

## **K. Sahul Hameed Vs The Government of Tamil Nadu and The Tamil Nadu State Transport Corporation (Madurai) Division Ltd.**

**Court:** Madras High Court (Madurai Bench)

**Date of Decision:** Feb. 25, 2011

**Acts Referred:** Industrial Disputes Act, 1947 " Section 12(3)

Tamil Nadu State Transport Corporation Employees Pension Fund Rules, 1978 " Rule 16, 2, 3

**Hon'ble Judges:** M. Venugopal, J

**Bench:** Single Bench

**Advocate:** A. Rahul, for the Appellant; R. Janakiramulu, Spl. Govt. Pleader for R1 and N. Muthulakshmi, for R2, for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

M. Venugopal, J.

The Petitioner in W.P(MD) No. 10046 of 2006 has filed the writ petition seeking the relief of Writ of Declaration

declaring that Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Rules and consequential order dated 17.09.2004

passed by the first Respondent in letter No. 15639/T/2004-1 in rejecting the Petitioner claim for pension on the basis of Rule 16(a)(ii) and the

action of the Respondents in not counting the service prior to the date of the Petitioner's regularization for which P.F. Contributions were received,

as qualifying pensionable service, as illegal, arbitrary and unconstitutional and consequently, direct the Respondents to pay the Petitioner monthly

pension with effect from 01.01.2000 to till date and continue to pay monthly pension to the Petitioner in future every month.

2. The Petitioner in W.P(MD) No. 10047 of 2006 has filed the writ petition seeking the relief of Writ of Declaration declaring that Rule 16(a)(ii) of

the Tamil Nadu State Transport Corporation Employees Pension Rules as illegal, arbitrary and unconstitutional and consequently, direct the

Respondents to pay the Petitioner monthly pension with effect from 31.05.2000 to till date and continue to pay monthly pension to the Petitioner in

future every month.

3. The Petitioner in W.P(MD) No. 10048 of 2006 has filed the writ petition seeking the relief of Writ of Declaration declaring that Rule 16(a)(ii) of

the Tamil Nadu State Transport Corporation Employees Pension Rules and consequential order dated 18.09.2002 passed by the second

Respondent in Reference No. Makathu/Oyvuthiyam/448 in rejecting the Petitioner's claim for pension on the basis of Rule 16(a)(ii) as illegal,

arbitrary and unconstitutional and consequently, direct the Respondents to pay the Petitioner arrears of monthly pension with effect from

31.03.1999 to till date and continue to pay monthly pension to the Petitioner in future every month.

4. The Petitioner in W.P(MD) No. 10046 of 2006 joined the second Respondent/Transport Corporation as Driver in November 1979. He was

appointed as Driver by means of an order dated 14.11.1981 for one year. As per the order dated 22.12.1983, he was confirmed as Driver with

effect from 01.12.1983. He was promoted as Selection Grade Driver. After putting in more than 20 years of service with the second

Respondent/Transport Corporation, he retired from service under the Voluntary Retirement Scheme with effect from 01.01.2000. At the time of

his retirement, he was aged 52.

5. The Petitioner in W.P.(MD) No. 10047 of 2006 joined the second Respondent/Transport Corporation at Theni Branch as Conductor with

effect from 01.10.1978. He was promoted as Selection Grade Conductor. After putting 21 years of service in the Transport Corporation, he

retired from service as per the Voluntary Retirement Scheme with effect from 31.05.2000. The second Respondent/Transport Corporation was

previously called as Pandian Roadways Corporation.

6. The Petitioner in W.P.(MD) No. 10048 of 2006 joined the second Respondent/Transport Corporation as Trades Man (Electrical) with effect

from 12.08.1974. He was promoted to the post of Senior Trades Man. After putting in 26 years of service in the Transport Corporation, he

retired from service as per Voluntary Retirement Scheme with effect from 31.03.1999.

7. According to the Petitioners, as per Clause 64 of the Settlement u/s 12(3) of the Industrial Disputes Act, arrived at in the year 1989, relating to

the Voluntary Retirement Scheme, an employee who has completed 20 years of service or who has completed 15 years of service and attained the

age of 50 years, can opt for Voluntary Retirement Scheme. Furthermore, as per clauses 18 and 19 of the Settlement u/s 12(3) of the Industrial

Disputes Act, dated 13.02.1999, it has been agreed by all the State owned Transport Corporations to introduce and implement the pension

scheme with effect from 01.09.1998. As per the Settlement, all the workmen/employees who have been in service as on 31.08.1998 have been

made eligible for pension. Further, the Pension Rules have been framed and the Pension Trust has been formed only during the end of December

2000. The Government approved the Pension Rules as per G.O. Ms. No. 135 dated 15.12.2000. By a separate letter dated 15.12.2000, the

Government of Tamil Nadu issued the directions to all the State owned Transport Corporations to disburse pension to the retired employees.

