

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.A.No.1245 of 2018 and CMP.No.12224 of 2018

1. Tamil Nadu State Transport Corporation
(Villupuram) Limited rep. by the
Managing Director,
No.3/137, Salamedu,
Veludha Reddy Post,
Villupuram-605 602.
2. Tamil Nadu State Transport Corporation
(Villupuram) Limited rep. by the
General Manager,
Kancheepuram Regional Office,
Karapettai, Bangalore Highway,
Kancheepuram-631 552.
3. The Government of Tamil Nadu
rep. by the Deputy Secretary to Government,
Transport Department, Fort St. George,
Chennai-9. ... Appellants/Respondent

Vs

1. G.Kamala
2. The Commissioner,
Employees Provident Fund,
Regional Office : No.20, Royapettah
High Road, Chennai-14. ... Respondents/Petitioner

Prayer : Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 24.04.2018 made in W.P.No.534 of 2017 by a learned Single Judge.

WP No.534/2017 : Petition filed under Article 226 of the Constitution of India Praying to issue writ of certiorari to call for the records relating to the impugned order dt 26.7.2016 passed in letter No.7487/RW1/2016-3 Transport (RW1)Department on the file of the 1st respondent herein and the impugned order dated 14.7.2016 passed in Lr. No. 3776/Sa.Pa.12/TNSTC (V)/

KPM/2015 on the file of the 3rd respondent herein and quash the same as they are related to the denial of family pension to this petitioner and direct the respondents to provide reliefs and pay the amounts due to the petitioner in the light of the judgment dt 4.8.2010 in W.P. (MD) No.3838/2008 and also as per the Madras Liberalized Pension Rules 1960 in accordance with the order issued in G.O. (Ms) No.189 Transport (RW1) Department dated 13.8.2004 including the arrears with interest at the rate of 12% per annum payable from 30/01/94, within the time that may be stipulation by this Court.

For Appellants :: Mr.S.Rajeni Ramadass
 for Transport Corporation
 Mr.P.S.Siva Shanmuga Sundaram

 Spl.G.P. for State
For Respondents :: Mr.N.Ishak for R1
 Mr.G.Sankaran for R2

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the order dated 24.04.2018 made in W.P.No.534 of 2017 by a learned Single Judge.

2. The said Writ Petition has been filed seeking to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 26.07.2016 passed in letter No.7487/RW1/2016-3, Transport (RW1) Department on the file of the 1st respondent herein and the impugned order dated 14.07.2016, passed in Lr.No.3776/Sa.Pa.12/TNSTC (V)/KPM/2015 on the file of the 3rd respondent herein and quash the same as they are related to the denial of family pension to this petitioner and direct the respondents to provide reliefs and pay the amounts due to the petitioner in the light of the judgment dated 04.08.2010 in W.P.(MD).No.3838/2008 and also as per the Madras Liberalized Pension Rules, 1960, in accordance with the order issued in G.O.(Ms).No.189, Transport (RW1) Department, dated 13.08.2004, including the arrears with interest at the rate of 12% per annum payable from 30.01.1994, within the time that may be stipulated by this Court. The said Writ Petition was allowed by order dated 24.4.2018 by the learned Single Judge. Aggrieved over the same, the respondents therein have preferred the present writ appeal.

3. Heard the submissions made on either side. We have also perused the materials available on record carefully including the order of the learned Single Judge.

4. The facts that the 1st respondent is the wife of late

Mr.L.Ganesan, who was appointed as Conductor in the erstwhile Tamil Nadu State Transport Department on 31.08.1967 and thereafter, he was permanently absorbed in the Tamil Nadu State Transport Corporation with effect from 01.05.1975 are not in dispute. It appears that after rendering in various units of the Corporation, the 1st respondent's husband died while he was in service on 29.01.1994. While so, the 1st respondent herein being the nominee of her deceased husband, requested the Corporation to sanction family pension payable to her. Finally, an order was passed on 26.07.2016, by the first appellant and also another order was passed by the third appellant on 14.07.2016, rejecting her claim only on the ground that the 1st respondent's husband was an OSSR optee and therefore, her request for grant of family pension, could not be considered.

