

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 33543 OF 2007

Tmt. Emili Maragatham

.. Petitioner

Vs.

1. The Secretary to Government
Transport Department
Fort St. George
Chennai - 600 009.
 2. The Presiding Officer
Principal Labour Court
Chennai -600 104.
 3. The Collector of Chennai
Chennai - 600 001.
 4. The Management of Tamilnadu
State Transport Corporation
(Villupuram) Ltd.,
Vellore Region, Vellore- 9
rep. by its General Manager
- ... Respondents

PRAYER: This Writ petition is filed under Article 226 of Constitution of India, praying for issuance of a Writ of Mandamus, directing the third respondent to take steps to recover the sum of Rs.1,19,400/- with interest and cost as instructed in G.O. (D) No.836 Labour and Employment Department dated 11.09.1996 from the first respondent and to pay the petitioner a sum of Rs.1,19,400/- with interest being calculated at the rate of 12% per annum for the period from 12.12.1995 to the date of payment.

For Petitioner : Mr. C. Manohar

For Respondents: Mr. R. Govindaswamy,
Additional Government Pleader for R1 & R3
Mr. P. Paramasivadosh,
Standing Counsel for R4
R2 - COURT

O R D E R

Tmt. Emili Maragatham has filed the present writ petition seeking issuance of Writ of Mandamus, under Article 226 of the Constitution of India, to direct the directing the Collector of Chennai, the third respondent to take steps to recover a sum of Rs.1,19,400/- with interest and cost as instructed in G.O. (D) No.836 Labour and Employment Department dated 11.09.1996 by the Secretary to Government, Transport Department, Chennai, the first respondent herein and to pay the petitioner a sum of Rs.1,19,400/- with interest being calculated at the rate of 12% per annum for the period from 12.12.1995 to the date of payment.

2. Learned counsel appearing for the petitioner would submit that the husband of the petitioner Late S. Kanagasundaram who was working as a Driver in the erstwhile Tamil Nadu State Transport Department from 01.04.1965 upto 30.04.1975, was later absorbed in the then Pallavan Transport Corporation on 01.05.1975, with option as Government assured pension in the Transport Department, in addition to the wages he would get in the Transport Corporation and issued G.O. Ms. No. 378 Finance (FR.II) Department dated 18.04.1975. However, many employees who had completed 10 years of service were denied option on the ground that they have not completed 10 years of service from the date of regularisation of service and the Government also refused to count the 10 years of service on daily wages, inspite of the fact that the Tamil Nadu Pension Rules 1978 allows such service to be counted as a qualifying service. Under these background, all those employees who were affected by refusal of pension, joined together and filed Claim Petition before the Labour Court under Section 32(C) (2) of the Industrial Disputes Act. The petitioner's husband was also one among the 13 claimants in C.P. No. 283 of 1992 claiming arrears of pension for the period from 01.05.1975 to 30.11.1991. The claim of her husband and others were allowed on 12.12.1995 in C.P. No. 283 of 1992 computing the money value of arrears of pension due to each of the petitioner as Rs.1,19,400/-. Accordingly, a direction was given to the respondent Government to pay this amount to each of the petitioner. When that award was not complied with, all the 14 petitioners have sent applications under Section 33(C)(1) of the Industrial Disputes Act to the Secretary to Government, Labour and Employment Department for issuance of necessary orders to recover the said amount from the employer for payment of the same to the petitioners therein.

3. Adding further, learned counsel would submit that after verification of the order passed by the Labour Court, the Secretary to Government, Labour and Employment Department issued G.O. (D) No.836 Labour and Employment Department dated 11.09.1996 for recovery of the said amount from the Transport Corporation. Even after the issuance of the said G.O. No.836, when no one was paid by the Government, the petitioner's husband sought for legal remedy by

filing W.P. No.19874 of 2000 before this Court, for recovery of Rs. 1,19,400/- from the State Government and the same was allowed. However, the Government filed Writ Appeal No.475 of 2001 challenging the award passed in C.P. No. 283/1992 dated 12.12.1995. The same was dismissed on 10.08.2007 confirming the order passed in C.P.No.283/1992 dated 12.12.1995. Even after attaining finality, there was no any sign of implementation of the Award, hence the petitioner initiated computation proceedings in C.P. No.1278 of 2007 seeking for computation of monetary value to a tune of Rs.1,22,887/- payable for the payment of pension from 01.12.1991 to 02.02.2002. The same was also decreed in favour of the petitioner by order dated 19.06.2009. On this basis, it was further claimed that when the petitioner had admittedly rendered 35 years of service in the Corporation as well as in the erstwhile Transport Department, the order passed by the Labour Court in C.P. No. 283 of 1992 dated 12.12.1995 to pay arrears of pension of Rs.1,19,400/- along with interest from 01.01.1996 to till the date of payment has to be implemented. Concluding his argument, learned counsel appearing for the petitioner submitted that as per the order of the Labour Court the arrears of pension to be paid is Rs.1,19,400/-. That apart, interest for 19 years at the rate of 12%, as per the G.O. (D) No. 836 to be paid is Rs.2,72,232/- and as per the G.O. (D) 836 the cost is Rs.5000/-. Hence, an amount of Rs.3,96,632/- should be ordered to be paid by the respondent Corporation. As per the orders of this Court an amount of Rs.91,468/- has been paid by the Transport Corporation by way of a Cheque dated 11.12.2014. After deducting the same, an amount of Rs.3,05,164/- has to be paid to the petitioner, he pleaded.

