

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.12.2018
CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.31260 of 2018
and
W.M.P. No.36447 of 2018

Periyathai

..Petitioner

Vs.

1. The Secretary
Labour and Employment Department
Fort St. George
Chennai - 600 009

2. The Secretary
Tamil Nadu Construction Workers
Welfare Board
8, Valluvar Kottam High Road
Nungambakkam
Chennai - 600 034.

3. The Labour Officer
Social Security Scheme
Kancheepuram.

4. The District Collector
Kancheepuram District
Kancheepuram.

.. Respondents

PRAYER: This Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 2nd and 3rd respondents to disburse the monthly pension amount of Rs.1000/- to the petitioner and pay the arrears of pension amount from July 2011, the date on which her application for pension was submitted and acknowledged by the 3rd respondent along with interest at the rate of 18% per annum on the sum accrued and liable to be paid to the petitioner and pass further orders.

For Petitioner : Ms. P. Selvi
For Respondents : Mr. M.Karthikeyan,
Addl. Government Pleader for R1, 3 & 4

O R D E R

This writ petition is filed seeking to direct the 2nd and 3rd respondents to disburse the monthly pension amount of Rs.1000/- to the petitioner and pay the arrears of pension amount from July 2011, the date on which her application for pension was submitted and acknowledged by the 3rd respondent, along with interest at the rate of 18% per annum on the sum accrued and liable to be paid to the petitioner.

2. The learned counsel for the petitioner would submit that the petitioner made a representation to the 3rd respondent, through the 2nd respondent, to sanction pension provided for every registered manual worker, who has completed 60 years of age. The registration of the petitioner has been renewed by the Board, once in two years. The aforesaid application of the petitioner is still pending before the 3rd respondent for passing of orders.

3. On instructions, the learned Additional Government Pleader would submit that the petitioner's representation is pending before the 3rd respondent and the same will be considered, within the time fixed by this Court.

4. It is brought to the notice of this Court, the order passed by this Court in W.P. No.4322 of 2015 dated 17.02.2016 [Tamil Nadu AITUC Kattida Thozhilalar Sangam vs. Tamil Nadu Constructions Workers Welfare Board], following the order dated 19.06.2014 in W.P. No.30028 of 2013 [M. Jothi vs. Tamil Nadu Manual Workers Welfare Board and another] wherein this Court has directed the respondents therein to grant pension to the members of the petitioner Union, from the date on which the respect workmen attained the age of 60 years. The operative portion of the order, reads as follows :-

“ Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. The petitioner is a Trade Union registered under the provisions of Trade Unions Act, 1926 and they have filed this writ petition praying for a writ of declaration to declare the action of the 2nd respondent in granting pension to the members of the petitioner union whose names are given in the Annexure to the affidavit filed in support of the writ petition from August 2013/ October 2014 instead of the date of their

attaining 60 years of age as illegal, arbitrary and contrary to law.

3. The learned counsel appearing for the petitioner pointed out that an identical issue was considered by this Court in a writ petition, in W.P.No.30028 of 2013 dated 19-06-2014 (M. Jothi Vs. Tamil Nadu Manual Workers Welfare Board and another) and would submit that the action of the second respondent in not granting pension from the month and year of completing 60 years is contrary to the said decision.

4. In the counter affidavit filed by the second respondent, Labour Officer (Social Security Scheme) this specific contention has not been denied. Furthermore, there is no material placed before this Court to show as to whether the said order passed in W.P.No.30028 of 2013 has either been upheld or set aside. In the light of the above this Court is inclined to follow the said order in the earlier writ petition.

5. At this stage, it would be beneficial to refer the operative portion of the above said order:

"3. Clause 18 of the Scheme provides for pension on completion of 60 years of age. The same is not in dispute. The second respondent passed the impugned order dated 30.08.2013 sanctioning the pension of Rs.1000/- per month as pension from 01.08.2013 onwards, instead of from 01.03.2013.

4. The petitioner has sought to quash the said order of the second respondent in so far as denying pension from 01.03.2013 and for a direction to pay her pension from 01.03.2013 onwards.

5. A counter affidavit is filed by the second respondent to sustain the impugned order stating that the impugned order is based on the proceedings dated 27.12.2012 of the Commissioner of Labour and the second

respondent has relied on paragraph No.5 of the proceedings of the Commissioner, which is extracted hereunder:

5. The Commissioner of Labour once again suggested that while sanctioning the pension claim applications, the procedure adopted in the Revenue Department in disbursing of old age pension (OAP) should be followed and the date of sanction by the L.O. (SSS) to be taken into account for sanctioning pension.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

