

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.10293 of 2011

V.Govindaraj

.. Petitioner

vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-I) Ltd.,
Kumbakonam,
Thanjavur District.

2.The Regional Provident Fund Commissioner,
EPF Office, Sub Regional Office
Post Box No.588, Shree Complex,
D-Block, 18, Madurai Road,
Thiruchirappalli - 620 008.

3.The Assistant Provident Fund Commissioner,
(Exem-Accounts), EPFO, Sub Regional Office,
Post Box No.588, Shree Complex,
D-Block, 18, Madurai Road,
Thiruchirappalli -620008.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first respondent to dispose of the petitioner's representation dated 22.12.2010 on merits within a time frame.

For petitioner : Mr.G.P.Arivuchudar

For Respondents 2 & 3 : Mr.K.Gunasekar, ACGSC

For Respondent No.1 : No appearance

ORDER

According to the petitioner, he was appointed as Driver on 14.9.1977FN at Chozhan Roadways Corporation Ltd., Kumbakonam. The Chozhan Roadways Corporation was then named as the Tamil Nadu State Transport Corporation (Kumbakonam Division-I) Ltd.,. On completion of 21 years of continuous service, he got retirement on voluntary retirement scheme on 29.9.1998AN. During his tenure of service, necessary contribution towards EPF Scheme 1952 was recovered from his salary regularly, but he was

not issued any Statement of Annual Account for EPF till the date of his retirement. Even though he requested the TNSTC in person several times, the TNSTC simply assured him that the EPF Annual Account Statement would be issued on its receipt from the EPF authority but they failed to do so. While so, the Government of India formulated Employee's Pension Scheme 1995 in place of Employee's Family Pension Scheme 1971 in exercising the powers conferred under Section 6A of the EPF & MP Act 1952 which came into force w.e.f. 16.11.1995. Based on the EP Scheme, 1995, the TNSTC obtained option from him and subscriptions were also recovered from him as per Paragraph 4 of the EP Scheme, 1995 read with Section 6 of the EPF & MP Act, 1952 till his retirement. He was permitted to retire on 29.9.1998AN after the date of enforcement of the Scheme, 1995. As such, he is statutorily entitled for pension and other benefits under EP Scheme, 1995. Though the second respondent has sanctioned pension to the employees of TNSTC, Kumbakonam, who were permitted to retire prior to 01.09.1998, the petitioner's legitimate pension was not sanctioned. Further, the first respondent has not obtained any consent letter from the petitioner to close and transfer his EPF account at Employees Provident Fund Organisation to the TNSTC Kumbakonam as alleged in the Letter dated 3.7.2003 of the Assistant PF Commissioner (PEN), Trichy, which clearly violates the provisions of the EPF & MP Act, 1952 and all the Schemes formulated under the Act, 1952. In the mean while, the petitioner made a representation dated dated 13.10.2010. Subsequently, another representation dated 22.12.2010 was made to the first respondent setting out his grievance. However, there was no response from the respondent for such representations. Hence, the petitioner was constrained to file the Writ Petition seeking for a direction to the first respondent to dispose of the Representation dated 22.12.2010.

2. A counter affidavit has been filed on behalf of the respondents 2 and 3 stating that Employees' Pension Scheme, 1995 has been introduced by the Government of India replacing the erstwhile Employee's Family Pension Scheme, 1971, with effect from 16.11.1995 and options were called for, from the employees who were not members of the erstwhile Family Pension Scheme. All the members of the erstwhile scheme were automatically made members of the newly introduced pension Scheme. It is further stated that the petitioner has been sanctioned with monthly pension on receipt of the Pension Application from the petitioner complete in all respects through the First Respondent after his retirement on superannuation. Subsequently, as the Government of Tamilnadu has formulated a new Pension Scheme for all the Transport Units of the State of Tamilnadu and pursuant to the Government of Tamilnadu's request to exempt all such units from the purview of the Act, the request was acceded to and consequently the exemption under Section 16(1)(b) of the Act from the operation of the Act had been granted with effect from 31.8.1998. Hence, all the employees who retired after

31.8.1998 are covered under the Pension Scheme of the Government of Tamil Nadu. The monthly pension sanctioned to the petitioner was, therefore, stopped subsequently and as per the Memorandum of Understanding and the contribution paid on account of such members has been transferred to the Government of Tamil Nadu including that of the petitioner. Hence, the petitioner is entitled to receive pension from the first respondent only.

3. In view of the nature and limited scope of the prayer made, it is unnecessary for this Court to go into the merits of the matter, at this stage. It is suffice that a direction is issued to the first respondent to consider the representation of the petitioner. Accordingly, without going into the merits of the matter, this Court directs the first respondent to consider and dispose of the petitioner's representation dated 22.12.2010 on merits and in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order. The petitioner is directed to enclose a copy of the representation dated 22.12.2010 along with a copy of this order while submitting it to the first respondent.

4. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

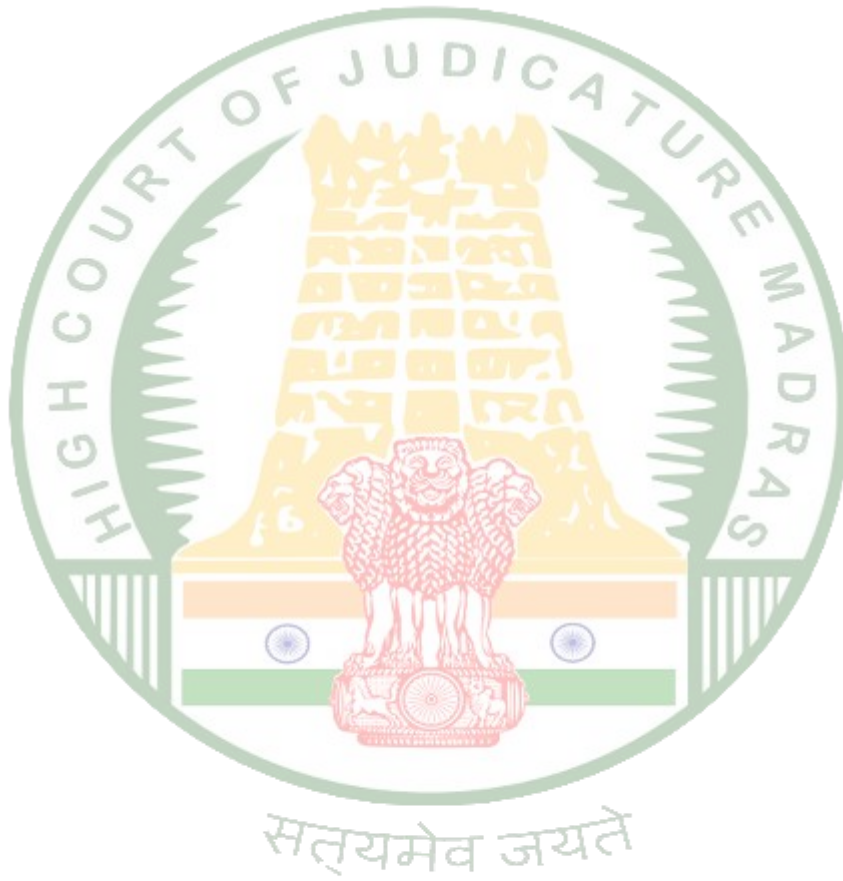
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+1cc to K. Guna Sekar, Advocate SR. 6285

+1cc to M/S. Law Square, Advocate SR. 6174

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RR (CO)
VR(08/03/2017)



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