SUPREME COURT OF INDIA

Commisioner and Secretary To Government

Vs

N. Govindan Achary and Others

Appeal (Civil) 410-429 of 2002 with Civil Appeal Nos. 381-382 of 2002

(Arijit Pasayat and C. K. Thakker, JJ)

31.01.2006

JUDGMENT

ARIJIT PASAYAT J

These appeals are directed against the judgment of the Tamil Nadu Administrative Tribunal, Madras (in short the 'Tribunal') disposing of several applications filed by the respondents. By the impugned judgment, the Tribunal held that respondents were entitled to pension in terms of G.O.Ms. No.378 issued by the Finance Department of the appellant- State dated 18.4.1975 read with G.O.Ms. No.378, Transport Department, dated 23.9.1985.

Background facts as highlighted by the appellants are essentially as follows:

The respondents were employees of the erstwhile Transport Department in the State of Tamil Nadu. Till 1972 the public transportation was managed and run as a Government Department conferring the status of Government servants to all employees of the State Transport Department. Pursuant to the policy decision of the State, Corporations were formed. Initially, the employees were sent to the said Corporations on deputation. As there was reluctance on their part to be absorbed with the Transport Corporations giving up their status and benefits available to government servants, the Government by G.O.Ms. No.378 dated 18.4.1975 issued orders offering pension for the services rendered in the Transport Department while they served in the transport corporations. But the pension offered in the said G.O.Ms. No.378 dated 18.4.1975 was denied to the respondents. Hence, they filed applications before the Tribunal with a prayer that direction be given to the present appellants to pay the eligible pension to the applicants before the Tribunal for services rendered by them in the transport department in terms of G.O.Ms. No.378 of the Finance Department dated 23.9.1985. Two categories of cases were filed; one related to cases where pension was denied on the ground that the applicants had not put in the qualifying service of 10 years. Their services were counted from the date of permanent absorption in the Transport Department instead of their date of entry into service on 15.9.1975 i.e. the date of absorption in Transport Corporations and in the second type of cases the employees were not given benefit of pension while in service in the Transport Corporation as per G.O.Ms. 378. The Government referred to G.O. No.212 to deny the benefit. It was pointed out by the present appellants that the respondents had opted to continue under Operational Subordinate Service Rules (in short the 'Operational Rules') when pension was offered to operation staff in G.O. No.212 dated 28.3.1974. Acting on the basis of demand raised by certain employees the aforesaid G.O. No.212 dated 28.3.1974 was issued extending pensionary benefits and called for exercising options either to remain in the existing scheme or to come under pension scheme.

The State of Tamil Nadu was at the relevant point of time following two types of schemes. One was the pensionary scheme under Madras Liberalised Pension Rules, 1960 (in short 'Liberalised Rules') and other was known as Non- Pensionary Contributory Provident Fund Scheme (in short the 'Provident Fund Scheme') under the Tamil Nadu State Transport Department Operation Subordinate Retiring Invalid and Compassionate Gratuity (Non-Pensionable Establishment) Rules.

As noted above, the G.O.No.212 was issued on 23.9.1974. When the G.O. was issued certain doubts were entertained as to under which scheme the concerned employees were covered. According to the appellants the respondents opted to continue in the Non-pensionary Contributory Provident Fund scheme by exercising option in writing under Rule 34 of the Tamil Nadu Pension Rules (in short 'Pension Rules'). Certain benefits were granted on 18.7.1975 to the employees engaged by the Public Sector Undertakings and the State Government.

There were some connected issues which had been dealt with by this Court in detail in Government of Tamil Nadu and Ors. v. M. Ananchu Asari and Ors. and Government of Tamil Nadu and Ors. v. M. Ananchu Asari and Ors. These cases related to fixation of cut off dates for granting/calculating pensionary benefits. In M. Ananchu Asari's case (supra) it was held as follows:

"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."

