IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.04.2015

Date of decision: 30.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Writ Appeal Nos.685 of 2011, 967 of 2011
and 1726 of 2012
and
M.P.Nos.1 and 1 of 2011
and
M.P.No.1 of 2012

W.A.No.685 of 2011

1.The Deputy Secretary to
the Government of Tamilnadu,
Transport Department,
Fort St.George, Chennai - 600 009.

2.Tamil Nadu Transport Employees'
Pension Fund Trust,
rep.by its Administrator,
Thiruvalluvar House,
Pallavan Salai, Chennai - 2.

3.The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division - I Ltd.,
Villupuram. ...Appellants

Vs

Chandramani ...Respondent

W.A.No.967 of 2011

1.The Government of Tamilnadu,
rep. by its Secretary,
Transport Department,
Fort St.George, Chennai - 600 009.

2.Tamil Nadu State Transport Employees'
Pension Fund Trust,
rep. by its Administrator,
Thiruvalluvar House,
Pallavan Salai, Chennai - 2.

3.The General Manager,
Tamil Nadu State Transport Corporation,
Karaikudi - 623307. ... Appellants

Vs.

S.Thomaiarammal ... Respondent

W.A.No.1726 of 2012

The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Dindigul Region, Dindigul. .. Appellant

Vs.

1.S.Elizabeth

2.The Deputy Secretary to the Government of
Tamil Nadu,
Transport Department,
Fort St.George, Chennai - 9.

3.The Administrator,
Tamil Nadu Transport Corporation,
Employees Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai, Chennai - 2. .. Respondents

Writ Appeal No.685 of 2011 filed under Clause 15 of the Letters Patent against the order dated 07.09.2010 made in W.P.No.10425 of 2007.

Writ Appeal No.967 of 2011 filed under Clause 15 of the Letters Patent against the order dated 07.09.2010 made in W.P.No.31130 of 2005.

Writ Appeal No.1726 of 2012 filed under Clause 15 of the Letters Patent against the order dated 07.09.2010 made in W.P.No.36941 of 2005.

Prayer in W.P.No.10425/2005,31130/2005,36941/2005:

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings Letter No.14362/D/2005-1, Ref.No.LR.No.9650/D/05, 14290/D/2005-1, Ref.No.22326/D/2006/2 and consequentially direct the first respondent to pay the family pension to the petitioner under the provisions of 20(3) (a) of the Tamil Nadu State Transport Corporation Employees pension Fund Rules.

Mr.T.Chandrasekaran: For Appellants in W.A.No.685 of 2011
and in W.A.No.967 of 2011

Mr.Paramasiva Doss : For Appellants in W.A.No.1726 of 2012

Mr.S.Balasubramanian:For sole respondent in 685 & 967/11
and for R1 in W.A.NO.1726/2012

COMMON JUDGMENT

(Judgment of the Court was delivered by R.S.RAMANATHAN, J)

The first respondent in these Writ Appeals are widows of the employees of the appellant - Transport Corporation, whose late husbands served in the military and after retirement from the military, they joined the service of the appellant and they were receiving military pension and after retirement from the appellant Corporation, they were receiving pension from the appellant Corporation and after their death, their widows/first respondents applied for family pension and that was negatived by the appellant and hence the first respondent in these Writ Appeals challenged the order of the appellants in negativing the family pension payable to them by the appellants by way of Writ Petitions and the same were allowed and aggrieved by the same, these Writ Appeals are filed.

2. The first respondent being the widow of the former employees of the appellant Transport Corporation claimed family pension and that was rejected by the appellant on the ground that as per Rule 49 (13-B) of the Tamil Nadu Pension Rules 1978, a person who is in receipt of Family Pension under any other Pension Rules is not entitled to get family pension and as the first respondent/writ petitioners are receiving family pension from military, they are not entitled to claim family pension. When the order of the appellants was challenged in the Writ Petitions, the appellant relied upon

G.O.No.5418/D/2004-4, Transport, dated 23.8.2014 and stated that the widow of the deceased ex-servicemen are eligible to draw either the State Transport Corporation's family pension or military family pension and Rule 20(3)(a) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules is not applicable to the writ petitioners and as per Rule 16(1) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, the writ petitioners were advised to remit the employer share amount and loan drawn from the employer's share along with interest in order to make eligible to pay pension to their husband from the date of retirement and they have not remitted the amount and stated that the writ petitioners are not entitled to claim two pensions as per Sub-Rule (13-B) of Rule 49 of the Tamil Nadu Pension Rules 1978.

