

A THE GOVERNMENT OF TAMIL NADU AND ORS.

v.

M. ANANCHU ASARI AND ORS.

OCTOBER 29, 2003

B [S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

Service Law :

C *Pension—Cut-off date—Fixation of—Criterion for—Held : Cannot be arbitrary or whimsical—Date of permanent absorption is a material aspect in fixing the date of cut-off.*

D *Pension—Entitlement to—Cut-off date—Fixation of—Transport Department employees sent on deputation to newly formed Transport Corporation and permanently absorbed later on—Cut-off date for claiming pensionary benefits fixed as 1.5.1975—Fresh options invited by 28.2.1982—High Court struck down fixation of cut-off date as 1.5.1975 being arbitrary and illegal—Correctness of—Held : Process of absorption not completed in 1975—Hence, High Court rightly struck down the cut-off date—On facts, 1.4.1982 fixed as the new cut-off date.*

E *Pension—Absorption—Government order calling for fresh options for pensionary entitlement struck down by High Court—Effect of—Held : Such options do not become non est in the eye of law—It shows that the process of absorption was not regarded as complete by the Government—F High Court did not adjudicate upon the validity of cutt-off date—Hence, options exercised pursuant to struck down Government order regained their efficacy.*

G *The respondents were originally employed in the State Transport Department. Pursuant to the decision taken by the appellant-State to form separate Transport Corporation the respondents were sent on deputation to the Corpporation up to 30.4.1975. From 1.5.1975 onwards, the Corporation had framed its own Rules and absorbed the respondent permanently based on the options exercised by them.*

H *In order to extend the benefit of pension to the Government*

servants permanently absorbed in the State Public Sector Corporations A based on their options, the appellant-State issued Government Order for permanent absorption. The last date for exercising options was fixed as 1.5.1975.

The High Court held the said cut-off date as illegal and arbitrary. B The High Court further directed the appellant-State to fix a fresh cut-off date taking into consideration the services of the respondents. Hence the appeals.

On behalf of the appellant it was contended that for all practical purposes, the process of absorption of the deputed respondents was completed by 1.5.1975 by which date even the Transport Department got disbanded; and that there was nothing arbitrary in the policy decision fixing the cut-off date as 1.5.1975. C

The following question arose before, the Court. D

Whether the cut-off date fixed by the Government for the purpose of entitlement to pension of the erstwhile Transport Department employees, who were later on absorbed in the Transport Corporations is constitutionally valid? E

Disposing of the appeals, the Court

HELD : 1. Cut-off date fixed by the Government for the purpose of conferring the pensionary benefits cannot be arbitrary or whimsical. The date of permanent absorption in the service of the Transport Corporation is a material aspect in fixing the cut-off date for pensionary entitlement. This criterion cannot be said to be irrational or irrelevant. [1113-E, 1113-G-H] F

2. The Government Order (G.O.) gives an unequivocal indication that the Government itself regarded that the process of absorption was not completed in 1975 and that a final exercise of calling for and accepting the offers should be gone through, maybe, in view of the change of criteria in regard to the terminal benefits. Hence, the finding of the High Court that the fixation of cut-off date as 1.5.1975 was arbitrary cannot be assailed. [1114-C-D, 1115-A] G H

A 3. The fact that the G.O. pursuant to which fresh options were called for was struck down by the High Court does not lead to the inference that such options must be regarded as *non est* in the eye of law. inference should be that the process of absorption was not regarded as complete by the Government as well as the Corporation.

B The invalidation of the G.O. by the High Court does not in any way displace this factual inference. In fact, the validity of cut-off date was apparently no adjudicated upon in the writ petition. The options exercised pursuant to the struck down G.O. have for all practical purposes regained their efficacy. [1115-B-E]

C 4. In view of the long lapse of time and in order to avoid further delay and the scope of possible controversies, instead of leaving it to the Government to fix a fresh cut-off date as per the directions of the High Court, it is directed that the date 1.4.1982 shall be adopted as the cut-off date. [1115-G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1444-1445 of 1999.

From the Judgment and Order dated 16.9.97 of the Madras High Court in W.A. No. 522/92 and 962 of 1993.

WITH

C.A. Nos. 1446-1452/99 and 8507 of 2003.

F V.R. Reddy V. Balalji, Sunil Murarka, P.N. Ramalingam for the Appellants.

