

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.4322 of 2015

Tamil Nadu AITUC Kattida Thozhilalar Sangam
Rep. by its General Secretary
Regn.No.2373,MDS Kovai Mavatta Kuzhu
20, Dhandapani Street
Pappanaickenpalayam
Kovai 641 037

... Petitioner

Vs

1. Tamil Nadu Constructions Workers Welfare Board
Rep. by its Secretary, No.8, Valluvarkottam High Road
Nungambakkam, Chennai 600 034
2. Labour Officer (Social Security Scheme)
Tamil Nadu Constructions Workers Welfare Board
Trichy Road, Ramanadhapuram
Coimbatore - 45

... Respondents

Writ Petition under Article 226 of the Constitution of India praying for a writ of declaration declaring the action of the 2nd respondent in granting pension to the members of the petitioner union whose names are given in the Annexure to this Affidavit from August 2013/ October 2014 instead of from the date of their attaining years of age as illegal, arbitrary and contrary to law and in violation of Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme 1994 and consequently direct the respondents to pay the arrears of pension at the rate of Rs.1000/- per month to the members of the petitioner union for the period between the date of attaining the age of 60 years and till date of paying the pension to the members of the petitioner Union.

For petitioner : Mr. Balan Haridass
For respondents : Mr. R. Rajeswaran, Spl.G.P.

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. The petitioner is a Trade Union registered under the provisions of Trade Unions Act, 1926 and they have filed this writ petition praying for a writ of declaration to declare the action of the 2nd respondent in granting pension to the members of the petitioner union whose names are given in the Annexure to the affidavit filed in support of the writ petition from August 2013/ October 2014 instead of the date of their attaining 60 years of age as illegal, arbitrary and contrary to law.

3. The learned counsel appearing for the petitioner pointed out that an identical issue was considered by this Court in a writ petition, in W.P.No.30028 of 2013 dated 19-06-2014 (M. Jothi Vs. Tamil Nadu Manual Workers Welfare Board and another) and would submit that the action of the second respondent in not granting pension from the month and year of completing 60 years is contrary to the said decision.

4. In the counter affidavit filed by the second respondent, Labour Officer (Social Security Scheme) this specific contention has not been denied. Furthermore, there is no material placed before this Court to show as to whether the said order passed in W.P.No.30028 of 2013 has either been upheld or set aside. In the light of the above this Court is inclined to follow the said order in the earlier writ petition.

5. At this stage, it would be beneficial to refer the operative portion of the above said order:

"3. Clause 18 of the Scheme provides for pension on completion of 60 years of age. The same is not in dispute. The second respondent passed the impugned order dated 30.08.2013 sanctioning the pension of Rs.1000/- per month as pension from 01.08.2013 onwards, instead of from 01.03.2013.

4. The petitioner has sought to quash the said order of the second respondent in so far as denying pension from 01.03.2013 and for a direction to pay her pension from 01.03.2013 onwards.

5. A counter affidavit is filed by the second respondent to sustain the impugned order stating that the impugned order is based on the proceedings dated 27.12.2012 of the Commissioner of Labour and the second respondent has relied on paragraph No.5 of the proceedings of the Commissioner, which is extracted hereunder:

5. The Commissioner of Labour once again suggested that while sanctioning the pension claim applications, the procedure adopted in the Revenue

Department in disbursing of old age pension (OAP) should be followed and the date of sanction by the L.O. (SSS) to be taken into account for sanctioning pension

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents

7. I am of the view that the proceedings of the Commissioner has no legal sanctity firstly. Further, paragraph (5) is also not clear that pension shall be paid from the date of sanction of the concerned Labour Officers. If paragraph 5 of the proceedings is understood in the way as the second respondent did, the same would lead to anomalous situation and it would depend upon the sweet will of the sanctioning authority, as pension shall be paid from the date of passing of the order of the Labour Officer. If the Scheme provides that the manual workers, who have completed 60 years, shall be paid pension, the proceedings of the Commissioner cannot prescribe a procedure in violation of the Scheme. Hence, I am of the view that the petitioner is entitled to pension from 01.03.2013 and not from 01.08.2013, the date of passing of order by the sanctioning authority of the pension. The reliance placed by the second respondent on the proceedings of the Commissioner has no legal sanctity, particularly, when it is not in dispute that the petitioner has reached 60 years on 28.02.2013 and the right to pension accrues from 01.03.2013 as per the Statutory Scheme 2006, which cannot be taken away by the Commissioner or by any Authority. Hence, the impugned order is quashed and a direction is issued to the second respondent to pay pension to the petitioner from 01.03.2013 onwards within a period of six weeks from the date of receipt of a copy of this order. The writ petition is allowed. No costs. The connected miscellaneous petition is closed."

