

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.20867 of 2014

Mrs.Shahuban Beevi

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Transport Department,
Secretariat, Chennai-600 009.
2. The State of Tamil Nadu,
Rep. by its Secretary,
Finance Department,
Secretariat, Chennai-600 009.
3. The State Express Transport Corporation Ltd.(Tamil Nadu),
Rep. by its Managing Director,
Thiruvalluvar House,
Pallavan Salai,
Chennai-600 002.
4. The Regional Provident Fund Commissioner,
Royapettah, Chennai-600 014.
5. The Assistant Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office,
43-P/1, Trivandrum Road,
Palayamkottai, Tirunelveli-627 002.
6. The Assistant Commissioner,
Employees Provident Fund Organisation,
Sub-Regional Office,
No.66, Water Tank Road,
Nagercoil-629 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first respondent to grant Tamil Nadu State Government Family Pension and pay arrears of family pension to the petitioner as per G.O.Ms.No.189, Transport Department, dated 13.08.2004 from the date of death of petitioner's husband, namely 21.10.1991 for the service rendered by petitioner's husband in the State Transport Department by following the judgments in W.A.No.1246 of 2009, dated 18.08.2010 and W.P.No.230 of 2014, dated 11.02.2014 on the file of this Court and direct the fourth and fifth respondents to stop payment of Employees Provident Fund Pension to the petitioner forthwith and furnish the statement of account of total Provident Fund Family Pension paid to the petitioner, to the respondents 1, 2 and 3 to enable them to pay to the petitioner the family pension as per the orders of this Court referred in the affidavit filed by the petitioner.

For Petitioner : Mr.D.Sadhasivan
For Respondents : Mr.K.Dhananjayan,
Spl.G.P. for RR-1 & 2
Mr.P.Paramasivadosh for R-3
Mr.A.R.Suriyaprakasam for RR-4 to 6

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to grant Tamil Nadu State Government Family Pension and pay arrears of family pension to the petitioner as per G.O.Ms.No.189, Transport Department, dated 13.08.2004 from the date of death of petitioner's husband, namely 21.10.1991 for the service rendered by petitioner's husband in the State Transport Department by following the judgments in W.A.No.1246 of 2009, dated 18.08.2010 and W.P.No.230 of 2014, dated 11.02.2014 on the file of this Court and direct the fourth and fifth respondents to stop payment of Employees Provident Fund Pension to the petitioner forthwith and furnish the statement of account of total Provident Fund Family Pension paid to the petitioner, to the respondents 1, 2 and 3 to enable them to pay to the petitioner the family pension as per the orders of this Court referred in the affidavit filed by the petitioner.

2. It is the case of the petitioner that her husband Late S.Syed Aboo Backer was appointed as Conductor in the Tamil Nadu State Government Transport Department on 12.02.1960 and then was promoted as a Checking Inspector in Kanyakumari Branch. Subsequently, on formation of various new Transport Corporations on 01.01.1972, the petitioner's was absorbed in Pallavan Transport Corporation Ltd. (Express Wing) on 15.09.1975 and it

was later named as Thiruvalluvar Transport Corporation Ltd. Subsequently, its name was changed as State Express Transport Corporation Ltd. (Tamil Nadu), the third respondent herein. The petitioner's husband died on 21.10.1991 while in service.

3. It is the further case of the petitioner that her husband, while in service, was contributing to the Employees Family Pension Scheme, 1971, till his death. After his death, the petitioner had been receiving a sum of Rs.838/- as family pension under the Employees Provident Fund Scheme, 1995, for the service rendered in Thiruvalluvar Transport Corporation Ltd. from 15.09.1975 till his death, i.e. 21.10.1991. It is a very meagre amount with which the petitioner is not able to meet her basic needs.

4. It is the further case of the petitioner that State Government Family Pension was not paid to the petitioner for the services rendered by her husband in the Tamil Nadu State Government Transport Department from 12.02.1960 to 14.09.1975. The Government had assured and agreed to pay pension to the employees of the erstwhile Tamil Nadu State Transport Department, for their service rendered in the Tamil Nadu State Transport Department before their absorption in the Transport Corporation. Accordingly, as per G.O.Ms.No.1028, Transport Department, dated 23.09.1985, the petitioner's husband, while in service, was sanctioned pension by the Transport Department and he received the said pension till his death, i.e. on 21.10.1991. Consequently, the petitioner became entitled to receive family pension with effect from the date of death of her husband from the first respondent.

