

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.37970 of 2016

Kasiammal

.. Petitioner

Vs.

- 1 The State of Tamil Nadu
Rep. by its Secretary Transport Department
Secretariat Chennai-9.
- 2 The State of Tamil Nadu
Rep. by its Secretary Finance Department
Secretariat Chennai-9.
- 3 The Managing Director
Metropolitan Transport Corporation TN ltd
Pallavan House Anna Salai Chennai-2.
- 4 The Regional Provident Fund
Commissioner Royapettah Chennai-14.
- 5 The Commissioner
Employees Provident Fund Organisation Sub
Regional office Ambattur R40 A TNHB
Complex Mugappair Chennai-37.

.. Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus directing the 1st 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 13.8.2004 from the date of death of petitioner husband 26.12.2015 for the service rendered by petitioner husband in the State Transport Department by following the judgements in W.A.Nos.1246 of 2009 dated 18.8.2010 W.P. No.230 of 2014 dated 11.2.2014 and W.P.No.18339 of 2014 dated 15.4.2016 on the file of this Court and direct the 4th and 5th respondents to furnish Statement of Account of total Provident Fund to the respondents 1, 2 and 3 to enable them to pay the petitioner the Family Pension as per orders of this Court referred to above.

For Petitioner : Ms.S.Bhuvaneswari

For Respondents : Mr.G.Selvam,
Govt. Advocate,
R1 and R2
R.K.Gandhi, for R3

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 Tamil Nadu State Government Family Pension and Pay Arrears of Family Pension to her as per G.O.Ms. No.189 Transport Department dated 13.8.2004 from the date of death of her husband dated 26.12.2015 for the service rendered by him in the State Transport Department by following the judgements in W.A.Nos.1246 of 2009 dated 18.8.2010, W.P.No.230 of 2014 dated 11.2.2014 and W.P.No.18339 of 2014 dated 15.4.2016 on the file of this Court and direct the respondents 4 and 5 to furnish Statement of Account of total Provident Fund to the respondents 1, 2 and 3 to enable them to pay the petitioner the Family Pension as per orders of this Court referred to above.

3. It is the case of the petitioner that her husband P.P.Sambandham was appointed as Conductor in the Tamil Nadu State Transport Department on 20.9.1961. After various promotions, finally he was promoted as Assistant Branch Manager and retired from service on attaining the age of superannuation on 31.7.1998. Thereafter, he died on 26.12.2015. After the death of her husband, the pension amount was not paid to her. As per G.O.Ms.No.1028, her husband received pension till his death. Consequently, the petitioner is entitled to receive the same from the date of death of her husband. 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. The said GO was challenged in W.P.No.21204 of 1992 and this Court allowed the said writ petition on 7.3.2001, pursuant to which G.O.Ms.No.110, Transport Department dated 6.6.2002 was passed. Subsequently, W.P.No.19585 of 2003 was filed and this Court by order dated 11.12.2004, extended the benefits to all the State Transport Department Employees and to implement the same, G.O.Ms.No.189, Transport Department dated 13.8.2004 was passed by the Government. In para 7(1) of G.O.110, it was stated that the order in G.O.189 dated 13.8.2004 was 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 allowed the said appeal. Challenging the same, SLP (Civil) C.C.No.8381 of 2011 was filed 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 Corporation Department dated 7.9.2011. The petitioner is also similarly placed persons as in the case of W.A.No.1246 of 2009 and she is also entitled to get family pension from the date of death of her husband for the service rendered by him in the State Transport Department following the judgment made in W.A.No.1246 of 2009. Further, the respondents ought to have called upon the petitioner to exercise her option under rule 13-B of the Tamil Nadu Pension Rules, 1978. But, they have failed to do so. In this regard, she sent a representation dated 18.8.2016 to the respondents 1, 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 set out earlier.

4. Today, when the matter was taken up for consideration, learned counsel for the petitioner has pointed out that the issue involved in this writ petition is covered by the 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 13.8.2004. It is only the family pension under the Employees Provident Fund which alone stands in the way of her claiming family pension."

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. Therefore, this Court is constrained to pass the following order:-

"The first respondent is directed to consider the representation of the petitioner dated 18.8.2016 positively, in the light of the 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.

The writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sbi

To

- 1 The Secretary,
State of Tamil Nadu
Transport Department
Secretariat Chennai-9.
- 2 The Secretary
State of Tamil Nadu
Finance Department
Secretariat Chennai-9.
- 3 The Managing Director
Metropolitan Transport Corporation TN ltd
Pallavan House Anna Salai Chennai-2.
- 4 The Regional Provident Fund
Commissioner Royapettah Chennai-14.
- 5 The Commissioner
Employees Provident Fund Organisation Sub
Regional office Ambattur R40 A TNHB
Complex Mugappair Chennai-37.

+1cc to Mr.D.Sadhasivam, Advocate Sr.62278
+1cc to the Government Pleader sr.62487

W.P.No.37970 of 2016

lrs[co]
srg 02/11/2016