8. The second Respondent served the option forms to the Petitioners on 03.05.1999 and in February 1999 respectively calling upon them to

exercise their options to choose the proposed new Pension Scheme or Employees Provident Fund Pension Scheme prevailing at that time. The

Petitioners exercised their option choosing the new Pension Scheme and submitted the forms to the second Respondent/Transport Corporation on

03.05.1999 and in February 1999 respectively.

9. The learned Counsel for the Petitioners submits that by the orders dated 30.12.1999, 31.05.2000 and 20.03.1999 respectively, the Petitioners

have been allowed to retire voluntarily with effect from 01.01.2000, 31.05.2000 and 31.03.1999 respectively.

10. Advancing his arguments, the learned Counsel for the Petitioners contends that if the Petitioners have been informed that 20 years of service in

a confirmed post on regular post is mandatory, they might have awaited for some more years and then, opted to go on Voluntary Retirement.

11. Expatiating his contentions, the learned Counsel for the Petitioners submits that though all the employees are entitled to pension, the second

Respondent/Transport Corporation has paid pension only to the employees who have gone on Voluntary Retirement Scheme after completion of

20 years of service and attained the age of 50 years and denied the pension to others.

12. The specific plea taken by the Petitioners is that the reason for denial of pension to the Petitioners who have gone on Voluntary Retirement like

them, is that as per Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, the employees who have gone

on voluntary retirement are entitled to pension only if they have completed 20 years of service and also attained the age of 50 years and those who

do not fulfill the conditions, are not entitled to claim the pension.

13. The learned Counsel for the Petitioners urges before this Court that the employees who opt for Voluntary Retirement Scheme rendering more

years of service but not reaching 50 years of age, are deprived of pension, while others who have put in less number of years, but reached 50

years of age, are paid the pension and this is a serious anomaly.

14. In short, the stand of the Petitioners is that as per Clause 64 of the Settlement u/s 12(3) of the Industrial Disputes Act, an employee is

permitted to opt for Voluntary Retirement Scheme if he has completed 20 years of service without reference to the age, but the same clause

provides and also permits an employee to proceed on Voluntary Retirement if he has completed 15 years of service and attained the age of 50

years.

15. The core contention of the Petitioners is that the pension cannot be restricted only to the employees to have completed 20 years of service and

attained the age of 50 years by placing reliance on the Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees' Pension Fund

Rules and this new condition is in negation of the Clause 64 of the Settlement u/s 12(3) of the Industrial Disputes Act reached in the year 1989.

Moreover, without any annulment or alteration of the benefit as per Clause 64 of the Settlement u/s 12(3) of the Industrial Disputes Act, by means

of an another Settlement or Award, the right or benefit accrued to the employees as per Clause 64 of the Settlement u/s 12(3) of the Industrial

Disputes Act, arrived at in the year 1989, cannot be taken away in a whimsical and illogical manner/fashion. Therefore, the Petitioners pray for

issuance of a direction to the Respondents to pay the monthly pension to them from the month of November" 2006.

16. According to the learned Counsel for the second Respondent/Transport Corporation, Rule 16(a)(ii) of the Tamil Nadu State Transport

Corporation Employees' Pension Fund Rules provides for the payment of Voluntary Retirement pension if an employee has rendered a qualifying

service of 20 years or more and attained the age of 50 years and as such, only those employees who have voluntarily retired from service and

satisfied the prescribed conditions as per Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, are alone

eligible for claiming the benefits under the Voluntary Retirement pension and they are being paid accordingly.

17. It is the contention of the learned Counsel for the second Respondent that the special scheme for voluntarily retired employees of State

Transport Undertakings have been approved by the Government by means of G.O. Ms. No. 2010 Transport dated 03.11.1987 and as per Rule 3

of the said scheme, an "employee" who has completed 50 years of age and 20 years of service by giving three months" notice in writing to the

authority, is entitled to retire from service voluntarily. An amendment to the Voluntary Retirement Scheme has referred to above, has been brought

into as per Government letter No. 11819/C2/88-13, Transport dated 16.11.1990 in and by which the Voluntary Retirement Scheme is applicable

to the persons who have completed 50 years and put in minimum qualifying service of 15 years or to those who have put in a total qualifying

service of 20 years.