In the review petition's decision in M. Ananchu Asari's case (supra) it was observed as follows:

"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."

Stand of the appellants in these appeals is that the aforesaid two decisions did not relate to the facts of the present case. On the contrary, learned counsel for the respondents submitted that the issue is no longer res integra in view of the aforesaid two judgments.

As noted above, the two relevant GOs are Nos.212 and 378, so far as relevant, they read as follows:

"GOVERNMENT OF TAMIL (ABSTRACT)

Pension: Benefits of Madras Liberalized Pension Rules - Extension to employees of Tamil Nadu State Transport Department orders issued.

TRANSPORT DEPARTMENT *G.O.Ms. No.212 DATED 28th MARCH 1974 G.O. Ms. No.537, Transport Department, dated 3.7.1972*

ORDER

In the G.O. read above the Government has approved the Special Rules for the Tamil Nadu State

Transport Department Operation Sub- Ordinate Service. According to Rule 12 of the said Rules, all the members of the services are eligible for the benefits of gratuity and they will be governed by the Special Gratuity Rules and will not be entitled to pension or provident Fund benefits as applicable to the regular government servants. The Government have since decided to extent the benefits of the Madras Liberalised Pension Rules, 1960 to the workers of the Tamil Nadu State Transport Department in lieu of Tamil Nadu State Transport Department Operation Subordinate Retiring. In valid and compassionate Gratuity (Non-Pensionable Establishment) Rules.

02. The Government accordingly direct that the workers of the Tamil Nadu State Transport Department be entitled to the Pension and Provident Fund and the Family Pension benefits as applicable to the regular Government servants under the Madras Liberalised Pension Rules, 1960 and the Madras Government Servants Family Pension Rules, 1964.

03. This order shall take effect from 11.1.1974. The workers shall be given the option either to remain in the existing system or to be governed by the Madras Liberalised Pension Scheme. The implementation of the Madras Liberalised Pension Rules, 1960 and the Madras Government Servants Family Pension Rules, 1964 shall be effected subjected to the following conditions:-

(a) All existing employees borne on the Tamil Nadu State Transport Department Subordinate Service who opt for the Madras Liberalised Pension benefits shall be governed by the Madras Liberalised Pension Rules, 1960. For this purpose, their entire service in the Tamil Nadu State Transport Department Operation Subordinate Service will be reckoned towards pension, gratuity and all other benefits for which they would have been entitled to under the rules. They will not be eligible to get any Government contribution to Employees Provident Fund, 1952 now converted as Tamil Nadu Government Industrial Employees Provident Fund, 1969 and the amount of such contribution already credit to the account of the employees will be resumed and credited back to the Government. The contribution made towards the Employees Provident Fund, so far will be deemed as having been contributed to General Provident Fund (Madras). They will have to continue to contribute to the General Provident Fund (Tamil Nadu).

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06. However, to ensure that all existing employees are given the option to continue to be governed by the existing terms and conditions, if for some reasons, they choose to do so, Government direct that all the employees covered in paragraph 3 (a) (c) of this order will have the option to request to be governed by the existing terms and conditions of service. This option will be exercised on or before 30.6.1974. Those who do not exercise any option shall automatically come under the Liberalised Pension Rules, 1960. Option cannot be exercised after 30.6.1974 and option once exercised is final.

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(BY ORDER OF THE GOVERNOR) M.S. RAM SPECIAL SECRETARY TO GOVERNMENT)

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"GOVERNMENT OF TAMIL NADU (ABSTRACT) FUNDAMENTAL RULES PERMANENT ABSORPTION OF GOVERNMENT SERVANT UNDER STATE OWNED CORPORATIONS/BOARDS/UNDERTAKINGS TERMINAL BENEFITS ORDERS ISSUED.

FINANCE (FR.II) DEPARTMENT

G.O.MS.No.378 Dated 18.4.1975.

