

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.16084 of 2016

T.Anusuya

... Petitioner

vs.

1. The State of Tamil Nadu,
rep. by its Secretary,
Transport Department,
Secretariat,
Chennai 600 009.
2. The Tamil Nadu State Transport Corporation,
(Villupuram Division - II) Ltd.,
(Old Name Pattukottai Azhagiri Transport
Corporation Ltd.,)
rep. by its Managing Director,
Rangapuram, Vellore Region,
Vellore - 632 009.
3. The Commissioner,
Employees Provident Fund,
Regional Office,
No.20, Royapettah High Road,
Chennai 600 014.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of mandamus directing the 1st respondent to grant Family Pension and payment of arrears of Family Pension to the petitioner from 21.11.2013, the date of death of the petitioner's husband by following the judgments in W.A.No.1246 of 2009, dated 18.08.2010 and in W.P.No.33975 of 2005, dated 20.09.2011 and in W.P.No.35674 of 2005, dated 20.09.2011 and in W.P.No.18866, 18887, 19394 to 19396 of 2014, dated 27.08.2014 and in W.P.No.1372 of 2015, dated 20.04.2015 and in W.P.Nos.25880, 25881 of 2015, dated 20.08.2015, etc.

For Petitioner : Mr.V.S.Jagadeesan
For R1 : Mr.K.Dhananjayan,
Special Government Pleader
For R2 & R3 : Mr.P.Paramasivados

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the 1st respondent to grant Family Pension and payment of arrears of Family Pension to her from 21.11.2013, the date of death of her husband in the light of the judgments rendered by this Court in similar circumstances.

2. The case of the petitioner, in brief, is as follows:

(a) The petitioner's husband N.Thulasidass was appointed as a Conductor on 26.01.1963 in the erstwhile State Transport Corporation. Subsequently, on formation of various new Transport Corporations, on 01.01.1972, the petitioner's Late husband, N.Thulasidass was absorbed in the then Tamil Nadu State Transport Corporation (Villupuram Division-II) Ltd., (Old Name Pattukottai Azhagiri Transport Corporation Ltd.) i.e. the 2nd respondent herein on 01.05.1975, as a Conductor. Later, he was promoted as a Checking Inspector. The petitioner's Late husband took Voluntary retirement on 31.03.1996. He died on 20.11.2013.

(b) The petitioner's husband was receiving pension vide Pension Payment Order No.A551771 and he received the same till his death, i.e. 20.11.2013. After his death, the petitioner became eligible to receive Family Pension with effect from 21.11.2013 and she was receiving a sum of Rs.373/- as Family pension under the EPF Scheme 1995.

(c) Subsequent to the Government Order that the employees of the erstwhile Tamil Nadu State Transport Department, who were permanently absorbed in the Transport Corporation are not entitled to the benefit of Family Pension, a Writ Petition was filed in W.P.No.21204 of 1992, and the same was allowed by this Court. Consequently, the Government came forward to grant Family Pension only to the members of the Association who had filed the said Writ Petition. However, by a Government Order in G.O.Ms.No.189, Transport (RW1) Department, dated 13.08.2004, the Government decided to extend the benefit of Family Pension to the spouses of all pensioners of erstwhile Tamil Nadu State Transport Department similarly placed, subject to the conditions specified in the said Government Order. Since the petitioner is also a similarly placed person, she made various representations to the 2nd respondent seeking Family Pension. Finding no reply

from the respondents, she is before this Court.

3. Today, when the matter is taken up for consideration, learned counsel appearing for the petitioner relied upon a judgment of a Division Bench of this Court dated 18.8.2010 passed in W.A.No.1246 of 2009 (A.Loganayaki v. The Secretary to Government, Transport Department, Secretariat, Chennai-9 and two others), wherein, in paras 21 and 22, the Division Bench has held as follows:

"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 instalments not exceeding 36 in number, the first instalment 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 employee's share of provident fund. It is also a matter of record that the Government have issued a proceeding dated 2.6.2006 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 13.8.2004. 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. By relying upon the said judgment, learned counsel appearing for the petitioner submitted that the petitioner is also entitled for family pension as per the said decision. Thus, he sought for a direction to the respondents to grant family pension to the

petitioner in the light of the decision of the Division Bench of this Court referred to above."

