

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.684 of 2011

B.Swamidoss

.. Petitioner

vs.

- 1.The Presiding Officer,
II Additional labour Court,
Chennai, High Court Complex,
Chennai 600 104.
- 2.The Managing Director,
MTC Ltd., Division I,
Mount Road, Chennai 600 002.
- 3.The Assistant Provident Fund Commissioner,
O/o.The Regional Provident Fund Commissioner,
Chennai Region, No.37, Royapettah High Road,
Chennai 600 014.
- 4.The Secretary & Trustee,
Metropolitan Transport Corporation Division,
Employees Provident Trust,
Mount Road, Chennai 600 002.

(R3 and R4 are impleaded as per order dated
23.01.2017 in M.P.No.1 of 2013 in W.P.No.684
of 2011)

.. Respondents

Prayer.: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records relating to the first respondent in C.P.No.329/2000 dated 29.07.2010 viz. and quash the same by way of further directing the second respondent to pay the arrears family pension under the Family Pension Act 1995 as claimed in c.p.No.329 of 2000 by the petitioner with cost of Rs.5,000/- as legal expenses.

For Petitioner : Ms.V.Preetha
For R2 & R4 : Mrs.Rajeni Ramadoss
(Transport Corpn.)

For R3 : No Appearance

O R D E R

The petitioner has filed the Writ Petition praying to issue a writ of Certiorarified Mandamus to call for the records relating to the first respondent in C.P.No.329/2000 dated 29.07.2010 viz. and quash the same by way of further directing the second respondent to pay the arrears family pension under the Family Pension Act 1995 as claimed in c.p.No.329 of 2000 by the petitioner with cost of Rs.5,000/- as legal expenses.

2. According to the learned counsel for the petitioner, the petitioner was appointed as a daily paid driver on 11.06.1963 and brought into monthly cadre with effect from 01.10.1964. He retired from service on 31.07.1995. At the time of superannuation, the petitioner was served in the Tamil Nadu State Transport Corporation, for more than 10 years. The family Pension amount has been recovered from the salary of the petitioner from 01.11.1984 to 31.07.1995 for a total sum of Rs.5,578/-. The Employees' Pension Scheme was commenced from 16.11.1995. The Department has not paid benefits to the petitioner under the Family Pension Scheme. Thereafter, the petitioner has filed a petition in C.P.No.329 of 2000 on the file of the II Additional Labour Court, Chennai to compute the value of the benefits under Section 33 (2) of the Industrial Dispute Act (hereinafter referred to I.D.Act). On 12.04.2001, the Metropolitan Transport corporation has issued a letter stating that the petitioner is not eligible for pensionary benefits as he was not a member in Family Pension Scheme and it is further stated that the amount recovered from the petitioner amounting to Rs.5,578/- was refunded to the petitioner. The said C.P.No.329 of 2000 was pending before the Labour Court and the petitioner has filed an application under Section 11(3) of the I.D.Act, 1947 to direct the respondent to produce the following documents viz., 1. The service Register maintained by the respondent to prove Family Pension 2. the wages bill for the period from 01.01.1995 to 31.07.1995, retirement date, 3) G.O. Relating to the erroneous recovery of Family Pension contribution. In the meantime, the petitioner has filed the amendment petition to amend the amount of claim as Rs.1,64,520/- instead of Rs.30,000/- as pension payable under the Family Pension Scheme, 1995, for the period from 01.08.1995 to 31.07.2000. The said claim petition was dismissed by the Labour Court. Challenging the said order, the petitioner has filed the present writ petition before this Court.

3. The learned counsel for the respondent would submit that the petitioner was a non opted member in the Family Pension Scheme, 1971. However, the Family Pension Fund was erroneously recovered from the petitioner by the respondent from 01.11.1984

to 31.07.1995 for a total sum of Rs.5,578/-. Subsequently, the said amount erroneously recovered amount was already returned to the petitioner vide Cheque No.185260 dated 15.12.1995 and the said amount was received by the petitioner. Hence, the claim petition preferred by the petitioner before the Labour Court is barred by latches. Therefore, the petitioner is not entitled to pension under RPFC Pension Scheme.

4. By considering the said submission of the learned counsel for the parties that the petitioner has joined duty under the Transport Corporation as a daily paid driver on 11.09.1964 and he was served for more than 10 years, the petitioner is not entitled to Family Pension Scheme, but, the department has recovered the said amount from the salary of the petitioner from 01.11.1984 to 31.07.1995 and has received the recovery amount from the Corporation vide cheque No.185260 dated 15.12.1995. But after nearly five years, the petitioner has filed the claim petition before the II Additional Labour Court, claiming pension under the Family Pension Scheme 1995, after a lapse of five years, that too after receiving the amount erroneously recovered in the year 1995, before his superannuation and after the commencement of Family Pension Scheme 1995 against the transport corporation. The petitioner was estopped from claiming the said benefit under the said scheme had not opted for Family Pension Scheme and filed the claim petition after delay of 5 years is hit by doctrine of latches. Hence, this Court is not inclined to interfere with the order passed by the 1st respondent in C.P.No.329/2000, dated 29.07.2010.

5. In view of the facts and circumstances of the case, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar

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सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Presiding Officer,
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2.The Managing Director,
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+1cc to Mr.S.Rajeni Ramadass, Advocate Sr.86813

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srg 13/02/2019



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