

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.27906 of 2006
and
M.P.No.2 of 2006

S.Valli

... Petitioner

Vs.

1.The Secretary to Government,
Transport Department,
Secretariat, Chennai - 600 009.

2.The Managing Director,
State Express Transport Corporation,
Chennai-600 002.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent in regard to G.O.Ms.No.110 Transport Department dated 06.06.2002 and to quash the conditions laid down in para 7(a) and 10 of the said G.O. and to direct the Respondents to take steps to grant family pension and for payment of arrears to this Petitioner from 21.08.1995.

For Petitioner : Mr.V.S.Jagadeesan for
Mr.M.Eghambaram

For Respondents : Mr.K.S.Suresh
Government Advocate for R-1
Mrs.Rajeni Ramadoss for R-2

O R D E R

This Writ Petition has been filed for a Writ of Certiorari cum Mandamus to quash the conditions laid down in para 7(a) and 10 of G.O.Ms.No.110 Transport Department dated 06.06.2002 and to consequently direct the Respondents to take steps to grant

family pension and for payment of arrears to the Petitioner from 21.08.1995.

2.The case of the Petitioner is that her husband, K.A.Subramanian, was appointed as a Driver in the erstwhile Tamil Nadu State Transport Department and consequent to the formation of a new Transport Corporation, he was absorbed in the Transport Corporation as its employee. It is further stated that the Petitioner's husband was paid pro rata pension for services in the Transport Department and that Pension Payment Order No.A.560586 was issued to him. It is further stated that the Petitioner's husband received pension from the Government till his death on 20.08.1995. While in service, he contributed to the Employees Family Pension Scheme 1971. Accordingly, the Petitioner states that she became eligible for family pension under the E.P.F. Pension Scheme 1995 from 21.08.1995 and, at present, the Petitioner is receiving Rs.1321/- per month as family pension.

3.The Petitioner further states that a large number of employees of the erstwhile Tamil Nadu State Transport Department, who were later absorbed in various Transport Corporations, could not get pension for their services to the Department for the reason that they had not completed 10 years of service before the cut-off date of 01.05.1975 fixed by the Government and that, therefore, the cut off date of 01.05.1975 was challenged. Eventually, the Hon'ble Supreme Court, by Order dated 29.10.2003, in Civil Appeal Nos.1444 and 1445 of 1999 held that the cut-off date is illegal. Because the employees of the erstwhile Tamil Nadu State Transport Corporation were being denied the benefit of family pension, the said persons filed W.P.No.21204 of 1992 which was allowed by this Court and, consequently, the Government issued G.O.Ms.No.110 Transport Department dated 06.06.2002. However, this Government Order restricted the benefit of family pension to the members of the Association, which had filed W.P.No.21204 of 1992 and, therefore, subsequently, this restriction was challenged in W.P.No.19585 of 2003, which was allowed by order dated 11.02.2004. Consequently, G.O.Ms.No.189 Transport (RW1) dated 13.08.2004 was issued extending the benefits of pension to all the employees of the erstwhile Tamil Nadu State Transport Corporation.

4.In the above facts and circumstances, the Petitioner states that she is entitled to receive family pension from 21.08.1995. However, as per Para 7(a) of G.O.Ms.No.110, employees who were absorbed in the State Transport Undertakings and who came within the scope of the Employees Provident Fund Pension Scheme from 16.11.1995 onwards and are entitled to family pension under the Employees Provident Fund Act are

excluded from the benefit of pension and family pension. The Petitioner further states that there is no Rule in the Tamil Nadu Pension Rules 1978 to prevent a person from getting family pension on the ground of receiving family pension under the E.P.F. Pension Scheme 1995. It is stated that the Petitioner approached the 2nd Respondent Transport Corporation for family pension and she was informed that as per G.O.Ms.No.110 Transport Department dated 06.06.2002 she is not entitled to get family pension as she is receiving family pension under the E.P.F. Pension Scheme. Accordingly, the Petitioner has challenged G.O.Ms.No.110 Transport Department, dated 06.06.2002. In particular, Para 7(a) of that order to the effect that it is not applicable to those who were absorbed in the State Transport Undertaking and who come under the Employees Provident Fund Pension Scheme from 16.11.1995 onwards and Para 10 thereof, which makes the G.O. effective from 07.03.2001 or the date of death of the eligible pensioner, whichever is later, are under challenge.

5. At the hearing, the learned counsel appearing for the Petitioner referred to several orders passed by this Court in this regard. In Y.SAKUNTHALA @ SAKUNTHALAMMA AND OTHERS Vs. STATE OF TAMILNADU, REP. BY ITS SECRETARY, TRANSPORT DEPARTMENT, CHENNAI-600 009 AND OTHERS in W.P.NO.18886 of 2014, in paragraphs 7 and 8, this Court held as follows:

"7. In the case of Pepsu Road Transport Corpn, Patiala, referred supra, the Hon'ble Supreme Court, having regard to the regulations framed in the Pepsu Road Transport Corporation Act, 1950, wherein the party has to exercise option as per Regulation 4 of the Pepsu Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations 1992 held that in the Regulation which has the provisions for exercising option, the party has to comply with the Regulation and when they failed to exercise the same, they are not entitled to claim arrears of pension.