G Jitendera Sharma, Ms. R. Vaigai, S. Muralidhar, Ms. Minakshi Vij, P.N. Jha and Senthil Jagadeesan, V. Ramasubramanian and Mrs. K. Sharda Devi (NP) for the Respondents.

K.V. Viswanathan and K.V. Venkataraman for the Respondent No. 5.

H The Judgment of the Court was delivered by

P. VENKATARAMA REDDI, J. : Leave granted in S.L.P. (Civil) A No. 870/2002.

1. Civil Appeal Nos. 1444-1445 of 1999 are preferred against the common judgment of the Division Bench of the Madras High Court in W.A. Nos. 522 of 1992 and 962 of 1993 dismissing the writ appeals filed by the State of Tamil Nadu. The Civil Appeal arising out of S.L.P. (Civil) No. 870 of 2002 is against the order of the division bench of the High Court in Writ Petition No. 11985 of 1992 which was allowed following the judgment in Writ Appeal No. 522 of 1992 and 962 of 1993 referred to supra. Civil Appeal Nos. 1446-1452 of 1999 are those filed by the State of Tamil Nadu against the common order passed in a batch of writ petitions disposing of the writ petitions filed by the Transport Corporation employees in terms of the judgment in Writ Appeal Nos. 522 of 1992 and 962 of 1993. The State has directly approached this Court against the said order of the learned Single Judge. Thus, the lead judgment is the one rendered by the High Court in Writ Appeal Nos. 522 of 1992 and 962 of 1993. B C D

2. Broadly, the issue in these appeals is whether the cutoff date fixed by the Government for the purpose of entitlement to pension of the erstwhile Transport Department employees who were later on absorbed in Transport Corporations, is constitutionally valid? The High Court answered that issue in the negative and directed the fixation of cutoff date afresh in the light of the observations made. E

3. The two writ petitioners in W.P. No. 6969 of 1990 with reference to which Writ Appeal No. 522 of 1992 was filed by the State Government, were the employees of Nessmony Transport Corporation which was carved out of Kattabomman Transport Corporation Limited. The latter Corporation came into existence from 1.1.1974. The writ petitioner in W.P. No. 7012 of 1988 out of which writ appeal No. 962 of 1993 arose is the workers union of Pallavan Transport Corporation Limited which was formed with effect from 1.1.1973. The said writ petitioners including the concerned members of the workers union were originally employed in the State Transport Department. Pursuant to the decision taken by the Government to form separate transport corporations to take over the operation and management of public transport in the districts concerned, the two F G H

- A Corporations aforementioned came into existence in 1973 and 1974. The assets and liabilities were transferred on certain terms to the newly formed Government Companies which in effect have the status of Public Sector Undertakings. The writ petitioners and other similarly situated employees were deputed to work in the said transport Corporations. For instance, in
- B G.O.MS. No. 651 (Transport) dated 18.7.1973, it was stipulated that all employees of the Tamilnadu State Transport Department serving in the Kanyakumari District for the purpose of running, maintenance and upkeep of the transport system in the District will be considered to be employees on deputation with the Kattabomman Corporation with effect from 1.1.1974.
- C It was further enjoined that "they will continue to receive the same emoluments and enjoy the same conditions of service and privileges till such time the Corporation frames its own rules and takes those employees in its pay rolls". The G.O. further provided that the new Corporation shall be responsible for meeting all the establishment charges and making pension and leave salary contributions to Government in respect of such of those deputed employees of the Transport Department who were in pensionable services.
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- 4. It is the stand of the State Government as seen from the only counter-affidavit filed in W.P. No. 6969 of 1990 that all the employees absorbed in Kattabomman Transport Corporation Limited were on deputation upto 30.4.1975 and from 1.5.1975 onwards, the Corporation had framed its own rules and absorbed all of them as Corporation employees duly accepting the options exercised by them. It is to be mentioned at this juncture that options were called for finally only in the year 1982.
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- 5. The writ petitioners and other similarly situated employees who moved the High Court under Article 226 for appropriate reliefs were not eligible to pension while in Government service in view of non-fulfillment G of the criterion of ten years of qualifying service. It is not in dispute that the service in the Corporation is non-pensionable.