01. G.O.Ms. No.1072, Finance, Dated 5.9.1964.

02. G.O.Ms. No.731, Industries (Special) Dated, 21.5.1974.

ORDER

In the G.O. second read above certain terminal benefits relating to Pension, Gratuity, Provident Fund, Earned Leave, Family Pension, etc., were granted to Government servants permanently absorbed in the Tamil Nadu Small Industries Corporation Limited. The Government have decided to grant similar benefits to Government servant permanently absorbed under all other public undertakings under the State Government and pass the following orders in regard to the issues relating to liabilities of Pension and Gratuity, Provident Fund, Earned Leave, Family Pension commutation of leave to those opted to the service of the State owned Corporations/Boards/Undertakings.

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 the 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. Provident Fund:

The amount of subscription together with interest thereon, standing in the Provident Fund Account of a Government Servant opting for service in the Public Sector Undertaking may, if he so desires, be transferred to his new Provident Fund Account under the undertaking provided the undertaking *also agrees to such a transfer. If, however, the Public Undertaking does not operate a Provident Fund, the amount in question should be refunded to the subscriber. An officer covered by a Government contributory Provident Fund will also be allowed, if he so desires, to carry forward the corpus of the amount including Government contributions to his new Provident Fund Account under the Public Sector undertaking. Once such a transfer of Provident Fund balance has taken place, the officer will be governed by the Provident Fund rules of the undertaking. As per General Provident Fund (Tamil Nadu) Rules, the Provident Fund accumulation shall continue to carry interest at the normal rate till final payment or transfer of provident fund accumulation.*

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Family Pension:

Since the optee for permanent absorption in the Public Sector undertaking will cease to be a Government Servant, the Governments liability for family pension will cease.

Commutation of Pension:

i) Every Government servant will exercise an option within six months of his absorption for either of the alternatives indicated below:-

(a) Receiving the monthly pension and Death-cum-Retirement Gratuity already worked out under the usual Government arrangements.

OR

(b) Receiving the gratuity and a lump sum amount in lieu of pension worked out with reference to commutation tables obtaining on the date from which pension will be admissible and payable under the option orders.

ii) Any further liberalization of pension rules decided upon by Government after the permanent absorption of a Government servant in a public enterprise would not be extended to them.

iii) In cases where an officer at the time of absorption has less than 10 years service and is not entitled to pension the question of proportionate pension will not arise, as he will be eligible only to the proportionate service gratuity in lieu of pension and Death-cum-Retirement Gratuity based on length of service.

(BY ORDER OF THE GOVERNOR) S. GUHAN SECRETARY TO GOVERNMENT.")

For resolving of the controversy, GO.1028 may also be referred to. On a reading of the GOs the crucial expressions appear to be pension/gratuity "earned by him" (underlined for emphasis) and the period stipulated is 10 years. This is indicative of the fact that the position is relatable to government service and the qualifying service is 10 years in terms of the Pension Rules. If the respondents' stand is accepted it would mean that even if no benefit under the government scheme is available yet the pensionary benefits have to be given. It is to be further noted that G.O. No.212 refers to G.O. 537. From the factual details available it appears that the respondents preferred to remain under the Provident Fund Scheme. In the affidavits filed by the respondents in respect of the stand taken as to exercise of option, there is no specific denial. On the contrary, it is stated that the defendant does not remember whether the option was exercised.

Learned counsel for the respondents has highlighted about the beneficial nature of the provisions. It is to be noted that the Tribunal proceeded on the basis as if G.O.378 superseded G.O 212. G.O. 378 refers to exercise of the option by the employees who wanted to be covered by the scheme. If really G.O.378 was intended to supersede G.O.212, the least that could have been done is to refer to G.O.212 which is admittedly not the position. G.O.378 nowhere refers to any exercise of option under G.O.212. It is highlighted by learned counsel for the respondents and the employees who have intervened in the proceedings that when the Transport Corporations were formed option was asked for. It is too well known that in the Corporation no pensionary benefits were there. So the question of asking for any option did not arise and in that background the employees had opted for provident fund scheme. After the cut off date i.e. 1.4.1982 the basis of option changed and the earlier basis was also changed.