8. In this case, no regulation was framed to that effect and the parties are governed by G.O.Ms.No.189, referred to above and as per the said Government Order, a duty was cast upon the respondents to get option from those pensioners and the family members of those pensioners and forward the same to the Government. Though the Judgment rendered by this Court in W.P.No.3390 of 2006, referred above, the learned Judge has restricted three years and two months prior to filing of the Writ Petition, having regard to

the fact that pension is not a bounty and the employees are entitled to claim as a matter of right and therefore there was no necessity for the respondents to get option from the petitioner. Therefore, the arrears of pension cannot be restricted to three years prior to filing of the Petitions."

6. Likewise, the learned counsel also referred to the Order passed by a Division Bench of this Court in A.LOGANAYAKI Vs. THE SECRETARY TO GOVERNMENT, TRANSPORT DEPARTMENT, SECRETARIATE, CHENNAI - 600 009 AND OTHERS in W.A.No.1246 of 2009 to the effect that the Respondents were not justified in denying family pension to the family solely on the ground that the Petitioner therein was receiving pension under the Employees Provident Fund Scheme. On that basis, the Respondents were directed to sanction family pension on condition that the Petitioner therein would not be entitled to Employees Provident Fund Pension.

7. The learned counsel for the Petitioner also relied upon the judgment of the Division Bench of this Court in M.SUNDARAVALLI Vs. THE SECRETARY TO GOVERNMENT, TRANSPORT DEPARTMENT, SECRETARIAT, CHENNAI-600 009 AND ANOTHER in W.P.No.35674 of 2005, wherein at paragraph 13, the Division Bench of this Court held that the authorities miserably failed to consider the fact that they were expected to call upon the employees/widows to exercise their option under Rule 13-B of the Tamil Nadu Pension Rules. Therefore, failure on the part of the authorities to take steps to get the option exercised should not cause prejudice to the widow of an erstwhile pensioner. On that basis, the Division Bench directed the Petitioner to exercise her option within a period of four weeks from the date of receipt of a copy of that order so as to enable the authorities to sanction family pension. The Division Bench, however, made it clear that the petitioner is not entitled to pension under the Employees Provident Fund Scheme with effect from the date on which family pension is sanctioned.

8. In response, the learned counsel appearing for the Respondents submit that as long as the Petitioner is not permitted to claim pension under the Employees Provident Fund Pension Scheme from the date on which family pension is sanctioned, an order may be passed in accordance with the earlier orders passed in this regard.

9. The affidavit, documents on record and oral submissions

were carefully considered. The denial of family pension by relying upon para 7(a) of G.O.Ms.No.110 dated 06.06.2002 was expressed considered by Division Benches of this Court in W.A.1246 of 2009 (cited supra), W.P.No.33975 of 2005, THOULATH BAI Vs. THE SECRETARY TO GOVERNMENT and in W.P.No.55674 of 2005 (cited supra). In all these cases, it was held that the Petitioner therein cannot be denied family pension on the basis of para 7(a). As regards the challenge to para 10 of G.O.Ms.No.110, it was expressly held in para 14 of the Order of the Division Bench in W.P.No.35674 of 2005 that para 10 of G.O.Ms.110 is valid. Therefore, the Petitioner herein is not entitled to family pension from 21.08.1995 but only from 07.03.2001.

10. In view of the binding orders of the Division Bench of this Court, the Petitioner is entitled to receive family pension from 07.03.2001 onwards instead of EPF pension, if she so chooses. Accordingly, the Petitioner is directed to exercise her option within a period of four weeks from the date of receipt of a copy of this order. Upon receipt of the request for family pension from the Petitioner, the First Respondent shall consider and sanction family pension to the Petitioner with effect from 07.03.2001. While making payment of arrears, the First Respondent is permitted to deduct the EPF pension paid from 07.03.2001 and also the employer's contribution, which was credited to her husband, for the aforesaid period. This process shall be completed within a period of eight weeks of receipt of request from the Petitioner. The Petitioner shall not be entitled to EPF pension from the date of sanction of family pension.

11. In the result, this Writ Petition is allowed in the above terms. There shall be no order as to costs. Consequently connected M.P. is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Transport Department,
Secretariat, Chennai - 600 009.

2.The Managing Director,
State Express Transport Corporation,
Chennai-600 002.

+1 cc to M/s.V.S.Jagadeesan, Advocate, Sr.No. 36446

+1 cc to The Government Pleader, Sr.No. 37669

W.P.No.27906 of 2006

KJ(CO)
CSL/27.04.2019



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