- 6. In order to extend the benefit of pension to the Government servants permanently absorbed in the Public Sector Undertakings on the H basis of options, the State Government issued certain orders from time to

time. In order to appreciate the controversy in proper perspective, a brief reference to these G.Os. is necessary. The first one is G.O.MS. No. 378 (FR II) dated 18.4.1975. The said G.O. made the following provision for 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.”

This G.O. was kept in abeyance till further orders were issued in regard to the terminal benefits to be given to the Government servants who opted for service in Public Sector undertakings. This was done in G.O.MS No. 1197 dated 22.8.1978. Then, came G.O.MS. No. 284, Finance (CFC) Department, dated 31.3.1980 in supersession of the earlier orders issued on the subject including G.O.MS No. 378. According to para 2(iii) of the said G.O.

“Pension, in respect of industrial and non industrial workers who get themselves absorbed in State owned Corporations/Boards will be calculated at the time of transfer; it is payable by the State Government only on retirement of the employee from the public sector corporation

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The pension if any will be paid by the Government direct to the absorbed employee after his retirement from the Corporation/Board.”

Para 3 of the G.O. is the crucial provision. It says-

“3. The crucial date for calculating the terminal benefits in respect of all the State Public Sector Corporations except the Transport Corporations, will be the date from which the employee is continuously working in Corporation or the date of incorporation of the Corporation, whichever is later. *In respect of Transport*

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A *Corporations*, the crucial date will be 1st May, 1975 or the date from which the employee is continuously working in the Corporation, whichever is later.”

(Emphasis supplied)

B 7. Thus, as far as the Transport Corporations are concerned, the relevant date for the purpose of judging the entitlement of the employees who were earlier in Government service was fixed as 1st May, 1975. The same G.O. also stipulated that fresh options will be obtained from Government servants working in various Corporations/Boards “on the basis of this G.O.”. The Corporations/Boards were requested to decide absorption of Government servants on the basis of the terminal benefits indicated in the G.O. Pursuant to this G.O. a letter was addressed by the Commissioner and Secretary to Government, Transport Department on 5.1.1982 to all State Transport Undertakings to get fresh options from the employees of the erstwhile Tamilnadu State Transport Department

C D employees absorbed in the Corporation. The pro-forma of option form was enclosed therewith. The last date for exercise of options was fixed as 28.2.1982. As a consequence thereof, the Transport Corporations called for options to be submitted by 28.2.1982. It appears that G.O.MS NO. 284, dated 31.3.1980 was quashed by the High Court by its judgment dated

E 18.1.1983 insofar as it took away the benefits conferred by G.O. No. 378 dated 18.4.1975. Subsequently, G.O.MS. No. 1028 came to be issued on 23.9.1975. It is this G.O. read with the earlier G.O. 284 that has given rise to the grievance of the petitioners – respondents. The relevant portion of the G.O. is extracted hereunder :

F “...Eventhough the erstwhile Tamilnadu State Transport Department employees have exercised option for their permanent absorption in the Transport Corporations on different dates and were working continuously in the various Transport Corporations with effect from different dates from 1.1.72, the crucial date for their permanent absorption in the Transport Corporations was fixed as 1.5.75 or the date from which the employees were continuously working in the Corporation whichever was later as per orders issued in the Government order second read above. The crucial date already fixed in the G.O. second read above holds good without any change in this regard.”

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8. It was further laid down that the terminal benefits of all the erstwhile Tamilnadu State Transport Department employees working in the various Transport Corporations should be settled as per the orders issued in G.O. No. 378 dated 18.4.1975 subject to certain procedural modifications set out in the G.O. The pension/gratuity earned by an employee while in Government service prior to such absorption was protected as was done by G.O. No. 378. B

9. If the cutoff date stipulated in G.O. 1028 dated 23.9.1985 is applied to the case of the writ petitioners, they will not be eligible to get pensionary benefits. This led to the filing of the writ petitions in the High Court. C

10. It may be mentioned that during the pendency of the writ appeals, the Government issued G.O. MS. No. 250 (Transport Department) Dated 18.11.1996 further modifying the cutoff date in order to benefit the erstwhile State Transport Department employees. The Government while fixing the crucial date as 15.9.1975 for the permanent absorption in the respective Transport Corporations, directed that pensionary benefits should be granted to those who have completed ten years of qualifying Government service as on 15.9.1975 subject to the condition that no arrears of pension shall be given to the employees benefited by the revised date for the period prior to 1.1.1986. It does not appear that any of the respondents will be eligible to get pension even if the revised date is taken into account. D E

