IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2016

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.15209 of 2013
and WMP.No.22045 of 2016

Parvathi .. Petitioner

Vs

1. Secretary to Government,
Transport (R.W.1) Department,
Secretariat,
Chennai - 600 009.

2. Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Dvn.III) Ltd.
Villupuram. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, to direct the respondents to take immediate steps to sanction family pension payable by the Government to the petitioner within a time frame.

For Petitioner : Mr.N.Sundaramurthy

For Respondents : Mr.K.Dhananjayan, AGP

ORDER

By consent of both the parties, the Writ Petition itself is taken up for final disposal.

2. The prayer made in the writ petition is to issue a writ of Mandamus, directing the respondents to take immediate steps to sanction family pension to the petitioner within a time frame to be fixed by this Court.

3. The case of the petitioner is that her husband A.Srinivasan worked as Traffic Inspector in the respondent Corporation, Kancheepuram Region and retired from service on 31.08.1997. Initially, he was working in the erstwhile Tamil Nadu State Transport Department upto 31.12.1971 and subsequently, in the then Pallavan Transport Corporation from 01.01.1972 to 30.04.1975. Thereafter, he was absorbed in the respondent Corporation with effect from 01.05.1975. For the services rendered by him in the State Transport Department, he was receiving pension with effect from 01.05.1975. Apart from that, he was receiving Employees Provident Fund Pension, as per E.P.F. Pension Scheme, till his death i.e., on 02.12.2012. After the death of her husband, the petitioner made a representation dated 16.04.2013 to the respondents seeking family pension and the same was not considered so far. Therefore, she has come forward with the present writ petition for the above stated relief.

4. Today, when the matter came up for hearing, the learned counsel for the petitioner submitted that the issue involved herein is relating to G.O.Ms.No.110 Transport Department, dated 06.06.2002 and G.O.(Ms)No.189

Transport (RW1) Department dated 13.08.2004 and the same is squarely covered by the judgment of a Division Bench of this Court dated 18.08.2010 in W.A.No.1246 of 2009.

5. The learned Additional Government Pleader appearing for the respondents also fairly concedes the same.

6. This Court perused the judgment of the Division Bench dated 18.08.2010 in W.A.No.1246 of 2009 as referred to above, wherein, the appellant, who was a similarly placed person like that of the petitioner herein, had approached the first respondent therein for family pension, which was refused on the ground that the appellant was sanctioned family pension under the Employees Pension Scheme, 1995 and as such, she was not entitled to claim family pension. The challenge made in that writ appeal was with regard to para 7(a) of G.O.Ms.No.110 Transport Department dated 06.06.2002, as per which, the members, who had come under Employees Provident Fund Pension Scheme from 15.11.1995 onwards and entitled to get family pension under the Employees Provident Fund Act, are not entitled to family pension. The Division Bench of this Court, after hearing both sides and after extracting the relevant paragraphs of the said G.O. and Rule 13-B of the Tamil Nadu Pension Rules, 1978, disposed of the writ appeal by directing the first respondent therein

to sanction family pension to the appellant. For better appreciation, it is but necessary to refer the relevant paragraphs of the said judgment, which read as follows:

> "14.There is no dispute that the family pension was granted by the Government of Tamil Nadu to the erstwhile Tamil Nadu State Transport Department Employees only as per G.O.Ms.No.110 dated 06.06.2002. By way of this order, the Government have issued directions to grant family pension under the existing Tamil Nadu Rules to the families of the eligible members of the Tamil Nadu State Transport and Transport Corporation Retired Employees Association, who were employees and who had been permanently absorbed in various Transport Corporations. This Government Order was followed by another order in G.O.Ms.No.189 dated 13.08.2004.
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> 15.The subsequent Government Order in G.O.Ms.No.189 dated 13.08.2004 extended the benefits of the family pension ordered by the Government as per G.O.Ms.No.110 dated 06.06.2002 to the spouses of similarly placed pensioners of the erstwhile Tamil Nadu State Transport Corporation. Therefore, the case of the petitioner was clearly covered by the Government Order in G.O.Ms.Nos.110 and 189 dated 06.06.2002 and 13.08.2004 respectively.
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> 16.Now the question is as to whether the first respondent was justified in rejecting the family pension on the ground that the appellant was receiving Employees Provident Fund Pension. There is no dispute that the appellant was entitled to the benefits of G.O.Ms.No.189 dated 13.08.2004. It is only the family pension

under the Employees Provident Fund, which alone stands in the way of her claiming family pension.

