

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.42397 of 2016

K.Ponnesam

... Petitioner

Vs

- 1 The State of Tamil Nadu
Rep by its Secretary Transport Department
Secretariat Chennai-600 009
- 2 State Express Transport
Corporation Ltd (Old Name Thiruvalluvar
Transport Corporation 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 Family Pension to the petitioner from 12.10.1983 the date of the death of the petitioner's husband by following the judgments in W.A.No. 1246 of 2009 dated 18-08-2010 W.P.No.33975 of 2005 dated 20-09-2011 and in WP.No.35674 of 2005 dated 20-09-2011.

For Petitioner :	Mr.V.S.Jagadeesan
For Respondents :	Mr.K.Dhananjayan, Spl. Govt. Pleader, for R1 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 Family Pension from 12.10.1983, the date of the death of her husband by following the judgments in W.A.No. 1246 of 2009 dated 18.8.2010, W.P.No.33975 of 2005 dated 20.9.2011 and in W.P.No.35674 of 2005 dated 20.9.2011.

3. It is the case of the petitioner that her husband N.Swamy was appointed as a Conductor on 27.9.1963 in the respondent corporation. While in service, he died on 12.10.1983. During service, her husband was contributing to the Employees Family Pension Scheme 1995 till his death. After his death, the petitioner is receiving a sum of Rs.529/- as family pension under the EPF Scheme 1995. It is a very meagre amount. For the service rendered by her husband, he was eligible to receive pension even as per G.O.Ms.No.1028, Transport Department dated 23.9.1985 as he had put in the required service of 10-1/2 years of service and the petitioner is entitled to receive family pension with effect from the date of death of her husband i.e., on 12.10.1983. But, the same was not paid to her. Hence, the present writ petition.

4. Today, when the matter was taken up for consideration, learned counsel appearing for the petitioner submitted that similarly placed person like that of the petitioner has filed a writ petition before this Court in W.P.No.35643 of 2007 seeking family pension under the Tamil Nadu Pension Rules 1978 and the said writ petition was dismissed, against which, a writ appeal was filed in W.A.No.1246 of 2009 and the said writ appeal was disposed of on 18.8.2010, directing the Government to grant family pension. Aggrieved by the said order, the Government filed SLP before the Hon'ble Supreme Court in Special Leave to Appeal (Civil) C.C.No.8381 of 2011 and the same was dismissed on 13.5.2011. Subsequently, the Government implemented the said order by sanctioning family pension to the petitioner therein by issuing Government Order in G.O.(3D) No.38, Transport Department dated 7.9.2011. 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 Special Government Pleader, who has taken notice on behalf of the first respondent and the learned counsel, who has taken notice on behalf of the respondents 2 and 3.

6. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

7. The Division Bench of this Court in the judgment 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), in paras 21 and 22, 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."

8. 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbi

To

- 1 The Secretary Transport Department
Secretariat Chennai-600 009
- 2 The Managing Director State Express Transport
Corporation Ltd (Old Name Thiruvalluvar
Transport Corporation Ltd) Pallavan Salai Chennai-
600 002
- 3 The Commissioner
Employees Provident Fund Regional Office
No.20 Royapettah High Road Chennai-600 014

+1cc to Mr.V. Udaya Kumar, Advocate, S.R.No.71226

ug (CO)
md (02/01/2017)

W.P.No.42397 of 2016