7. I am of the view that the proceedings of the Commissioner has no legal sanctity firstly. Further, paragraph (5) is also not clear that pension shall be paid from the date of sanction of the concerned Labour Officers. If paragraph 5 of the proceedings is understood in the way as the second respondent did, the same would lead to anomalous situation and it would depend upon the sweet will of the sanctioning authority, as pension shall be paid from the date of passing of the order of the Labour Officer. If the Scheme provides that the manual workers, who have completed 60 years, shall be paid pension, the proceedings of the Commissioner cannot prescribe a procedure in violation of the Scheme. Hence, I am of the view that the petitioner is entitled to pension from 01.03.2013 and not from 01.08.2013, the date of passing of order by the sanctioning authority of the pension. The reliance placed by the second respondent on the proceedings of the Commissioner has no legal sanctity, particularly, when it is not in dispute that the petitioner has reached 60 years on 28.02.2013 and the right to pension accrues from 01.03.2013 as per the Statutory Scheme 2006, which cannot be taken away by the Commissioner or by any Authority. Hence, the impugned order is quashed and a direction is issued to the second respondent to pay pension to the petitioner from 01.03.2013 onwards within a period of six weeks from

the date of receipt of a copy of this order. The writ petition is allowed. No costs. The connected miscellaneous petition is closed." It was pointed out that the Scheme provides that pension will be sanctioned on the date of attaining 60 years and in violation of the Scheme, the pensionary benefits cannot be restricted to the date of sanction.

6. Thus, following the above decision, it is held that the decision of the respondent in restricting the date of pension to the date of sanction is held to be not in consonance with the Scheme and the writ petition is disposed of by directing the respondents to grant pension to the members of the petitioner-Union whose names have been furnished in the Annexure filed along with the affidavit filed in support of the writ petition, after verifying the details and such pension shall be paid from the date on which the respective workmen attained the age of 60 years. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order."

5. In the light of the aforesaid scheme as well as the decision cited supra, the 2nd and 3rd respondents are directed to consider and pass orders positively, in accordance with law, as expeditiously as possible, preferably within a period of two weeks from the date of receipt of a copy of this order.

6. The Writ Petition is disposed of, on the above terms. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

सत्यमेव जयते

Sd/-
Assistant Registrar (CS viii)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary
Labour and Employment Department
Fort St. George
Chennai - 600 009

2. The Labour Officer
Social Security Scheme
Kancheepuram.

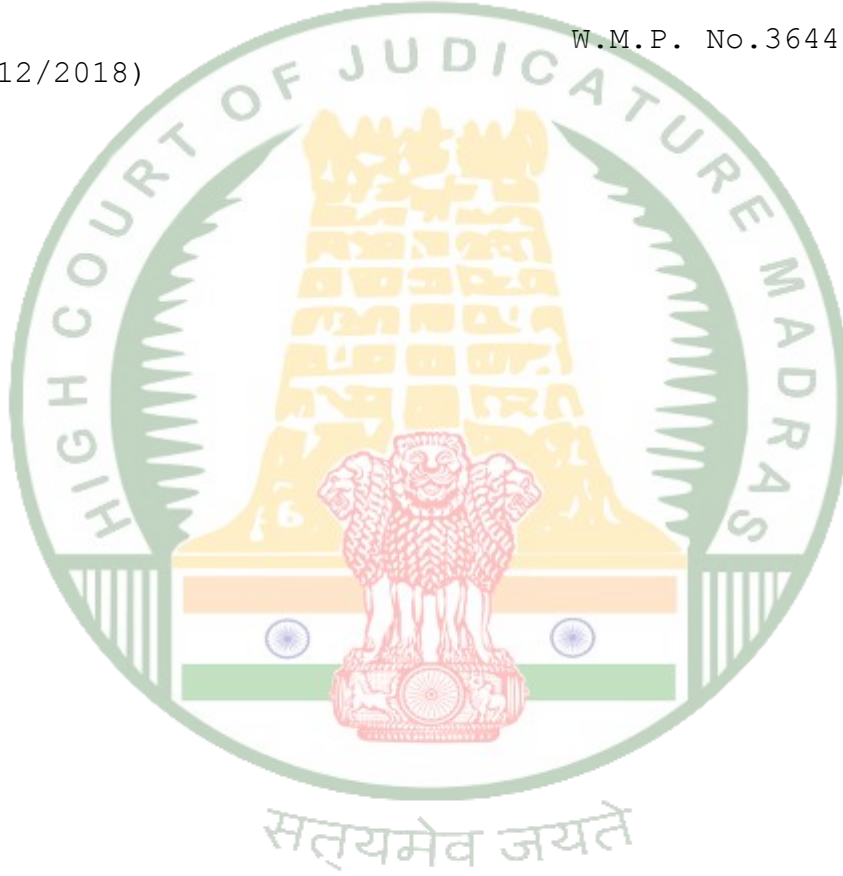
3. The District Collector
Kancheepuram District
Kancheepuram.

+1cc to M/s.Selvi , Advocate SR.No. 82512
+1 CC TO GOVERNMENT PLEADER SR.NO. 82874

W.P. No.31260 of 2018
and

W.M.P. No.36447 of 2018

ASK (05/12/2018)



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