17.The respondents have not asked the appellant to exercise the option under Rule 13-B of the Pension Rules. Rule 13-B of the Tamil Nadu Pension Rules, 1978 reads thus:-

> "13-B Family pension admissible under this Rule shall not be granted to a person who is already in receipt of family pension or is eligible therefor under any other pension rules.
>
> Provided that a person, who is otherwise eligible for family pension under this rule, may opt to receive family pension under this rule if he forgoes family pension admissible from any other rules."

18.The said rule gives an option to the spouses of the pensioners of the erstwhile Tamil Nadu State Transport Department either to opt for the family pension ordered by the Government or to receive the family pension under any other pension rules.

19.The appellant was receiving the Employees Provident Fund Pension as on the date on which the Government decided to grant pension to the spouses of the pensioners of the erstwhile Tamil Nadu State Transport Department. Therefore, the first respondent should have called upon the appellant to exercise her option as to whether she wants to continue in the existing pension scheme. Admittedly, no such option was given to the appellant and as such, she was in darkness with respect to the course to be adopted in the matter of family pension.

20.The second respondent in their counter affidavit also indicated that the husband of the appellant has received the employees contribution at Rs.50,788/- and as such, it was not open to the appellant to claim family pension.

21.Tamil Nadu Pension Rules also contains provisions for meeting situations like this. Pension Rules provides that in case the employee has received the Employee's contribution of Provident Fund and subsequently opts for family pension, the pensioner or the spouses shall refund such contribution in monthly installments not exceeding 36 in number, the first installment beginning the following month in which he/she exercised the option. Therefore, it was not open to the respondent to deny the family pension solely on the ground of receiving the Employer's share of Provident Fund. It is also a matter of record that the Government have issued a proceeding dated 02.06.2006 requesting all the Collectors and District Treasury Officers to take necessary steps to implement Tamil Nadu Pension Rules, 1978 by calling upon the pensioners to exercise their option to receive only one pension in case they are eligible for more than one pension. The case of the appellant is clearly covered by rule 13(b). The appellant is entitled to the family pension as per G.O.Ms.No.189 dated 13.08.2004. Therefore, the appellant should have been given an opportunity to exercise her option. This aspect was not considered by the learned single Judge.

22.Therefore, we are of the view that the respondents were not justified in denying family pension to the appellant solely on the ground that she was receiving pension under Employee's P.F. Scheme.

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24.Accordingly, we direct the first respondent to sanction the family pension to the appellant with effect from 13.8.2004. Such exercise shall be completed within eight weeks from the date of receipt of a copy of this order. However, she is not entitled to the

> Employees' Provident Fund Pension. The first respondent is permitted to deduct the Employees' Provident Fund Pension paid to the appellant for the period from 13.08.2004, as well as the amount paid to her husband by way of Employer's contribution viz., Rs.50,788/- from the arrears payable to her. In case the arrears amount is not sufficient to recover the amount indicated above, it is open to the respondents to recover the balance from the monthly pension payable to the petitioner in 36 equal installments.
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> 25.The writ appeal is disposed of as indicated above. No costs."

The judgment as extracted above, in my view, will hold good for the present writ petition as well.

7. It is also noteworthy to mention at this juncture that following the aforesaid Division Bench Judgment, another Division Bench of this Court has disposed of a writ petition in W.P.No.27820 of 2006 by directing the first respondent therein to pass appropriate orders granting family pension to the petitioner therein, by order dated 20.09.2011.

8. Therefore, in the light of the aforesaid Division Bench judgment, this Court directs the respondents to pass appropriate orders on the petitioner's representation dated 16.04.2013, granting family pension to her, taking into account the services rendered by her deceased husband A.Srinivasan, within a

period of six weeks from the date of receipt of a copy of this order. It is made clear that the petitioner is not entitled to the pension under the Employees Provident Fund Scheme with effect from the date on which the family pension is sanctioned.

9. This writ petition is disposed of as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

23.09.2016

Index : Yes

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To

1. Secretary to Government,
   Transport (R.W.1) Department,
   Secretariat,
   Chennai - 600 009.

2. Managing Director,
   Tamil Nadu State Transport Corporation
   (Villupuram Dvn.III) Ltd.
   Villupuram.

R.MAHADEVAN, J.

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