It was pointed out that the Scheme provides that pension will be sanctioned on the date of attaining 60 years and in violation of the Scheme, the pensionary benefits cannot be restricted to the date of sanction.

6. Thus, following the above decision, it is held that the decision of the respondent in restricting the date of pension to the date of sanction is held to be not in consonance with the Scheme and the writ petition is disposed of by directing the respondents to grant pension to the members of the petitioner-Union whose names have been furnished in the Annexure filed along with the affidavit filed in support of the writ petition,

after verifying the details and such pension shall be paid from the date on which the respective workmen attained the age of 60 years. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order.

7. However, there will be no order as to costs.
glp

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

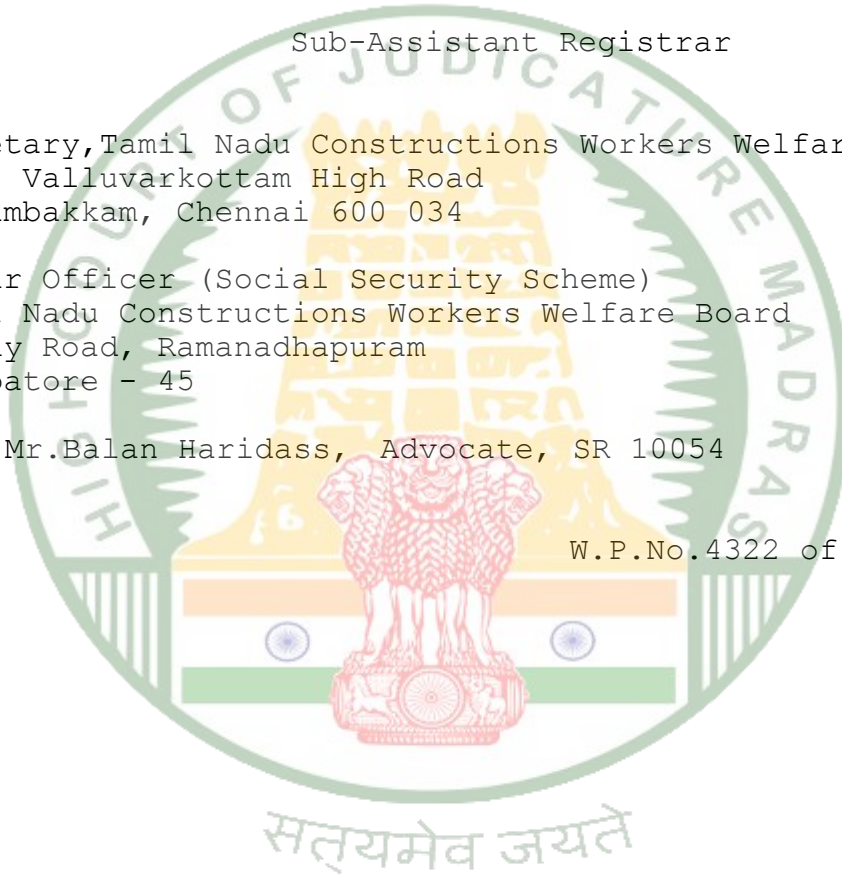
To

1. Secretary, Tamil Nadu Constructions Workers Welfare Board
No.8, Valluvarkottam High Road
Nungambakkam, Chennai 600 034
2. Labour Officer (Social Security Scheme)
Tamil Nadu Constructions Workers Welfare Board
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+ 1 cc to Mr.Balan Haridass, Advocate, SR 10054

mr(co)
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