18. The plea of the second Respondent is that in order to bring the eligibility conditions for Voluntary Retirement Scheme in the State Transport

Undertakings on par with the conditions mentioned under Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees' Pension Fund

Rules, the Government as per G.O. Ms. No. 243 Transport dated 23.12.2004 have restored the eligibility conditions for Voluntary Retirement

Scheme as mentioned in G.O. Ms. No. 2010 Transport dated 03.11.1987.

19. The learned Counsel for the second Respondent brings it to the notice of this Court that the workmen demanded Voluntary Retirement

Scheme during the wage settlement talks for the introduction of new pension to the employees of State Transport Undertakings on par with the

Government and T.N.E.B in lieu of the employees pension scheme 1995 under Employees' Provident Fund and Miscellaneous Provisions Act,

1952 and not as third retirement benefits. On implementation of the new pension scheme, the accumulation stand at the credit of the employer

contribution for the period hereunder in the respective Provident Fund Trust of the Corporation is as follows:

Period Total Contribution (%) Remitted towards FPS Balance amount

1971/EPS 1995(%) credited into

with employee's A/c as

employer contribution

RPFC (%)

01.03.1971 to 8 1.16 6.84

31.07.1988

01.08.1988 to 8.33 1.16 7.17

31.05.1989

01.06.1989 to 10 1.16 8.84

15.11.1995

16.11.1995 to 10 8.33 1.67

21.09.1997

22.09.1997 to 12 8.33 3.67

31.10.2000

20. The second Respondent takes a plea that it has recovered contribution to the above scheme as per Family Pension Scheme 1971 with effect

from 01.03.1971 to 15.11.1995. The Employees Pension Scheme has come into effect from 16.11.1995 and the total 12% contribution towards

the pension made by the employer from 01.11.2000 is being utilised for payment of pension amounts and the balance amount is invested in Special

P.D. Account with Reserve Bank of India.

21. The learned Counsel for the second Respondent projects an argument that as per Rule 2(p)(iii) of the Tamil Nadu State Transport Corporation

Employees" Pension Fund Rules, the date of regular employment or becoming the member of the EPF in the State Transport Undertakings will be

reckoned for the calculation of pension service. As per Rule 2(i) of Tamil Nadu State Transport Corporation Employees" Pension Fund Rules,

"Member means a regular employee who is eligible to be a member under the rules. Therefore, the period of service on daily wages or

consolidated wages is not to be construed to be as pension service notwithstanding the fact that the Employees" Provident Fund and

Miscellaneous Provisions Act, 1952 nowhere envisages that the pension is being paid for daily paid/temporary services.

22. The learned Counsel for the Petitioners relies on the order of the Division Bench of this Court dated 24.07.2009 in W.A.(MD) No. 154 of

2009 between Period Total Contribution (%) Remitted towards FPS 1971/EPS 1995(%) with RPFC Balance amount credited into employee"s

A/c as employer contribution (%) 01.03.1971 to 31.07.1988 8 1.16 6.84 01.08.1988 to 31.05.1989 8.33 1.16 7.17 01.06.1989 to 15.11.1995

10 1.16 8.84 16.11.1995 to 21.09.1997 10 8.33 1.67 22.09.1997 to 31.10.2000 12 8.33 3.67 The Managing Director, The Tamil Nadu State

Transport Corporation (Kumbakonam) Ltd., Employees Pension Fund Trust, Thiruvalluvar House, Pallavan Street, Chennai and another and K.R.

Karnan, wherein in paragraphs 4 to 6, it is observed and laid down as follows:

4. The Appellants have therefore, accepted that the Respondent has rendered 20 years of service for the purpose of voluntary retirement but he

did not render 20 years of service for the purpose pension. Such a reasoning is on the face of it absurd. Further, the learned Judge has relied upon

an order dated 20.03.2008 in W.A. No. 585 of 2007 while allowing the writ petition and the following passage in the order in W.A. No. 585 of

2007 is extracted below as it squarely applies to this case also.

In the peculiar facts and circumstances of the present case, we do not feel that it is necessary to delve into this question, as in our opinion, if the

present first Respondent had not completed 20 years of service, he was not eligible for seeking voluntary retirement under the scheme provided by

the Transport Corporation and therefore, at that stage, the Transport Corporation should not have accepted such voluntary retirement. Having

accepted such voluntary retirement on the assumption that the employees had completed 20 years of service, how the Appellant Corporation

cannot turn back and contend that because of non-compliance of 20 years of service, the present first Respondent was not eligible to pension.

