992 and 962 of 1993 on 16.09.1997. The matter was taken to the Honourable Apex Court. The Honourable Apex Court confirmed the orders passed by the Division Bench of this Court, in the judgment in GOVERNMENT OF TAMIL NADU AND OTHERS VS. M. ANANCHU ASARI AND OTHERS reported in 2003 (10) SCC 503 and fixed the cut off date as 01.04.1982. However, the Honourable Apex Court held that the pensionary benefits would be paid only with effect from 01.01.1988.

5.The Government of Tamil Nadu filed a review petition, which was dismissed on 01.02.2005, by the Honourable Apex Court, vide judgment in GOVERNMENT OF TAMIL NADU AND OTHERS VS. M.ANANCHU ASARI AND OTHERS reported in 2005 (2) SCC 332. Thereafter, the Government passed an order in G.O.Ms.No.42, Transport (RW) Department, dated 27.05.2005 duly fixing the cut off date as 01.04.1982 and extending the pensionary benefits to the eligible employees, who retired prior to 01.01.1988 or after 01.01.1988 but before 01.09.1998, with effect from 01.01.1988. Pension is payable, if an employee of the Transport Department rendered 10 years of service as on 01.04.1982.

6.In this case, as on 01.04.1982, the petitioner has served for 10 years and 25 days from 06.03.1972 to 31.03.1982. He served in the third respondent Corporation upto 30.04.1998 till he voluntarily retired. He suffered loss of pay for 83 days. Hence, there was a short fall of one month and 28 days to complete 10 years of net qualifying Government service as on 01.04.1982. That is, the petitioner has rendered 9 years 10 months and 2 days.

7.According to the petitioner, he is entitled to pension for his service, by rounding of his service period to 10 years. In this regard, he relies on G.O.Ms.No.42, referred to above read along with G.O.Ms.No.24, Finance (Pension) Department, dated 13.01.1986.

8.According to G.O.Ms.No.24, a fraction of a year equal to 3 months and above, shall be treated as completed one half year and reckoned as qualifying service for determining the amount of pension. According to the petitioner, if G.O.Ms.No.24 is applied to his case, then rounding of his service period to 10 years could be made and that he is entitled to pension. G.O.Ms.No.24 states that it applies to persons, who retire on or after 01.01.1986.

9.The case of the petitioner is that since he retired only on 30.04.1998, he is entitled to pension, as per clause 5(a) of G.O.Ms.No.42 read with G.O.Ms.No.24. As per clause 5(a) of G.O.Ms.No.42, the persons, who retired prior to 01.09.1988 are entitled to pension benefit for their services rendered in Tamil Nadu State Transport Department, if they had put in 10 years of service as on 01.04.1982.

10.But the third respondent passed the impugned order dated 14.10.2008 refusing to grant pension under G.O.Ms.No.42 on the ground that the petitioner did not render 10 years of service as on 01.04.1982. The petitioner filed the present writ petition to quash the impugned order dated 14.10.2008 of the third respondent and has sought for a direction to the respondents to pay him pension.

11.Heard the submissions made on either side and perused the materials available on record.

12.The learned counsel for the petitioner submits that since the petitioner retired only on 30.04.1998, he is entitled to pension as per clause 5(a) of G.O.Ms.No.42 read with G.O.Ms.No.24, referred to above.

13.The learned counsel for the petitioner relies on the Division Bench judgment of this Court in N.VENKATRAMANI VS. INDIAN BANK reported in 2005 (4) LLN 637, wherein the service rendered by a Bank employee for 14 years 9 months and 17 days was rounded of as 15 years, when the rule provides pension for 15 years of service.

14.The learned Government Advocate and the learned counsel representing the Transport Corporation stoutly oppose the claim of the petitioner, placing reliance on G.O.Ms.No.24. According to them, G.O.Ms.No.24 applies to the employees,

who retired after 01.01.1986. According to them, since the cut off date fixed vide G.O.Ms.No.42 was 01.04.1982, G.O.Ms.No.24 shall not be applied in the case of petitioner.

15.The issue is whether the benefit granted in G.O.Ms.No.24, Finance (Pension) Department, dated 13.01.1986 could be extended to the petitioner herein.

