IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.No.11453 of 2012

D.Bhuvaneshwari ... Petitioner

Vs

1.The Secretary, the Railways Employee's Cooperative Credit Society Limited, Chennai-3

2.The Joint Registrar, Office of the Joint Registrar of Cooperative Societies, Madras Region Chennai-18 ... Respondents

Prayer:- This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondents to pay the Petitioner the family pension and the arrears thereof as per the Retirement Benefit Fund Rules.

For Petitioner : Mr.D.Nagasaila

For Respondent : Mr.A.Jenasenan-R1
Mr.L.P.Shanmugasundaram,
Special Government Pleader for R2

ORDER

This Writ Petition is filed to issue a Writ of Mandamus to direct the Respondents to pay the Petitioner the family pension and the arrears thereof as per the Retirement Benefit Fund Rules.

2. The learned counsel for the Petitioner would contend that the Petitioner's husband joined the service on 30.4.1979 and he was working as Senior Section Officer. There was a pension scheme for the employees having service up to 10 years. The contribution was fixed at the rate of 2% of basic pay and the contribution was deducted from February 1991. The pension scheme was to be operative with effect from 1.7.1987. Thereafter, the Cooperative Society itself started a pension fund trust by a circular dated 29.01.1991. According to the Petitioner, the husband of the Petitioner contributed to the fund from the year 1998 and thereafter, when it was increased, it was also paid. The new staff retirement benefit scheme

came into force from 1.4.2001. The enhanced contribution was also deducted with effect from 8.3.2001. Due to the voluntary retirement scheme, in the year 1999, the Petitioner opted for voluntary retirement and was permitted to retire on 31.3.2004. From the time of retirement, he was also paid a pension of Rs.3700/- per month. Only because of the scheme he opted for voluntary retirement. Further, he would contend that according to the by-laws, when the objects of the staff retirement benefit fund scheme is to provide financial assistance to those who retired from service either by superannuation or voluntary retirement, the same should apply to them also.

3. The learned counsel for the Petitioner would further contend that earlier the husband of the Petitioner alone filed WP.No.22406 of 2006, challenging the resolution dated 15.12.2004 to wind up the staff retirement benefit fund scheme. Even according to them, an option was given to the persons who retired prior to 2005 to accept lump sum payment and the said resolution would have no application to the Petitioner as he had not opted for lump sum payment in lieu of pension. Therefore, the earlier Writ Petition was closed. Thereafter, the Petitioner has made a representation dated 14.12.2009 to the Respondent Society to pay the family pension to her and since the same was not considered, this Writ Petition has been filed.

4. The learned counsel for the Respondents, by filing a counter affidavit, would contend that the Respondent Society is registered under the Multi-State Cooperative Societies Act and his wholly funded by its own resources with no funding either directly or directly by the State or the Central Government and therefore, this Writ Petition is not maintainable. Even on merits, he would also contend that the employees are governed by the Employees Provident Fund Miscellaneous Provision Act, 1952 and the provisions under the employees provident fund scheme also provides for family pension to the wife of the employee after his death. But, in so far as the Society is concerned, since they have a separate fund, the Committee took a decision way back in the year 1990 to have pension scheme to the staff of the Society and accordingly, a set of rules known as Staff Retirement Benefit Fund Rules, 1991 was framed by the share holders and the staff welfare fund committee. Therefore, a separate fund was created called as the staff retirement benefit fund. As the fund could not meet out the requirements, to the by-laws, a separate by-law no.17 was introduced in June 2002, for making equal contribution by the employee of the society and board management and the subscription was to be recovered with the consent of the parties.

5. The learned counsel for the Respondents would further contend that the staff retirement benefit fund rules 2002 would apply to the husband of the Petitioner, as he was appointed in 1979 and contributed till 2004. In the year

2004, he opted for voluntary retirement and at that point of time, he has been given a consolidated lump sum amount of Rs.5,96,345/- towards his terminal benefits and he was eligible to receive Rs.3700/- per month as financial assistance under the above scheme. Subsequently, in December 2004, the very staff benefit scheme itself was wound up at the instance of the then serving employees. In a batch of writ petitions filed, the decision of the Society to scrap the scheme was upheld and in WA.No.572 to 588 of 2007, it was confirmed. Thereafter, since the husband of the Petitioner died in 2009, as per the provisions of 2002 Rules, the financial assistance was confined only to the retirees and no provision was made for any family members. After the death of the Petitioner's husband, even the payment of financial assistance had ceased of and therefore, she is not eligible to get the same. He would also contend that the definition of 'staff' would not include the family member as contemplated under the Rules 2002 and that the very object of the rules 2002 itself was only to provide financial assistance to those persons who retired from service either on attainment of superannuation or voluntary retirement. In such circumstances, this Writ Petition is liable to be dismissed.

6. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

7. Whether the Petitioner being the family member is entitled to the benefits is the question. It is no doubt that there is no dispute between the parties that the parties are governed by the rules as framed. The Petitioner's husband was admittedly a contributory to this. But, after abolition of the very scheme itself, when it was challenged before this court in a Writ Petition, it was upheld and it was also confirmed by this court in the writ appeal. Further, admittedly, the Petitioner did not retire from service by superannuation and he had opted for retirement on voluntary retirement scheme and he was also paid a consolidated payment and even at that point of time, he was directed to be paid a sum of Rs.3700/- per month as pension and admittedly, he was receiving it. No doubt, it is not the case of the Respondents that amount was not liable to be paid.

8. But under the rules, the definition of 'staff' reads as under:-

> "Staff" means the employees/officers employed in the Railway Employee's Cooperative Society Credit Society Limited, Chennai-3"

If the interpretation of the word 'staff' as defined above is taken into consideration, it clearly states that only a staff member would be eligible. To the question as to whether a family member can be considered as a staff to come within the purview, definitely the answer is no at this point of time. Further, it would clearly indicate that when the scheme was given an option and the person opted for it, whether after the retirement or after the resignation or after the voluntary retirement, can it be modified is the question. The meaning of 'Staff' also does not include the family members. Since scrapping of the scheme itself was upheld and confirmed by this court, the question as to whether the family member is eligible does not arise.

9. In the decision relied on by the learned counsel for the Petitioner reported in 2010 8 MLJ 42 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam Vs. Government of Tamil Nadu), it has been held as under:-

> "6. According to the petitioners, the payment of pension by the Transport Corporations was stopped to all workmen who retired after 1.4.2003 due to non-availability of exemption from the purview of the income tax to the Tamil Nadu Transport Corporation Employees Pension Fund Trust. The Union protested the said action and the first respondent issued a letter No.245, Transport Department, dated 24.12.2004 and directed the Transport Corporations that the amount of pension and commutation of pension be disbursed immediately to the workmen, who retired voluntarily, medically discharged or expired on or after 1.4.2003. The widows of the workmen, who are the petitioners in these writ petitions are not paid family pension and commutation of pension, even though the workmen were paid pension till their death. Their claims were rejected on the ground that the Rules do not provide for family pension to the widows of ex-servicemen. The said action of the respondents being in violation of Rules 14(c) and 20 of the Rules, the petitioners have filed these writ petitions contending that the action of the respondents is arbitrary, unreasonable, violating the Rules and inhumane, as the widows of the deceased employees of the Corporation are denied of family pension only on the ground that they were already paid military pension for the services rendered by them in the Army/Navy/ Air Force. The same is also challenged on the ground that the action of the Transport Corporation is contrary to Tamil Nadu Pension Rules, 1978. "

10. It is no doubt true that in the normal circumstances, any widow or any family member will be entitled for family pension. But, in the case on hand, when it is

governed by the society by-laws and when the scheme itself was closed, that too when there is no provision in the Rules providing for payment of financial assistance to the family members of an employee in the event of his death, the question of family pension to the widow or the family member does not arise. Further, I do not find any reason much less a valid reason to entertain this Writ Petition. In view of the above reasons and discussions, this Writ Petition is liable to be dismissed.

11. In the result, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Srcm
To:

1.The Secretary, the Railways
Employee's Cooperative
Credit Society Limited, Old Zoo Road,
Ashok Vihar Complex, Chennai-3

2. The Joint Registrar,
Office of the Joint Registrar of
Cooperative Societies, Madras Region
No.91, St. Mrys Road, Abhiramapuram,
Chennai-18

+ 1 cc to M/s. A. Jenasenan, Advocate sR.49456
+ 1 cc to Government Pleader Sr.49992

WP.No.11453 of 2012

RSK(CO)
EU 28/09/2016