Therefore, in our considered opinion, the order passed by the learned single Judge does not require any interference.

5. Therefore, the only contention raised by the learned Counsel for the Appellants that the Respondent did not render 20 years of service for the

purpose of pension fails.

6. In these circumstances, the writ appeal fails and the same is dismissed. The Appellants are directed to pay pension along with arrears within a

period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, M.P(MD) No. 2 of 2009 is closed.

23. He also relies on the order of this Court dated 10.04.2008 in W.P.(MD) No. 2276 of 2008 between K.R. Karnan and The Managing

Director, The Tamil Nadu State Transport Corporation (Kumbakonam) Ltd., Employees Pension Fund Trust, Thiruvalluvar House, Pallavan

Street, Chennai and another, wherein at paragraphs 4 and 6, it is observed and held as follows:

4. The case of the Petitioner is that he has rendered qualifying service as per rules and the same was accepted by the second Respondent and

pursuant to the same the Petitioner has applied for voluntary retirement. The second Respondent having found that the Petitioner has completed the

age of 50 years and 20 years of qualifying service had allowed the Petitioner to retire voluntarily and accepted his application for voluntary

retirement. While so, the second Respondent rejected the representation of the Petitioner on the ground that he is not entitled for pension.

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6. Considering the above facts and circumstances and considering the orders passed by this Court referred to above, the impugned order of the

second Respondent dated 06.02.2008 is liable to be quashed. Accordingly, the writ petition stands allowed. The Petitioner shall forward all the

necessary papers to the second Respondent within a period of two weeks from this date and on receipt of the same, the second Respondent shall

forward the same to the first Respondent within two weeks thereafter and the second Respondent is directed to pass appropriate orders on merits

and in accordance with law within a period of four weeks thereafter. Consequently, connected M.P is also closed. No costs.

24. Also, in paragraph 5 of the aforesaid order, the learned Single Judge of this Court has referred to the order passed in W.A. No. 585 of 2007

dated 20.03.2008 and since that has already been made mention of in paragraph 4 of the order dated 24.07.2009 in W.A.(MD) No. 154 of

2009, the same is not referred to again.

25. Continuing further, the learned Counsel for the Petitioners cites the decision of this Court in C. Nagarajan v. The Management, Tamil Nadu

State Transport Corporation (Kumbakonam Division-I) Ltd., rep. by its Managing Director, Kumbakonam-1 and Anr. reported in 2011 (1) LLN

164 (Mad.), wherein it is held that "having permitted the Petitioner to retire under Voluntary Retirement Scheme, the Respondents cannot go back

and take a contrary version which is detrimental to the interest of employee and further that, without having 20 years of qualifying service, the

Respondents could not have permitted the Petitioner to retire under the Voluntary Retirement Scheme and that there is no justification on the part

of the Respondents for not disbursing the retirement benefits, etc."

26. Admittedly, the Petitioner in W.P(MD) No. 10046 of 2006 as seen from the Office order dated 30.12.1999 of the General Manager

(Operations), has served for more than 15 years (leaving the days of loss of pay) and at the time of his retirement, he has been aged 52 years.

27. Likewise, the Petitioner in W.P(MD) No. 10047 of 2006 has served for 20 years and 8 months and he has completed 45 years and 11

months and at the time of the issuance of the Office order dated 31.05.2000 issued by the second Respondent/Transport Corporation permitting

him to retire under Voluntary Retirement Scheme.

28. Equally, the Petitioner in W.P(MD) No. 10048 of 2006 has served for more than 15 years and he has completed 47 years at the time of the

issuance of the Office order dated 20.03.1999 by the second Respondent/Transport Corporation permitting him to retire under Voluntary

Retirement Scheme.

29. It is to be borne in mind that the Voluntary Retirement and superannuation on the retirement of an employee (on reaching the age of

superannuation) are quite different entities. The employees having opted for Voluntary Retirement Scheme and receiving their dues cannot at a later

point of time, allege coercion or duress etc. Ordinarily, the Voluntary Retirement employees cannot claim benefits of a settlement made after

retirement as per the decision in PAL v. Employees' Welfare Association v. Premier Automobiles Ltd. reported in 2002 LLR 901 (Bom).

30. The Voluntary Retirement Scheme is akin to resignation of an employee. As a matter of fact, the aim of Voluntary Retirement Scheme is an

irritation to make an offer by the employees to avail the benefits. In a contract between the employer and employee pertaining to the option for

Voluntary Retirement Scheme, it is not for a Court of law to rewrite the terms of a contract. Indeed, the Voluntary Retirement Scheme is not a

retrenchment. The Voluntary Retirement Scheme is contractual in nature.