3. The learned single Judge framed the following issue in those Writ Petitions:-

> "whether the widows of the retired employees of the Transport Corporations who got employment after serving in the Army/Navy/Air Force are entitled to get family pension while receiving the military family pension."

4. The learned single Judge, after elaborately, considering the Tamil Nadu Transport Employees' Pension Fund Rules, particularly, Rules 12, 14(c), 20 and 49(2A) of the Tamil Nadu Pension Rules 1978 and also considered the judgments reported in (1983) 1 SCC 305 (D.S.Nakara v. Union of India), 1985 (3) SCC 345 (Poonamal v. Union of India, 2003 (1) SCC 184 (S.K.Mastan Bee v. G.M., South Central Railway), and Division Bench Judgments of this Court reported in 2008 (2) LLN 216 (Government of Tamil Nadu v. Tamil Nadu Government Transport Retired Employees Welfare Association), 2008 (1) LLN 314 (P.Arumugam v. Registrar, Tamil University, Thanjavur) and held that the writ petitioners, namely, widows of the retired employees of the Transport Corporation as well as the other eligible persons are entitled to get family pension from the Transport Corporation and set aside the orders passed by the appellants and allowed the Writ Petitions. Aggrieved by the said order, these Writ Appeals are filed by the appellants.

5. Mr.T.Chandrasekaran representing the appellants in Writ Appeal Nos.685 and 967 of 2011 and Mr.Paramasiva Doss representing the appellants in Writ Appeal No.1726 of 2012 submitted that the learned single Judge was not pleased to consider the provisions of Rule 49(13), (13-A) and (13-B) of the Tamil Nadu Pension Rules 1978 and also Rule 16(1) of the Tamil Nadu State Transport Corporation Employee's Pension Fund Rules and without surrendering the pension received from the military, they cannot claim family pension and a person is also not entitled to claim two family pensions from two authorities and relied upon the judgment of a Division Bench of this

Court rendered in W.A.No.220 of 2007 dated 24.08.2007 in the matter of Zonal Managing Director, Tamilnadu State Transport Corporation, (MDU-DVN III) Ltd., Nagercoil Vs. M.Pachiyabai and contended that the writ petitioners are not entitled to claim two pensions and they had an option to decide under which scheme, they were willing to receive the pension and without exercising the option, they are not entitled to claim pension from two authorities. The learned counsel appearing for the appellants also submitted that in the judgment referred to above, the Hon'ble Division Bench considered the jundgment rendered in the matter of P.Arumugam Vs. Registrar Tamil University, Thanjavur, supra and differentiated that judgment. The learned counsel also submitted that as per the judgment of the Hon'ble Supreme Court reported in (1983) 1 Supreme Court Cases 305 supra, the writ petitioners are not entitled to claim two pensions simultaneously.

6. Mr.S.Balasubramanian, learned counsel appearing for the first respondent, namely, the writ petitioners submitted that the writ petitioners are governed by the provisions of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules and that came into effect after section 12(3) of the I.D.Act settlement entered into between the employees and the management and the Government was also a party and therefore, the appellant and the State Government are bound by the said Pension Fund Rules and the Tamil Nadu Pension Fund Rules cannot be made applicable to the employees of the Transport Corporation as they are governed by different Pension Fund Rules. The learned Counsel also submitted that in the judgment reported in 2008 (2) LLN 216 supra, the Hon'ble Division Bench considered the scope of the Tamil Nadu Pension Rules 1978 and held that the employees who are earning pension from the State Government are also entitled to claim pension from the Corporations for the service rendered by them in the Corporation and it will not amount to earning two pensions in the same service or force at the same time and the writ petitioners/respondents herein are not covered under the Tamil Nadu Pension Rules. He therefore submitted that having regard to the judgment of this Court rendered in 2008 (2) LLN 216 supra, the writ petitioners are entitled to claim two pensions and that was also permissible under the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. The learned counsel further submitted that the judgment of the Division Bench rendered in Zonal Managing Director, Tamilnadu State Transport Corporation, (MDU-DVN III) Ltd., Nagercoil Vs. M.Pachiyabai in W.A.(MD)No.220 of 2007 cannot be applicable to the facts of the case as in that Appeal, the Hon'ble Division Bench was not informed about the Tamil Nadu State Transport Corporation Employees' Pension Fund and there was no discussion regarding the said Pension Fund and the Hon'ble Division Bench only considered the scope of Rule 49 (13-A) and (13-B) of the Tamil Nadu Pension Rules without any reference to the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules and