11. In writ petition No. 6969 of 1990, the learned single Judge held that the cutoff date fixed by the Government in G.O.MS. No.1028 was illegal and left it to the Government to fix a fresh cutoff date taking into consideration the services of the writ petitioners. In the second writ petition also another learned Single Judge of the High Court declared the fixation of cutoff date as 1.5.1975/14.9.1975 as illegal and arbitrary and directed the Government to fix the cutoff date afresh within the stipulated time. At the same time it was indicated in the judgment that date on which the options were finally called for i.e., 20.6.1982 would be the appropriate date for determining the eligibility to pension. On appeal, the Division Bench of the High Court while affirming the judgments in the two writ petitions, concurred with the view expressed by the learned Judge in the latter case H G

A as regards the fixation of cutoff date with reference to the exercise of options in the year 1982. The Division Bench observed thus :

“...we are of the view that the cut-off date fixed as 1.5.1975 for the purpose of computing the terminal benefits of the erstwhile

B Government servants, who came to be subsequently permanently absorbed in the various Government Undertakings, particularly State Transport Undertakings, proceeded on an artificial basis.

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C ... It is only subsequently, in the year 1982, that such employees were asked to finally exercise their option, either way, and various employees exercised their option also. For instance, in respect of Pallavan Transport Corporation, the said date within which such options have to be exercised appears to have been fixed finally by a letter dated 20.6.1982 and in respect of other Corporations, it would depend upon the option called for before they were finally absorbed as employees of the Corporations, which have come into existence. Till the respective employees have exercised their options on their volition, they must be considered to continue in service as Government employees only, in view of the fact that the actual exercise of option by different employees may be on different dates and to have a uniformity among group or category of workers pertaining to a particular Corporation, the date on which the options were called for finally, or the last date within which the options were to be exercised, once and for all finally, may be taken up as the relevant criteria in fixing the cut-off or crucial date for determination of the terminal benefits.”

G 12. The learned senior counsel for the appellants has urged that for all practical purposes, the process of absorption of deputed employees was completed by 1.5.1975 by which date even the State Transport Department got disbanded. Our attention was drawn to the fact that pursuant to the promulgation of the rules known as 'The Pallavan Transport Corporation Longevity Pay Scheme and Conditions of Service Rules' which came into force on 1st May, 1975, options were called for from the employees on deputation from Government Departments. The option form enclosed to

the Memorandum dated 29.5.1975 issued by the Managing Director of PTC Ltd. required the employees to declare that they voluntarily opted to serve in the PTC Ltd. and accordingly relinquished all their rights vis-à-vis Tamilnadu State Transport Department and that they were willing to get absorbed permanently in the said Corporation subject to the service put in the State Transport Department being carried over to PTC Ltd. with pay scales, accumulated rights for gratuity, provident fund, pension etc. Accordingly, the respondents exercised their options in 1975 itself and the process of absorption had thus completed during that year. Having regard to this background, there is nothing arbitrary in the policy decision fixing the cutoff date for eligibility to pension as 1.5.1975. The learned senior counsel then contended that the relevance and the rationality of fixation of the crucial date as 1.5.1975 cannot be faulted merely because on more opportunity was given to exercise options in the year 1982. The premise on which the impugned judgment proceeded, namely, that the respondents continued to be Government employees till final options were exercised in February, 1982, according to the learned counsel for the appellants is based on incorrect appreciation of facts. The financial repercussions have also been stressed by the learned senior counsel.

13. We find it difficult to accept the contentions advanced by the appellants' counsel. The learned counsel has not disputed the proposition that the cutoff date fixed by the Government for the purpose of conferring the pensionary benefits cannot be arbitrary or whimsical. Even according to the appellants, the date of permanent absorption in the service of the Corporation is a material date and it is in the light of that factor that the cutoff date was fixed as 1.5.1975. The stand taken in the counter affidavit filed on behalf of the Government of Tamilnadu in writ petition No. 6969 of 1990 is that the writ petitioners were absorbed in the Kattabomman Transport Corporation with effect from 1.5.1975 on the basis of the options exercised by them and that their deputation ended on 30.4.1975. That is how the choice of the date 1.5.1975 is sought to be justified. In other words, the fixation of cutoff date is sought to be linked up with the completion of the process of absorption. A perusal of G.Os. 1028 and 250 would also make it clear that the Government wanted to fix the date for pensionary entitlement to coincide with the date of permanent absorption. The criterion cannot be said to be irrational or irrelevant. But, the question is whether this factual premises that the process of absorption took place in the year