4. I have also heard the learned Special Government Pleader, who has taken notice on behalf of the 1st respondent and the learned Standing Counsel, who has taken notice for the 2nd and 3rd respondents/Transport Corporation.

5. Considering the facts and circumstances of the case and taking note of the submissions made on either side, this Court directs the petitioner to send a fresh representation along with a copy of this order to the first respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider the said representation seeking Family Pension and pass appropriate orders, on merits and in accordance with law and also in the light of the judgment of the Division Bench of this Court dated 18.8.2010 passed in W.A.No.1246 of 2009 (A.Loganayagi v. The Secretary to Government, Transport Department, Secretariat, Chennai-9 and two others), within a period of six weeks thereafter.

The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

aeb

To:

1. The Secretary,
State of Tamil Nadu,
Transport Department,
Secretariat,
Chennai 600 009.

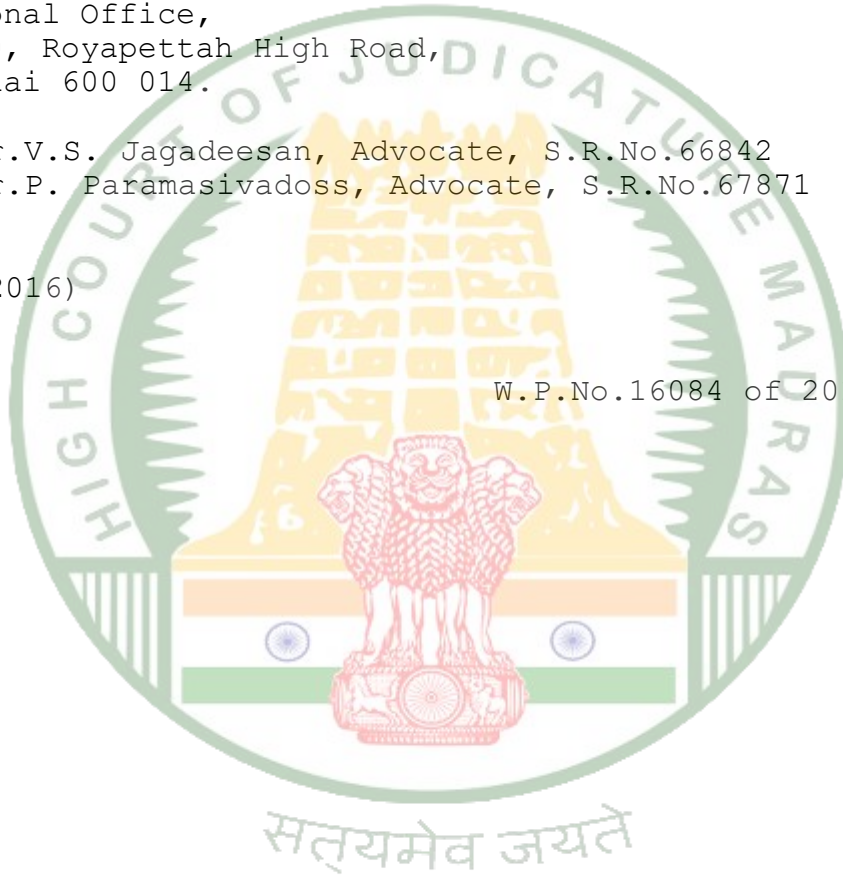
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+1cc to Mr.V.S. Jagadeesan, Advocate, S.R.No.66842
+1cc to Mr.P. Paramasivadosh, Advocate, S.R.No.67871

nrjk(CO)
md(23/12/2016)

W.P.No.16084 of 2016



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