therefore, that judgment cannot be said to have laid down law on this aspect. He therefore, submitted that the well considered judgment of the learned single Judge has to be upheld.

7. After hearing the arguments of the learned counsel for the appellants as well as the first respondent, the point for consideration that arises for consideration in these Writ Appeals is whether the widows of the retired employees of the State Transport Corporation who are in receipt of military pension are entitled to get Family Pension under the Tamil Nadu State Transport Corporation Pension Fund Rules.

8. The facts in the judgment reported in 2008 (2) LLN 216 supra, are almost similar to that of the present case and in that case, the persons were initially employed under the services of the State in its transport department, and subsequently, absorbed in different Corporations established by the Government. In that context, the question arose whether the employees who were originally working in the Transport Department of the State and were receiving pension were eligible to claim pension after they were absorbed in the State owned Corporations and the Hon'ble Division Bench held that So far as the eligibility of pension under the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules is concerned, it is another pension, which an employee is earning on completion of requisite period under the transport corporation. Such pension rule has been framed by the corporation pursuant to a settlement made u/s 12 (3) of the Industrial Disputes Act, which is binding on all the parties. Apart from transport corporation and its employees, the State Government, being also a party to it, the settlement is binding on the State Government. As the pension from the corporation has to be paid by the corporation and not by the State Government, it cannot be stated to be a second pension drawn by any employee under the State for the purpose of Rule 7 of the Pension Rules, as quoted above. The Hon'ble Division Bench further held in Paragraph 13 as follows:-

> 13. If the argument as advanced by the learned Advocate General is accepted, it will amount to taking away a right of an employee to get pension under the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules framed pursuant to a settlement u/s 12 (3) of the Industrial Disputes Act. The State Government has no jurisdiction to alter the settlement and being bound by the settlement, learned single Judge rightly reversed clause 5 (b) of G.O. Ms. No.42 dated 27th May, 2005.

Therefore, in that judgment, the Hon'ble Division Bench made it clear that the employees are entitled to get two pensions - one from the

State Government and another from the State transport Corporation as per the provisions of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules.

9. In this case, we are concerned with the Family Pension payable to the writ petitioners. The stand of the appellant is that as per the Tamil Nadu Pension Rules, a person is not entitled to claim two pensions and relied upon Rule 49 (13-A) and (13-B).

10. According to us, having regard to the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, which came into force, as a result of 12(3) settlement, the employees of the State Transport Corporation are governed by the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. They are entitled to get that pension and the provisions of the Tamil Nadu Pension Rules 1978 will not have any effect on the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. Further, Rule 20 (2) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules deals with Family Pension, which is as follows:-

> "2. Family Pension
> a) Family Pension shall be admissible to the family of the member, who has rendered less than 7 years but not less than one year of service from the date following the date of death of the member while in service at the rate of 30% of basic pay last drawn and the contribution for the period has been paid into the Fund, till the life time of the spouse (widow/widower)
> Exception: In respect of employees who has rendered less than one year of service, the family pension may also be allowed to the family of a member who die in harness, provided that the deceased employee immediately prior to his appointment was examined and declared fit for employment.
> b) After the death of the spouse, the first child is eligible for family pension at the rate of 30% upto the period till he or she attains the age of 25; in the case of male child, family pension is admissible till he attains the age of 25 years or getting employment, whichever is earlier, and in the case of female child, family pension is eligible till she attains the age of 25 or the date of her marriage whichever is earlier.
> c) if the first child becomes ineligible for family pension, the next child will become eligible for family pension and the subsequent children are eligible for family pension in the

chronological order, as indicated in clause 20(2)(b), but the Family Pension is eligible only for one child at a time.