5. In this regard, it is useful to mention herein that originally, certain categories of the staff of the Tamil Nadu State Transport Department including the category of Conductor, was governed by a separate set of non pensionable establishment rules i.e., Tamil Nadu State Transport Department Operation Subordinate Service Rules (hereinafter referred to as OSSR). The employees who were covered under the OSSR, were not entitled for pension benefits under the then Madras Liberalized Pension Rules, 1960. While so, the Government has issued G.O.Ms.No.212, Transport Department, dated 28.03.1974, extending the benefits of pension scheme to the categories of employees who were governed by OSSR. The Government Order was put into effect from 11.01.1974 and the last date for submission of options by the employees was fixed on 30.6.1974. In that Government Order, it was made clear that if no such option has been exercised before the stipulated date i.e., 30.06.1974, the pensionary scheme would be made applicable under the Madras Liberalized Pension Scheme. but, subsequently by memo dated 12.12.1974, the date was extended till 31.12.1974 by which the 1st respondent's husband had exercised his option to remain with OSSR by his consent letter dated 19.12.1974. Hence, the question of grant of family pension to her does not arise and therefore, her claim was rightly rejected by their authorities.

6. But, according to the 1st respondent, the issue is directly covered by the decisions of Madurai Bench of this Court, rendered in W.P(MD).No.3838 of 2008, W.P(MD).No.6501 of 2008 and W.P(MD) No.6528 of 2008, dated 04.08.2010. In these writ petitions, the learned Judge considered the similar claim and passed a common order by considering the effect of G.O.Ms.No.212, Transport Department, dated 28.03.1974. The learned Judge after perusing the service record of those petitioners, had come to the conclusion that the option exercised by those petitioners were after the cut off date i.e., 30.06.1974. Therefore, the same cannot be a valid exercise of

option and allowed the writ petitions and directed to provide pensionary benefits to the petitioners therein under Madras Liberalized Pension Rules, 1960. As far as the objection raised by the respondents therein in the counter affidavit that the cut off date as 30.06.1974 has been extended till 31.12.1974, by memo of the Transport Department dated 12.12.1974, the learned counsel for the petitioners therein would also submit that it was merely a letter of the Transport Department and only a suggestion was made for the extension of cut off date till 31.12.1974. Such letter cannot supersede the cut off date prescribed by G.O.Ms.No.212, Transport Department, dated 28.03.1974. Following the same, according to the 1st respondent herein, family pension has to be granted to her.

7. But in the case on hand, the learned Single Judge has observed thus:

'... Once the option exercised by the deceased employee, the husband of the petitioner, as held to be invalid, the employee would be governed by the Madras Liberalized Pension Rules, 1960 and in which case, the petitioner is entitled to the family pension admissible to her. It is not in dispute that the family members of the deceased Transport Corporation employee, are entitled to family pension, as such entitlement has been a settled legal position and there is no dispute regarding the said entitlement.

13. In view of the above conclusion, this Court is of the considered view that the petitioner has made out a clear case for grant of relief. The respondents are directed to sanction family pension to the petitioner from the date of death of her husband and pay the arrears of family pension to the petitioner and continue to pay monthly pension as revised from time to time. In case, the deceased employee had been settled with the non-pensionable service benefits at the time of his death and the same may be adjusted while disbursing arrears of family pension payable to the petitioner. Since the petitioner's husband has died while in service as early as in 1994 and the family pension has been unduly denied for more than twenty years, the petitioner is also entitled to simple interest at the rate of 12% percent from the date it became payable till the date of actual payment.'

Anyhow, though several grounds have been raised for granting family pension to the 1st respondent, it is quite surprising to note that the husband of the 1st respondent died during the year 29.01.1994 whereas the writ petition was filed only in the year 2017 after a lapse of nearly 23 years by taking a suo motu decision. Therefore, we are of the view that

mainly on the ground of delay and laches itself, there is no case for the 1st respondent. That apart, it is pertinent to note that within the extended cut off date, the deceased husband of the writ petitioner exercised option and received the benefits on attaining the age of superannuation.

8. In view of all the above, the Writ Appeal is allowed and the order of the learned Single Judge dated 24.04.2018 is set aside. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The Deputy Secretary to Government,
The Government of Tamil Nadu,
Transport Department,
Fort St.George, Chennai-9
2. The Managing Director,
TNSTC (Villupuram) Ltd.,
No.3/137, Salamedu,
Veludha Reddy Post
Villupuram - 605 602
3. General Manager,
Kancheepuram Regional Office,
Karapettai, Bangalore Highway,
Kancheepuram-631 552.
4. The Commissioner,
Employees Provident Fund,
Regional Office : No.20, Royapettah
High Road, Chennai-14.

+1cc to Mr.N.Ishak, Advocate SR.No.61960

+1cc to Mr.S.Rajeni Ramadass, Advocate SR.No.61862

+1cc to Government Pleader SR.No.62960

W.A.No.1245/2018

VG II (CO)

GMV (13/11/2018)