5. It is further stated that the Government issued orders to the effect that the employees of the erstwhile Tamil Nadu State Transport Department, who were permanently absorbed in the Transport Corporations, were not entitled to the benefit of family pension. This was challenged in W.P.No.21204 of 1992 by the Tamil Nadu State Transport and Transport Corporation Retired Employees Association, and this Court allowed the said writ petition on 07.03.2001, pursuant to which, G.O.Ms.No.110, Transport Department, dated 06.06.2002 was passed for grant of family pension only to the members of the Association who had filed the aforesaid Writ Petition. Again, the same Association filed W.P.No.19585 of 2003 and this Court by order dated 11.02.2004, allowed the Writ Petition. Consequently, the Government came forward to extend the benefit of family pension to all the employees of the State Transport Department, by issuing G.O.Ms.No.189, Transport Department, dated 13.8.2004.

6. It is the further case of the petitioner that in paragraph 7 of G.O.Ms.No.110, stated above, it is stated that

the same is not applicable to the persons, who were absorbed in the State Transport Undertakings and hence, the same was challenged in W.P.No.35643 of 2007. But, the said Writ Petition was dismissed, against which W.A.No.1246 of 2009 was filed and the Division Bench of this Court disposed of the said Writ Appeal on 18.08.2010 with directions. Challenging the same, SLP (Civil) C.C.No.8381 of 2011 was filed before the Supreme Court and the same was dismissed on 13.5.2011. Subsequently, the Government implemented the order passed in the Writ Appeal by issuing G.O. (3D) No.38, Transport Department, dated 07.09.2011. It is the claim of the petitioner that she is also similarly placed person as in the case of W.A.No.1246 of 2009 and following the judgment made in W.A.No.1246 of 2009, the petitioner is also entitled to get the family pension from the date of death of her husband for the service rendered by her husband in the State Transport Department. Further, the respondents ought to have called upon the petitioner to exercise her option to receive the family pension under the Tamil Nadu Pension Rules, 1978. But, they have failed to do so. In this regard, the petitioner sent a representation dated 27.12.2013 to the respondents 1 and 3 to 5. Since the same was not considered, left with no other alternative, the petitioner has come up with the present Writ Petition for the relief stated above.

7. Today, when the Writ Petition is taken up for consideration, learned counsel for the petitioner has pointed out that the issue involved in this writ petition is covered by the above said judgment of the Division Bench of this Court in Writ Appeal No.1246 of 2009, dated 18.8.2010. The relevant portion of the judgment is extracted hereunder:

"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."

8. The dictum laid down by the Division Bench of this Court in the above decision, is squarely applicable to the present case. Hence, the petitioner is entitled for the relief as sought for in the present Writ Petition.

9. Therefore, the first respondent is directed to consider the said representation of the petitioner, dated 27.12.2013 positively, in the light of the said judgment of this Court in W.A.No.1246 of 2009, dated 18.8.2010 and pass appropriate orders

on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

10. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Secretary, Transport Department, Secretariat, Chennai-600 009.
2. The Secretary, Finance Department, Secretariat, Chennai-600 009.
3. The State Express Transport Corporation Ltd.(Tamil Nadu), Rep. by its Managing Director, Thiruvalluvar House, Pallavan Salai, Chennai-600 002.
4. The Regional Provident Fund Commissioner, Royapettah, Chennai-600 014.
5. The Assistant Commissioner, Employees Provident Fund Organisation, Sub-Regional Office, 43-P/1, Trivandrum Road, Palayamkottai, Tirunelveli-627 002.
6. The Assistant Commissioner, Employees Provident Fund Organisation, Sub-Regional Office, No.66, Water Tank Road, Nagercoil-629 001.

+1cc to Mr.a.P. Suryaprakasam, Advocate, S.R.No.70456
+1cc to Mr.D. Sadhasivam, Advocate, S.R.No.70253
+1cc to the Government Pleader, S.R.No.70051

rj (CO)
md(30/12/2016)

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