d) if the eligible child is mentally retarded or physically handicapped, he or she is eligible for family pension till death.

e) the minimum family pension payable shall be Rs.1275/- or the amount that may be revised from time to time.

f) If a member is not married, he can nominate his father/mother to receive family pension, as in the case of spouse, and they are eligible for family pension till their life time. If a member who is not having a family at the time of death can nominate a person to receive the family pension.

11. Rule 20 is not subject to any condition and therefore, when employees rendered requisite number of service, their family is entitled to family pension as per Rule 20(2) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. As rightly submitted by the learned counsel appearing for the first respondent, in the judgment rendered in W.A.No.220 of 2007, the Hon'ble Division Bench did not consider the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. The Hon'ble Division Bench considered only the scope of Rule 49(13-A) and (13-B) of the Tamil Nadu Pension Rules. Therefore, the same cannot be considered as precedent binding upon this Court. As stated supra, the law has been dealt elaborately in the judgment reported in 2008 (2) LLN 216 supra and the principle regarding the eligibility to get two pensions has been clearly laid down in the said judgment and the in the judgment reported in 2008 (1) LLN 314supra also right to get two pensions from two authorities was recognised and held that the service rendered in the State Government is quite distinct and different from the service rendered in the Tamil University and therefore, a person who is getting pension from the State Government is also entitled to get pension from the Tamil University if he satisfies the requirements as per the provisions of the Tamil University Act and Rules. Further, as rightly held by the learned single Judge that admittedly, the husbands of the writ petitioners were receiving pension from the military as well as from the State Transport Corporation on the retirement from the State Transport Corporation and only after their death, when the widows of the retired employees claimed family pension, that was denied. If the interpretation of the appellants were to be accepted, the husbands of the writ petitioners were not entitled to get pension from the appellant as

they were receiving pension from the military. However, they were given pension by the State Transport Corporation. Further, there is no question of contribution by the employees in the State Transport Corporation to become eligible to claim family pension as per the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. As held by the Hon'ble Division Bench in the judgment reported in 2008 (2) LLN 216 supra, the writ petitioners are governed by the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules and Rule 20 deals with Family Pension to the employees and if they satisfy the requirements as stated therein, they are entitled to claim pension and the receipt of military pension and the receipt of pension under the Tamil Nadu State Transport Employees' Pension Fund Rules are two different pensions paid for the different services rendered by the persons in two different organisations and that cannot be denied by invoking the provisions of the Tamil Nadu Pension Rules, 1978 wherein no similar provision is found in the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules which is governing the writ petitioners and the appellants in the matter of pension. Hence, we do not find any merit in these Writ Appeals.

12. In the result, the Writ Appeals are dismissed and the connected Miscellaneous Petitions are also dismissed. The impugned Common Order dated 07.09.2010 made in Writ Petition Nos.10425 of 2007, 31130 of 2005 and 36941 of 2005 are sustained. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

To

1.The Secretary,
The Government of Tamilnadu,
Transport Department,
Fort St.George, Chennai - 600 009.

2.The Deputy Secretary to
the Government of Tamilnadu,
Transport Department,
Fort St.George, Chennai - 600 009.

3.The Administrator,
Tamil Nadu Transport Employees'
Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai, Chennai - 2.

4.The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram Division - I Ltd.,
Villupuram.

5.The General Manager,
Tamil Nadu State Transport Corporation,
Karaikudi - 623 307.

6.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Dindigul Region, Dindigul.

2 cc to Mr. T.Chandrasekaran,Advocate, SR.No.24094
3 cc to Mr. S.Balasubramanian,Advocate, SR.No.24033
1 cc to Mr. P.Paramasivadoss,Advocate, SR.No.22272

W.A.Nos.685 of 2011,
967 of 2011
and 1726 of 2012
and
M.P.Nos.1 and 1 of 2011
and
M.P.No.1 of 2012

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