

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/02/2004

CORAM

THE HONOURABLE Mr. JUSTICE P.D.DINAKARAN

Writ Petition No.14096 of 2002

1. S.Matharaiyan
2. M.Selvarajan
3. Syed Kali Mullah
4. R.Megarajan
5. N.Chittibabu
6. D.Shanmugam
7. K.Ramadoos
8. C.Delli
9. Mohamed Yusuff
- 10.D.Mohan
- 11.K.Ponnusamy
- 12.E.S.Sampathkumar .. Petitioners

-Vs-

1. The Assistant Provident Fund
Commissioner (Pension),
No.20, Royapettah High Road,
Chennai-600014.

2. The Managing Director,
Metropolitan Transport
Corporation,
Chennai-600002. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India
for the issuance of a writ of Mandamus as stated therein.

For petitioner : Mr.C.Manohar

For Respondents : Mr.D.Narayanan-R1
Mr.N.V.V.Krishna-R2

:O R D E R

The short question that arises for my consideration in the writ
petition is whether the petitioners are entitled to pension under the
Employees' Pension Scheme, 1995, (for brevity 'EPS, 1995') as agreed to

between the petitioners and the second respondent-Transport Corporation in a settlement under Section 12(3) of the Industrial Disputes Act, (for short 'the I.D. Act'), on 13.2.1999 wherein it is provided as follows:

Pension:-

18. A new Pension Scheme shall be framed for the Employees of Transport Corporations and the draft scheme will be sent to the Regional Provident Fund Commissioner for getting exemption and upon getting exemption, the employees recruited after 01.09.98 shall come under the new pension scheme and as per the Employees' Provident Fund Act, the employer's contribution of those employees will be remitted to the Pension Fund.

19. However, the employees who are on the rolls of the State Transport Undertakings as on 31.08.98 shall have the option of joining the new pension scheme or continue to be a member in the existing Employees Contributory Provident Fund Scheme. This exercise of giving option shall be completed within a period of 3 months from the date of signing this settlement

subject to getting the exemption from the Regional Provident Fund Commissioner.

Any option exercised for this purpose shall be final."

1.2. Clause 16A of the EPS, 1995, provides as follows:

" 16A. Guarantee of Pensionary Benefits:- None of the pensionary benefits under this Scheme shall be denied to any member or beneficiary for want of compliance of the requirements by the employer under sub-paragraph (1) of paragraph 3 provided, however, that the employer shall not be absolved of his liabilities under the Scheme."

1.3. It is not in dispute that the petitioners exercised their option to avail the pension as per the EPS, 1995, and also agreed to pay their contribution for the period from May 1975 to August 1976 as contemplated under the EPS, 1995, as demanded by the second respondent- Corporation in the proceedings dated 2.8.1999.

1.4. However, the second respondent-Corporation had stopped pension under the EPS, 1995, placing reliance on G.O.Ms.No.157, Labour and Employment Department, dated 27.9.2000, which reads as follows:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and the Pension Scheme framed under Section 16(1)(b) of the Act in respect of State Transport Undertakings-Non-applicability of the ActOrders-Issued.

LABOUR AND EMPLOYMENT DEPARTMENT

G.O.Ms.No.157 Dated 27.9.2000

ORDER

As per wage settlement 1998, a Pension Scheme called 'Tamil Nadu State Transport Corporation Employees' Pension Fund' has been formulated for the benefit of employees of the Tamil Nadu Transport Undertakings with effect from 1.9.1998. This has been formulated in accordance with the provisions contained in Section 16(1)(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. After framing of the said scheme the

Employees' Provident Fund and Miscellaneous Provisions Act, 1952, will not apply to the Tamil Nadu Transport Undertakings. As a result, the Tamil Nadu Transport Undertakings totally get excluded from the purview of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 with effect from 1.9.1998.

2. Similar request from other Public Sector Undertakings for exclusion from the purview of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 citing this as precedent will not be entertained.

(BY ORDER OF THE GOVERNOR)

R.RATHINASAMY,
SECRETARY TO GOVERNMENT."

1.5. It is under such circumstances, the petitioners have preferred the above writ petition seeking a writ of Mandamus to direct the first respondent to continue to pay pension under Employees Provident Fund Pension Scheme 1995 to the petitioners from the month April 2002.

