

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 9143 of 2004

ORDER:

This writ petition is filed seeking to issue a writ of certiorari calling for the record relating to and connected with M.P.No.5 of 2002 on the file of the 2nd respondent-Industrial Tribunal, Hyderabad, and quash the order dated 09.06.2003 passed therein holding it as illegal and arbitrary.

2. Heard Sri N. Vasudeva Reddy, learned standing counsel for petitioner corporation, and Sri A.K. Jayaprakasha Rao, learned counsel for the 1st respondent workman.

3. It has been contended by the petitioner corporation that the 1st respondent workman was initially appointed as Conductor in the corporation on 17.08.1966. While so, he was removed from service for involving in cash and ticket irregularities, with effect from 07.12.1972. Thereafter, on consideration of the appeal, he was appointed as temporary conductor vide orders dated 18.05.1973. He had retired from service on attaining the age of superannuation on 31.12.1998. As he had not opted for family pension before retirement, the petitioner corporation rejected his claim for family pension. Questioning the same, he filed M.P.No.5 of 2002 on the file of the Industrial Tribunal-I, Hyderabad. The Tribunal, without properly appreciating the case on merits, allowed the said M.P., holding that the 1st respondent is entitled to family pension @

Rs.520/- per month from the date of his retirement and directing the petitioner corporation to pay the pension to him, vide orders dated 09.06.2003. Questioning the same, the present writ petition is filed.

4. It has been contended by the learned standing counsel for the petitioner corporation that the 1st respondent was initially appointed in the year 1966 and at that time there was no pension scheme. The pension scheme came into force only in 1971 and though many opportunities were given to such of those workers, who were appointed prior to 1971 to opt for family pension scheme, the 1st respondent had not opted for family pension scheme and not paid any contribution towards the said scheme. When once the 1st respondent has not exercised its option to come within the pension scheme, 1971, he cannot turn around and claim pension under the said scheme.

5. This Court, having considered the submissions made by the parties, is of the considered view that the Tribunal has passed orders in favour of the 1st respondent workman basing on the statement made by the petitioner corporation that the employees, who were appointed after 1971, are automatically entitled for pension under the family pension scheme. Since the 1st respondent was appointed on temporary basis in pursuance of the orders dated 18.05.1973 passed in the appeal, he is entitled for pension under the family pension scheme and an opportunity should have been given to him to come within the family pension scheme. No illegality has been committed by the Tribunal in passing the impugned orders in favour of the 1st

respondent. However, it is made clear that until and unless the 1st respondent pays contribution as per the family pension scheme, then only the petitioner corporation would be in a position to pay family pension to him. It is an admitted fact that the 1st respondent had not paid any contributions in terms of the family pension scheme. Therefore, the impugned order is modified to the extent that if the respondent workman pays contribution towards family pension scheme, then the petitioner corporation shall release family pension in terms of the family pension scheme within four (4) weeks from the date of receipt of a copy of this order. It is however made clear that if the 1st respondent has already paid the contribution, the petitioner corporation should not insist for contribution towards family pension scheme.

The writ petition is, accordingly, disposed of. Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

21st August, 2018
cbs

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(disposed of)

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