16.The petitioner was appointed as Junior Assistant by an order dated 31.12.1971 and he joined service on 06.03.1972. It is not in dispute that the petitioner initially joined in the Tamil Nadu State Transport Department and thereafter he was sent to the Transport Corporation on deputation basis and later he was permanently absorbed in the Transport Corporation. As stated above, the controversy went up to the Honourable Apex Court and the Honourable Apex Court resolved the controversy by fixing 01.04.1982 as the cut off date by the judgment reported in 2003 (10) SCC 503 (cited supra). The Honourable Apex Court also held that though the cut off date is 01.04.1982, the pension payable is only from 01.01.1988. Based on the aforesaid judgment of the Honourable Apex Court, the Government issued an order in G.O.Ms.No.42 duly fixing the cut off date as 01.04.1982 and extending the pension benefits to employees who retired prior to 01.09.1998. Clause 5(a) of G.O.Ms.No.42, that is relevant for this case, is extracted 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 judgment 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 qualifying 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."

17.The petitioner served uninterruptedly in the Transport Corporation up to his voluntary retirement on 30.04.1998. All the Transport Corporations, including the Transport Corporation where the petitioner served, introduced a pension scheme for employees who retired after 01.09.1998. The petitioner is not entitled to pension for the services rendered from 01.04.1982 to 30.04.1998. He is entitled to pension only for the services rendered in Transport Department upto his absorption with effect from 01.04.1982 in Transport Corporation. The cut off date for computing 10 years of service was fixed by the Honourable Apex Court as 01.04.1982. But the petitioner was not retired on 01.04.1982 and he was retired voluntarily only on 30.04.1998. The aforesaid clause 5(a) of G.O.Ms.No.42 makes it very clear that the persons who were absorbed into Transport Corporations and retired before 01.01.1988 or after 01.01.1988 but before 01.09.1998 would be paid pension, if they rendered 10 years of service as on 01.04.1982. Therefore, the date of retirement was not 01.04.1982. On the other hand, the date of retirement is 30.04.1998. Thus, G.O.Ms.No.24 is applicable to the case of the petitioner. G.O.Ms.No.24 treats a fraction of a year equal to 3 months and above as one half year and reckoned for the purpose of qualifying service for determining the amount of pension. In fact, the same was incorporated in the Tamil Nadu Pension Rules, by G.O.Ms.No.762, Finance (Pension) Department, dated 05.09.1994 and the same came into effect from 01.01.1986. Rule 43(3) of the Tamil Nadu Pension Rules is extracted hereunder: "43(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as completed one half year and reckoned as qualifying service."

18.G.O.Ms.No.24 and Rule 43(3) of the Tamil Nadu Pension Rules are one and the same. It is applicable to the employees, who retired on or after 01.01.1986. In this case, admittedly the petitioner retired after 01.01.1986. Clause 5(a) of G.O.Ms.No.42 also makes it clear that the persons served in Transport

Department and who got absorbed in Transport Corporations, who retired before 01.09.1998 is entitled to pension, if he rendered 10 years of service as on 01.04.1982. Here the date of retirement of the petitioner was 30.04.1998. Hence, the plain reading of clause 5(a) of G.O.Ms.No.42 makes it very clear that the benefit given under G.O.Ms.No.24 is applicable to the petitioner. Further, in the case of pension, a liberal interpretation has to be made, so that pension could not be deprived. This is in consonance with Article 21 of the Constitution.

19.As correctly contended by the learned counsel for the petitioner, the principles laid down by the Division Bench of this Court in N.VENKATRAMANI VS. INDIAN BANK reported in 2005 (4) LLN 637 treating 14 years 9 months and 17 days as 15 years by rounding of, is applicable to the present case also. In this case, the petitioner is in a better footing as he is supported by clause 5(a) of G.O.Ms.No.42. The pension has to be made only from 01.01.1988, that also falls after 01.01.1986. The petitioner also retired only on 30.04.1998. For extending the benefit under G.O.Ms.No.24, the date of retirement of the petitioner is crucial and not the cut off date relating to absorption in the service of the Transport Corporation. Hence, in my view, the petitioner is entitled to succeed.

20.Accordingly, the impugned order dated 14.10.2008 of the third respondent is quashed and the writ petition is allowed. The respondents are directed to pay pension to the petitioner with effect from 01.01.1988 with arrears, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com