2. Mr.C.Manohar, learned counsel appearing for the petitioners, submits that the settlement dated 13.2.1999 entered into between the petitioners and the second respondent-Transport Corporation under Section 12(3) of the I.D. Act, confers a statutory right on the petitioners to seek the benefit of the EPS, 1995, to which they had already opted as per Clauses 18 and 19 of the said settlement dated 13.2.1999 and also paid their contribution for the period from May 1975 to August 1 1976 even as demanded by the second respondent-Transport Corporation in the proceedings dated 2.8.1999. Such right cannot be interfered with or such benefit cannot be denied.

3. Per contra, Mr.D.Narayanan, learned counsel appearing for the second respondent-Corporation, submits that the G.O.Ms.No.157, Labour and Employment Department, dated 27.9.2000, referred to above, was issued by the Government by exercising the power conferred under Section 16(1)(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, which reads as follows:

16. Act not to apply to certain establishments:-

(1) This Act shall not apply:-

(a) ...

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits;

and therefore, the employees of the Transport Corporation are not entitled to the benefit of the old scheme viz., EPS, 1995, after framing the scheme under the Employees' Provident Fund and Miscellaneous Provisions Act, viz., new scheme, as per the said Government Order.

4. I have given a careful consideration to the submissions of both sides.

5.1. It is settled law that denial of pensionary benefit amounts to a violation of Article 14 of the Constitution of India, as the same is arbitrary, vide *Deokinandan Prasad v. State of Bihar*, reported in 1971 2 SCC 330. That apart, when the employees are entitled to have an option to select the better pensionary scheme, as in the instant case, as provided under Clauses 18 and 19 of the said settlement dated 13.2.1999 entered into under Section 12(3) of the I.D. Act, such better pensionary benefit cannot be denied to the employees by way of an executive order, assuming the same is made by exercising the power conferred under Section 16(1)(b) of the Employees' Provident Fund and Miscellaneous Provisions Act, by ignoring the earlier terms of the settlement entered into between the parties under Section 12(3) of the I.D. Act, because pension is not a bounty payable on the sweet-will and pleasure of the Government or the Transport Corporation in the instant case, but, on the other hand, the right to pension is a valuable right vested in a Government servant and the employees of the State Transport Corporation in the instant case. The right of the petitioners to receive pension is property, which cannot be arbitrarily denied, which would otherwise attract Article 14 of the Constitution of India, by a mere executive order of the State.

5.2. It, therefore, follows that the denial of right to pension to the petitioners is a clear violation of the terms of the settlement dated 13.2.1999 entered into between the parties under Section 12(3) of the Industrial Disputes Act, which had already been acted upon by the second respondent-Corporation itself, viz., by calling on the petitioners to make their contribution for the period from May 1975 to August 1976 and pursuant to which, the petitioners had also contributed the same. The Government as well as the second respondent Transport Corporation failed to take the relevant facts into consideration while passing the said Government Order as well as the consequential proceedings of the second respondent-Corporation dated 1.6.2002.

5.3. Hence, I am satisfied that the petitioners are entitled to pension under the Employees' Pension Scheme, 1995, and accordingly, the first respondent is directed to settle entire dues since February 2002 within a period of eight weeks from today and to disburse the prospective pension forthwith.

5.4. Since it is brought to my notice that there are several employees whose pensionary benefit under the Employees' Pension Scheme, 1995, and Employees' Provident Fund and Miscellaneous Provisions Act, had been stopped quoting the said G.O.Ms.No.157, Labour and Employment Department, 27.9.2000 and the consequential proceedings of the second respondent dated 1.6.2002, even though those employees are not before this Court, I repose confidence on the second respondent that they would take appropriate decision in the matter concerned with those similarly placed employees of the other Transport Corporations also, whose pension was stopped quoting the Government

Order dated 27.9.2000, without standing on any technicality that they should also approach this Court for their redressal.

With the above direction, the writ petition is allowed. No costs.

25.02.2004.

ATR

To,

1. The Assistant Provident Fund
Commissioner (Pension),
No.20, Royapettah High Road,
Chennai-600014.

2. The Managing Director,
Metropolitan Transport
Corporation,
Chennai-600002.

□