

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.09.2016
CORAM
THE HONOURABLE MR. JUSTICE R.SUBBIAH
Writ Petition No.34226 of 2016

R.Baby Ammal

... Petitioner

vs.

1. The State of Tamil Nadu
rep.by its Secretary
Transport Department
Secretariat
Chennai 600 009.
 2. Metropolitan Transport Corporation
(Chennai) Ltd.,
(Old Pallavan Transport Corpn.Ltd.)
rep.by its Managing Director
Pallavan Salai
Chennai 600 002.
 3. The Commissioner
Employees Provident Fund
Regional Office
No.20, Royapettah High Road
Chennai 600 014.
- Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the first respondent to grant pension to the petitioner's late husband based on the service he has put in i.e., 10 years 2 months and 0 day of service (06.03.1965 to 01.05.1975) under the first respondent or to grant pension to the petitioner's late husband based on the service he has put in i.e. 17 years 0 month and 25 days of service (06.03.1965 to 01.04.1982) as per G.O.Ms.No.42, Transport dated 27.05.2005, fixing the cut-off date of his service in the Transport Department as 01.04.1982, and to pay the said pension for the period 01.01.1988 to 07.05.2008 as lifetime arrears of pension to the petitioner and to grant family pension to the petitioner from 08.05.2008 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.Nos.18866, 18887, 19394 to 19396 of 2014 dated 27.08.2014 and in W.P.Nos.25880, 25881 of 2015 dated 20.08.2015.

For Petitioner : Mr.V.S.Jagadeesan
For Respondents : Mr.S.Gunasekaran
Additional Government Pleader
for RR1 and 3
Mr.V.Udayakumar for R2

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioner has come up with the present writ petition for a mandamus, directing the first respondent to grant pension to her late husband based on the service put in i.e., 10 years 2 months and 0 day of service (06.03.1965 to 01.05.1975) under the first respondent or to grant pension to the petitioner's late husband based on the service he has put in i.e. 17 years 0 month and 25 days of service (06.03.1965 to 01.04.1982) as per G.O.Ms.No.42, Transport dated 27.05.2005, fixing the cut-off date of his service in the Transport Department as 01.04.1982, and to pay the said pension for the period 01.01.1988 to 07.05.2008 as lifetime arrears of pension to the petitioner and to grant family pension to the petitioner from 08.05.2008 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.Nos.18866, 18887, 19394 to 19396 of 2014 dated 27.08.2014 and in W.P.Nos.25880, 25881 of 2015 dated 20.08.2015.

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

(a) The petitioner's husband G.Rajendran was appointed as a Conductor on 6.3.1965 in the respondent corporation. In the year 1993, he retired under voluntary retirement scheme on 31.12.1994. Subsequently, he died on 7.5.2008. While in service, her husband was contributing to the Employees Family Pension Scheme 1971 till his death. After his death, the petitioner is receiving a sum of Rs.325/- as family pension.

(b) Though the petitioner's husband had put in 10 years and 2 months service, his benefits were not paid to him. While so, the validity of fixation of cut off date as 1.5.1975 / 15.9.1975 was challenged by the Trade Unions before this Court. After various litigations, finally the Hon'ble Supreme Court by judgment dated 29.10.2003, directed that the date of 1.4.1982 shall be adopted as cut off date for the purpose of assessing the requisite length of service and further directed that the

employees of the respondent corporation, whoever have retired, shall get arrears of pension only from 1.1.1988. Following the same, the Government issued G.O.Ms.No.42, Transport dated 27.5.2005. Only as per G.O.Ms.No.42, Transport dated 27.5.2005, the cut off date of his service in the transport department was fixed as 1.4.1982 and he continued to be eligible to receive pension and the said pension was to be paid from 1.1.1988. Even though her husband was eligible to receive pension as he had put in 17 years of service, till date, the pension was not paid. Hence, the present petition.

4. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner has relied upon the judgment of the 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.

5. I have also heard the learned Additional Government Pleader, who has taken notice on behalf of the respondents 1 and 3 and the learned Standing Counsel, who has taken notice for the second respondent-Transport Corporation.

6. Considering the facts and circumstances of the case and considering 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 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.Loganayaki 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.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sbi
To

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

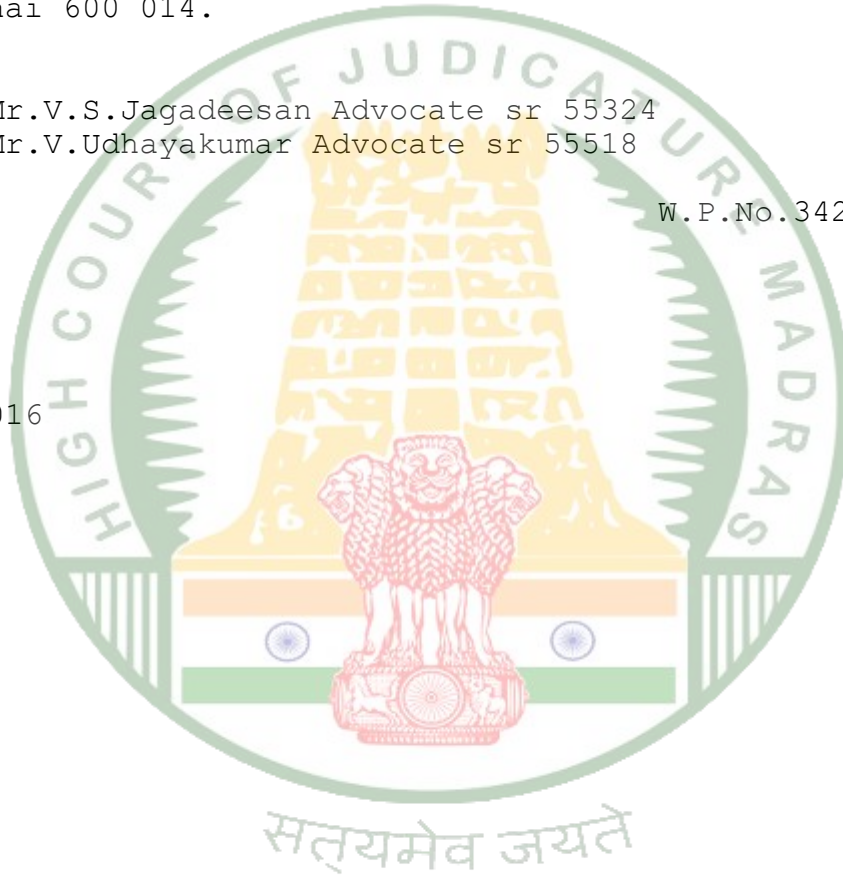
2. The Managing Director
Metropolitan Transport Corporation
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(Old Pallavan Transport Corpn.Ltd.)
Pallavan Salai
Chennai 600 002.

3. The Commissioner
Employees Provident Fund
Regional Office
No.20, Royapettah High Road
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+1 cc to Mr.V.S.Jagadeesan Advocate sr 55324
+1 cc to Mr.V.Udhayakumar Advocate sr 55518

W.P.No.34226 of 2016

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