4. Opposing the above prayer, Mr.P. Paramshivados, learned Standing Counsel appearing for the 4th respondent would submit that the claim of the petitioner has no legs to stand since the petitioner has been settled with all the arrears of pension as per the judgment of the Hon'ble Apex Court in Civil Appeal Nos. 1444-1445 with 1446 to 1452 of 1999 and C. A. No. 8507 of 2003 (Arising out of SLP in Civil No. 870 of 2002) dated 29.10.2003. Briefly, stating his side of the case submitted that the petitioner's husband Late S. Kanagasundaram joined the Transport Department as a Driver on casual basis on 01.04.1965 and he was brought into regular time scale of pay on 01.07.1966. Subsequently, he was also absorbed into the erstwhile Pattukottai Azhagiri Transport Corporation on 01.05.1975. But he did not complete the requisite qualifying service for payment of pension as prescribed under G.O. Ms. No. 378 (FR.II) dated 18.04.1975. However, the petitioner's husband along with 13 others filed a Computation Petition under Section 33(c)(2) of the Industrial Disputes Act 1947 in C.P. No. 283 of 1992 before the learned Principal Labour Court seeking payment of pension at the rate of Rs.600/- for the period from 01.05.1975 to 30.11.1991. Although the claim was opposed by the respondent Corporation on the ground that the petitioner's husband and 13 others have not completed 10 years of

qualifying service for payment of pension under the relevant G.O Ms. Nos. 378 (FR.II) dated 18.04.1975 and G.O. Ms. No. 1028 (Transport) Department dated 23.09.1985, the Labour Court taking note of the order passed by this Court in W.P. No. 7012 of 1988 computed the payment of pension to a sum of Rs.1,19,400/- for each of the claimant.

5. Therefore, the respondent Corporation filed W.P. No. 14235/1998 challenging the award passed by the Labour Court. The same was dismissed. Again, the Writ Appeal No.475 of 2001 was also rejected on 10.08.2007. In the meanwhile, on the SLP filed against a batch of orders passed by this Court, in Civil Appeal Nos. 1444-1445 with 1446 to 1452 of 1999 and 8507 of 2003, the Apex Court passed an order on 29.10.2003, fixing the cut off date as 01.04.1982 and directed to pay arrears of pension only from 01.01.1988. Therefore, even though the claim of the petitioner was confirmed on two occasions, the order of the Hon'ble Supreme Court directed payment of arrears only from 01.01.1988 is not only binding upon the respondent Corporation but also the petitioner. Therefore, the petitioner has been paid with a sum of Rs.91,468/-, being the total outstanding due payable by the respondent Corporation, to satisfy the computation award, as directed by Hon'ble Supreme Court. Being so, having been accepted prior to 01.01.1988 the petitioner cannot make any more claim.

6. This Court finds full merits on the submission made by learned counsel for the respondents. It is an admitted case that the petitioner has rendered totally 33 years of service from 01.05.1975 to 30.06.2000 restricting his net qualifying service to 30 years. As per the direction issued by the Hon'ble Apex Court in Civil Appeal Nos. 1444-1445 with 1446 to 1452 of 1999 and 8507 of 2003 on 29.10.2003 the pension has already been paid to the petitioner from 01.01.1988 to 30.11.1991, for 47 months at the rate of Rs.600/- which comes to Rs.28,200/-. Again from 01.12.1991 to 30.06.2000 for 103 months at the rate of Rs.1007/-, it comes to Rs.1,03,721/- was also paid. However, after making permissible deductions the net pension payable is Rs.91,468/-, which has been admittedly paid by way of cheque on 11.12.2014.

7. Since the directions of Hon'ble Apex Court in Civil Appeal Nos. 1444-1445 with 1446 to 1452 of 1999 and 8507 of 2003 dated 29.10.2003, directing both the parties to pay the arrears only from 01.01.1988, the writ petition filed by the petitioner in my considered view, is to be held as mis-construed.

8. Therefore, the Writ Petition fails and the same is dismissed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr
To

1. The Secretary to Government
Transport Department
Fort St. George
Chennai - 600 009.
2. The Presiding Officer
Principal Labour Court
Chennai -600 104.
3. The Collector of Chennai
Chennai - 600 001.
4. The General Manager
Management of Tamilnadu
State Transport Corporation
(Villupuram) Ltd.,
Vellore Region, Vellore- 9

+ 1 cc to M/s. C. Manohar, Advocate SR.5437
+ 1 cc to M/s. P. Paramasivadosh, Advocate SR.8847
+ 1 cc Government Pleader Sr.8801

RSK(CO)
EU 13.04.2015

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