31. At this stage, this Court pertinently points out that the Government of Tamil Nadu in its letter dated 23.12.2004, has issued the following

instructions:



(i) The employees retired voluntarily from 1.9.98 onwards as per the orders issued in G.O.(Ms) No. 2010, Transport, dated 3.11.87 read with the

subsequent amendment issued in Government Letter No. 11819/C2/88-13, Transport department, dt.16.11.90 and attained the age of 50 years

and completed 20 years of Qualifying Service on the date of their Voluntary Retirement are eligible to receive Voluntary Retirement Pension, as

per the Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules issued in G.O.(Ms) No. 135, Transport,

dated 15.12.2000. They are also eligible for the lump sum. (Ex-gratia amount) payment payable under the Voluntary Retirement Scheme.

(ii) The employees retired voluntarily from 1.9.98 onwards as per the orders issued in G.O.(Ms) No. 2010, Transport, dated 3.11.87 read with

the subsequent amendment issued in Government Letter No. 11819/C2/88-13, Transport department, dt.16.11.90 but not fulfilled the conditions

stipulated in Rule 16(a)(ii) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules (attaining of 50 years of Age and 20

years of Qualifying Service) are not eligible for Voluntary Retirement Pension; but they are eligible for refund of Employer's Contributions. In such

cases, the Employer's share of Contributions up to the date of their exit from service shall be refunded to them along with the interest. They are

also eligible for the lump sum (Ex-gratia amount) payment payable under Voluntary Retirement Scheme.

for adherence in regard to the regulation of the pensionary benefits in respect of the Tamil Nadu State Transport Corporation Employees who

retired from service voluntarily as per the orders issued in G.O.(Ms) No. 2010, Transport, dated 3.11.87 read with the subsequent amendment

issued in Government Letter No. 11819/C2/88-13, Transport department, dt. 16.11.90.

32. As such, if the Petitioners are not fulfilling the requirements for seeking the Voluntary Retirement as referred to supra, namely completion of 50

years of age and 20 years of qualifying service, then they are not eligible to opt for Voluntary Retirement under the scheme envisaged by the

second Respondent/Transport Corporation and in reality, the second Respondent/Transport Corporation ought not to have accepted the

Voluntary Retirement of the Petitioners, but that has not been done by the second Respondent/Transport Corporation. Instead it has accepted the

Voluntary Retirement of the Petitioners and therefore, it is not open to the second Respondent/Transport Corporation to approbate and reprobate

in the matter in issue and suffice it for this Court to point out that it cannot take a diametrically, symmetrically, logically opposite or even a resiling

stand which is not sustainable in the eye of law.

34. On a careful consideration of respective contentions and on overall assessment of the facts and circumstances of the present case in an integral

manner and also that since the subject matter in issue in the present writ petitions is squarely covered by the order of the Division Bench of this

Court dated 24.07.2009 in W.A.(MD) No. 154 of 2009 between The Managing Director, The Tamil Nadu State Transport Corporation

(Kumbakonam) Ltd., Employees Pension Fund Trust, Thiruvalluvar House, Pallavan Street, Chennai and another and K.R. Karnan and also the

decision of this Court in C. Nagarajan v. The Management, Tamil Nadu State Transport Corporation (Kumbakonam Division-I) Ltd. rep. by its

Managing Director, Kumbakonam-1 and Anr. reported in 2011 (1) LLN 164 (Mad.), this Court allows the present writ petitions in

W.P(MD)Nos. 10046 to 10048 of 2006, by quashing the impugned order dated 17.09.2004 passed by the first Respondent in letter No.

15639/T/2004-1 (in W.P.(MD) No. 10046 of 2006) and the impugned order dated 18.09.2002 passed by the second Respondent in Reference

No. Makathu/Oyvuthiyam/448 (in W.P(MD) No. 10048 of 2006). Further, the Petitioners are directed to forward the relevant papers to the

second Respondent/Tamil Nadu State Transport Corporation (Madurai) Division Ltd., within a period of three weeks from the date of receipt of a

copy of this order and on receipt of the same, the second Respondent/Transport is further directed to forward the same to the first Respondent

within a period of three weeks thereafter and the second Respondent is directed to pass necessary orders on merits in the manner known to law

and in accordance with law within a period of six weeks thereafter. Considering the facts and circumstances of the case, there is no order as to

costs.