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- A 1975 is correct. Viewed in the light of G.O.MS. No. 284 dated 30.1.1980 and the subsequent action taken by the Management of the State Transport Undertakings, it cannot be said with certitude that the process of absorption was completed even in the year 1975. If in fact the process was completed by April, 1975, the pertinent question would be why fresh options were directed to be called for in the year 1980 and actually called for in January, 1982 and thereafter? G.O.MS. No. 284 dated 30.1.1980 clearly stipulates that fresh options shall be obtained from the Government servants working in various Corporations/Boards. The Corporations/Boards were requested to decide the question of absorption of Government servants "on the basis of the terminal benefits indicated in the G.O." The sanction of pension and other terminal benefits was made dependent upon the acceptance of options. Specific reference has been made in G.O. to the Transport Department employees. This G.O. gives an unequivocal indication that the Government itself regarded that the process of absorption was not complete and that a final exercise of calling for and accepting the offers should be
- B gone through, may be, in view of the change of criteria in regard to the terminal benefits. As already noticed, G.O. No. 378 was issued on 18.4.1975, it was kept in abeyance on 22.8.1978 and thereafter G.O. No. 284 was issued on 31.3.1980. Thus, the terms and conditions of absorption did not take final shape till then. Moreover, even if the respondents had
- C submitted the option forms in the year 1975 for the purpose of availing the Longevity Pay Scheme or otherwise, there is nothing on record to show that the said options were treated as final for all purposes. No material has been placed either before the High Court or before this Court to establish that the respondents' deputation came to an end by 1.5.1975 and that they
- D were absorbed into Corporations' service from that date. Above all, the more important point is that nothing has been said in the counter-affidavit filed by the State Government before the High Court as to why fresh options were provided for by G.O. No. 284 and called for by the Corporation in the year 1982, if the entire process was concluded in the year 1975 itself. The counter-affidavit merely contains as assertion that
- E State Transport Department employees were absorbed into the Transport Corporation with effect from 1.5.1975 by accepting the options. In the counter, not even a reference has been made to G.O. No. 284 and the options exercised pursuant thereto. There reason for calling for fresh options has not been spelt out even in the S.L.P. The factual assertion in
- F the counter-affidavit therefore remains unsubstantiated.

14. Having regard to these facts and circumstances, we cannot accept A the plea of the appellants that the absorption did in fact take place in the year 1975. In this situation, the justification sought to be made out for fixing the cutoff date as 1.5.1975 loses its ground in which case the finding of the High Court that the date was arbitrarily fixed cannot be assailed.

15. There is one more point which needs to be considered. In order B to explain away the effect and efficacy of the options called for in the year 1982, a contention has been raised that G.O. No. 284 pursuant to which the options were called for was struck down by the High Court in a writ petition disposed of in the year 1983 and therefore such options must be regarded as *non est* in the eye of law. We find no merit in this contention. C It is true that G.O. No. 284 was struck down at the instance of some of the employees who were benefited by the earlier G.O. which it superseded. But, that is besides the point. What is material is the factual inference that is to be drawn from the fact that fresh options were called for by virtue D of and pursuant to G.O. No. 284. The inference should be that the process of absorption was not regarded as complete by the Government as well as the Corporation. The invalidation of that G.O. by the High Court does not in any way displace this factual inference. In fact the validity of cutoff date was apparently not adjudicated in the said writ petition. The options exercised pursuant to G.O. No. 284 have for all practical purposes E regained their efficacy with the reiteration of the same cutoff date by the subsequent G.O. dated 23.9.1985.

16. For the reasons aforesaid we find no merit in these appeals. The F 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 G 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 cutoff 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 cutoff date in modification H of what was prescribed in G.O. No. 1028 dated 23.9.1985 and G.O. No.

A 250 dated 18.11.1996. The reason for selecting the said date is that 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 cutoff 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

D 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

E reference to the year of filing the first writ petition namely W.P. 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.

F 17. The civil appeals are disposed of accordingly without costs.

V.V.S.

Appeals disposed of.