

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.18000 of 2013

R.Parameswari

.. Petitioner

Vs.

1.The Secretary to Government,
Transport (R.W.1) Department,
Secretariat, Chennai - 9.

2.Managing Director,
Dr.Ambedkar Transport Corporation
Ltd., now known as
Metropolitan Transport Corporation
Ltd., Pallavan Illam,
Chennai - 2.

3.The Regional Provident Fund
Commissioner, Royapettah,
Chennai - 14.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus directing the respondents to take steps for sanction of service family pension payable by the first respondent as per G.O.Ms.No.110 Transport Department dated 06.06.2002 on receipt of the petitioner willingness to forego the E.P.F. Family Pension, within a time frame.

For Petitioner .. Mr.C.Manohar

For Respondents.. Mr.T.M.Pappiah,
Spl. Govt. Pleader for R1
Mr.P.Paramasivadosh for R2
Mr.A.P.Suryaprakash for R3

ORDER

The petitioner has approached this Court seeking the following relief:

to direct the respondents to take steps for sanction of service family pension payable by the first respondent as per G.O.Ms.No.110 Transport Department dated 06.06.2002 on receipt of her willingness to forego the E.P.F. Family Pension, within a time frame.

2.The case of the petitioner is that her husband was earlier employed in the Tamil Nadu State Transport Department and was last working as Senior Tradesman. He worked as such upto 30.04.1975 in the department and subsequently absorbed in the Transport Corporation as its employee from 01.04.1975. He retired from the service in the Transport Corporation on 31.03.1994 after attaining the age of superannuation. After his retirement, the petitioner's husband was receiving pension from the Government and was also in receipt of the pension under EPF Family Pension Scheme, 1995.

3.However, after the death of her husband on 01.12.2011, the family pension payable by the Government was not paid and she was informed that her husband was already in receipt of EPF Family Pension from 01.04.1994 on retirement from service in the Transport Corporation. She was informed that if she is prepared to exercise the option to forego the EPF Family Pension paid by the third respondent, she would be entitled to get Service Family Pension payable by the Government. The petitioner also came to know that one Tmt.Lokanayaki, who was similarly placed and who was in receipt of EPF Family Pension, had approached this Court and ultimately succeeded before the Division Bench and in the said case, this Court has held that if an option is exercised to forego EPF Family Pension, the respondents herein were directed to grant Service Family Pension as per the orders in force and in pursuance of the said direction, the family pension became payable.

4.When the matter was taken up for hearing, it is represented by the learned counsel for the parties that the issue was the subject matter of consideration before this Court in W.P.No.230 of 2014 and this Court has considered the rival submissions and finally allowed the similar claim filed by one Tmt.R.Nagarathinam. This Court has cited the earlier decision taken by the Division Bench of this Court in respect of Tmt.Loganayaki. The relevant portion of the order passed by this Court in the above said writ proceedings is extracted below:

2. According to the petitioner, one Tmt.A.Loganayaki, spouse of an ex-employee has filed a writ petition in W.P.No.35643 of 2007 and the same was dismissed on 12.1.2009. Against that Writ Appeal No.1246 of 2009 was filed by her. The appeal was disposed of directing the Government to grant family pension with certain conditions. Aggrieved by the same, the Government filed SLP before the Hon'ble Apex Court in Civil Appeal No.8381 of 2011 and the same was dismissed on 13.5.2011. Subsequently, the Government implemented the order by sanctioning the Family Pension to Tmt.A.Loganayaki by issuing a Government order in G.O.(3D), Transport (RW1) Dept., dated 7.9.2011. The grievance of the petitioner is that she is also similarly placed person and therefore, she cannot be denied the said benefit. Hence, the petitioner has come forward with the present writ petition.

3. When the matter is taken up for hearing, the 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.

4 The dictum laid down by the Division Bench of this Court is squarely applicable to the present case. Furthermore, the petitioner sent legal notice, dated 17.9.2013 stating that even though she exercised her option on 17.8.2009, the Government did not pass any orders for payment of Government Family Pension.

5 In view of the above, the petitioner is entitled for the relief sought for. Therefore, this Court constrained to pass the following order:

"The first respondent is directed to consider the representation of the petitioner positively, dated 7.8.2013, 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 merit and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs."

5.Learned counsel appearing for the petitioner would draw the Court's attention to the averments contained in the affidavit particularly, para 8, in which, it is categorically submitted that the petitioner is willing to forego the EPF Family Pension and also any amount received towards the same would be refunded.

6.Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the first respondent. Mr.P.Paramasivadosh, learned counsel appears for the second respondent and Mr.A.P.Suryaprakash, learned counsel appears for the third respondent.

7.Heard the rival submissions of the learned counsels for the parties and after perusing the materials and pleadings, this Court is of the view that the present writ petitioner is also identically placed as that of Loganayaki and Nagarathinam and any different approach to the claim of the petitioner would be per se discriminatory and unjust. In the said circumstances, there shall be a direction to the respondents to sanction Service Family Pension payable by the first respondent as per G.O.Ms.No.110 Transport Department dated 06.06.2002 on receipt of the petitioner's willingness to forego EPF Family Pension. The petitioner is also directed to submit an application expressing her willingness to forego EPF Family Pension within a period of one week from today and refund the amount, in case any such amount has been received by her and on such willingness expressed, the first respondent is directed to pass orders and grant Service Family Pension payable by the Government with all arrears as admissible to the petitioner within a period of two months thereafter.

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8.With the above direction, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
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Secretariat, Chennai - 9.
- 2.Managing Director,
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+1 cc to M/s.C.Manohar Advocate sr 55401 dt 11/08

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W.P.No.18000 of 2013

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