

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.07.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

WRIT PETITION.No.17256 of 2017

K.Jeyasankari

... Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. by The Principal Secretary to Government,
Transport Department,
Secretariat, Chennai-600 009.
2. Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Rep. by The Managing Director,
3/137, Salamedu,
Valudha Reddy Post,
Villupuram-605 602.
3. The Commissioner,
Employees Provident Fund,
Regional Office,
20, Royapettah High Road,
Chennai-600 014.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to grant Family Pension under the Tamil Nadu Pension Rules 1978 to the petitioner from 12.12.1993 the date of death of the petitioner's husband by considering and passing order on the representation of the petitioner dated 13.03.2017 by following the judgements in W.A.No.1246 of 2009 dated 18.08.2010 and followed in G.O.Ms (3D) No.38 Transport (RW1) Department dated 07.09.2011 W.P.No.33975 of 2005 and W.P.No.35674/2005 dated 20.09.2011 as given to other similarly placed persons.

For Petitioner : Mr.M.Ishak

For Respondents : Mr.K.Dhananjeyan (For R1)
Special Government Pleader

: Mr.A.Antony Arokiyaraja (For R2)

ORDER

The grievances of the writ petitioner is that she has been denied right of Family Pension. The husband of the petitioner was an employee of the respondents Transport Corporation and died while in service, on 12th December 1993.

2. The deceased husband of the writ petitioner was initially employed in the erstwhile Tamilnadu State Transport Corporation Department on 9th November 1966 and his services were also regularized in the post of Conductor. Thereafter, he was absorbed in the 2nd respondent Transport Corporation with effect from 1st May 1975.

3. The husband of the writ petitioner served in the erstwhile Pallavan Transport Corporation and thereafter, transferred to the Tamilnadu State Transport Corporation (Villupuram) Limited. He was having the qualifying services of 14 years and 30 days in the category of Conductor, in the erstwhile Tamilnadu State Transport Corporation Department. Therefore, the husband of the writ petitioner is entitled for Family Pension, under the Tamilnadu Pension Rules 1978.

4. Though the writ petitioner submitted her representation to the respondents to grant Family Pension, the same is not considered and is being kept pending without passing any orders.

5. The learned counsel appearing for the writ petitioner contented that the issue was already decided by the Division Bench of this Hon'ble Court in Writ Appeal No.1246 of 2009 dated 18th August 2010. The copy of the order is enclosed in Page No.15 of the typed set of papers and it is relevant to extract the following paragraphs :

"21. Tamil Nadu Pension Rules also contains provisions of 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 installments not exceeding 36 in number, the first installment 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 Employer's share of Provident Fund. It is also a matter of record that the Government has issued a proceeding dated 02.06.2006 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 13.08.2004. 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.

23. The learned counsel for the appellant on instructions would submit that the appellant is prepared to exercise the option by restricting her claim to the family pension as announced by the Government in G.O.Ms.No.110, dated 6.6.2002 and the subsequent order in G.O.Ms.No.189, dated 13.08.2004.

24. Accordingly, we direct the first respondent to sanction the family pension to the appellant with effect from 13.08.2004. Such exercise shall be completed within eight weeks from the date of receipt of a copy of this order. However, she is not entitled to the Employee's Provident Fund Pension. The first respondent is permitted to deduct the Employee's Provident Fund Pension paid to the appellant for the period from 13.08.2004, as well as the amount paid to her husband by way of Employee's contribution viz. Rs.50,788/- from the arrears payable to her. In case the arrears amount is not sufficient to recover the amount indicated above, it is open to the respondents to recover the balance from the monthly pension payable to the petitioner in 36 equal installments."

6. In view of the Judgment of the Division Bench of this Court, the present prayer sought for in this writ petition deserves to be considered. Accordingly, the respondents are directed to pass appropriate orders in the light of the Judgment of the Division Bench of this Court passed in Writ Appeal No.1246 of 2009 dated 18th August 2010, within a period of eight weeks from the date of receipt of a copy of this order.

7. The said exercise shall be carried out by verifying the service records of the husband of the writ petitioner and after fulfilling the conditions stipulated in the Pension Rules.

8. With this, the Writ Petition stands disposed of. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sji/maya

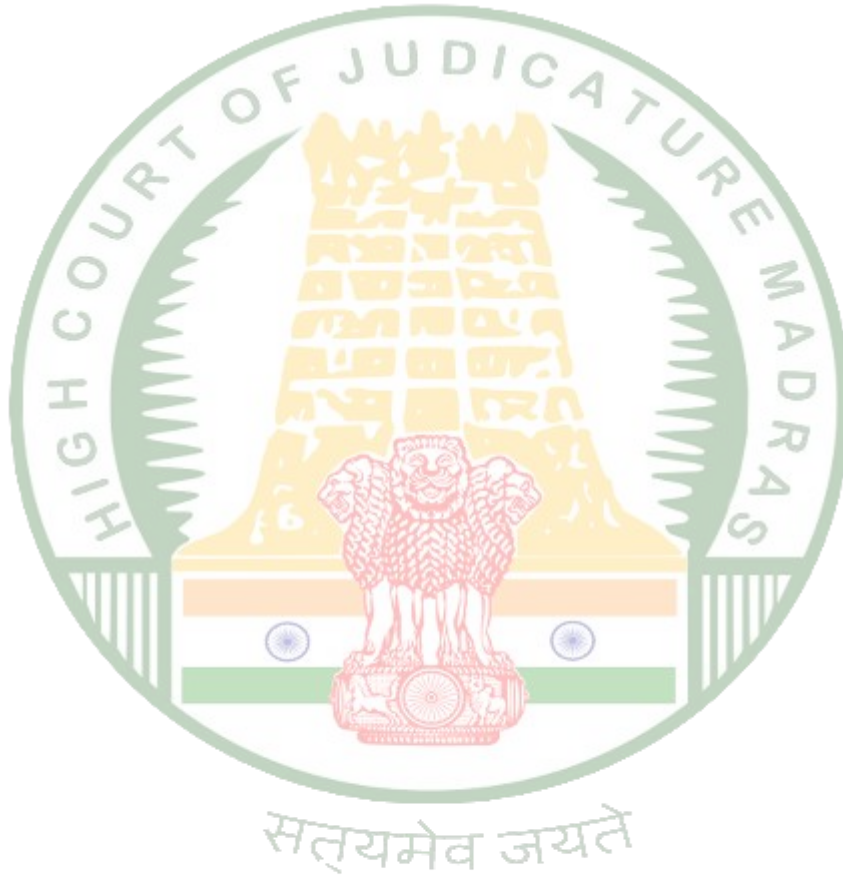
To

1. The Principal Secretary to Government,
The Government of Tamil Nadu,
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3. The Commissioner,
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+1cc to the Government Pleader, S.R.No.47656
+1cc to M/s.N.Ishak, Advocate, S.R.No.47146
+1cc to M/s.A.Antony Arokiaraja, Advocate, S.R.No.47426

W.P. No.17256 of 2017

SVI (CO)
CU(21/07/2017)



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