The controversy as noted above lies within a narrow compass i.e. whether G.O. No.378 in effect superseded G.O. No.212. Bare reading of the two GOs do not certainly indicate that to be the position. Additionally, if the stand of the respondents is accepted the expression "earned by him" becomes superfluous. That can never be the intention. It would be also relevant to quote a portion of GO MS No.1028 dated 23.9.1985 which has also relevance.

"GOVERNMENT OF TAMIL NADU

ABSTRACT

STATE PUBLIC SECTOR UNDERTAKINGS PERMANENT ABSORPITON OF GOVERNMENT SERVANT UNDER STATE OWNED CORPORATIONS/BOARDS/ UNDERTAKINGS TERMINAL BENEFITS ORDERS ISSUED.

TRANSPORT DEAPRTMENT G.O. MS. NO.1028 DATED 23.9.1985 KURODHANA PURATTAST-

01. G.O. Ms. No.378, Finance (FR.11) Department, dated 18.04.1975

02. G.O. Ms. No.284, Finance Department dated 31.3.1980.

0.3 From the Finance (Pen.) Department Lr. No.74399/ Pen./83-8 dated 5.6.1985 addressed to the Accountant General Tamil Nadu.

PENSION AND GRATUTITY

In addition to pay in the Public Undertakings, an optee will be entitled to pension/gratuity earned by him in government service prior to such absorption as per Madras Liberalisd Pension Rules 1960. They are permitted to draw their pension/gratuity from the date of their permanent absorption in the Transport Corporations. The arrears of monthly pension from the date of their permanent absorption till date or the lumpsum amount based on the commuted value of pension according to their option shall be paid immediately in respect of retired/legal heirs of the deceased employees. Some of the retired employees were sanctioned and paid pension only from the dates of the actual retirement from the Transport Corporations on attaining the age of superannuation as per the orders issued in the G.O. second read above. In respect of such cases the arrears of monthly pension from the date of absorption to the date of retirement of lumpsum amount based on the commuted value after adjusting the monthly pension already received till date according to their option shall be paid to them. In respect of the employees who expired on or after their permanent absorption the legal heirs would have been paid only Death-cum- Retirement Gratuity. In such cases the lumpsum amount based on the commuted value will be paid to the legal heirs, since the payment of monthly pension/ family pension does not arise.

EMPLOYEES WHO ARE IN SERVICE IN STATE TRANSPORT UNDERTAKINGS

If the employees opt for lump sum amount based on the commuted value of pension, the entire amount of pension and gratuity will be paid to them in the form of National Savings Certificate. If they opt for monthly pension, the arrears of monthly pension from the date of absorption to till date and gratuity will be paid to them in the form of National Savings Certificate and the current monthly pension will be paid every month:

04. The expenditure towards the settlement of Terminal Benefits referred to in para 3 above will be initially met by the respective Transport Corporations and subsequently adjusted against the outstanding Government loan to the Corporations.

06. FAMILY PENSION

1. Since the optee for permanent absorption in the State Transport Undertakings will cease to be a Government servant the Government liability for Family Pension will cease.

The erstwhile Tamil Nadu State Transport Department employees absorbed permanently in the State Transport Undertakings should be allowed pension increase also in their pension besides Dearness Allowance, Additional Dearness Allowance as applicable from time to time to Government pensioners who retired on that date as per the orders issued in the letter third read above.

(BY ORDER OF THE GOVERNOR)

A.K. VENKAT SUBRAMANIAN COMMISSIONER & SECRETARY TO GOVERNMENT"

Therefore, the stand of the State Government appears to be correct. The view expressed by the Tribunal is indefensible and is set aside. The appeals are allowed but with no orders as to costs.