IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.12.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.12475 of 2019

Tmt.N.Bhagyalakshmi ... Petitioner

-Vs-

1. The Government of Tamil Nadu
   Represented by its Secretary,
   Finance Department,
   Fort St. George, Chennai - 600 009.

2. The Principal Secretary,
   The Government of Tamilnadu,
   Transport Department,
   Fort St.George,Chennai-9.

3. The Accountant General,
   O/o.of the Accountant General,
   Teynampet, Chennai-18.

4. Metropolitan Transport Corporation Ltd.,
   Rep. by its Managing Director,
   Pallavan Illam, Pallavan Salai,
   Chennai-2.

5. The Regional Provident Fund Commissioner,
   Employees' Provident Fund Organisation,
   Royapettah, Chennai - 600 014. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1 to 4 to sanction and pay the petitioner family pension, with effect from 03.02.2017, with arrears and other consequential benefits, as revised from time to time, within a specified time, Award costs and thus render justice.

For Petitioner : Mr.R.Krishnaswamy
For Respondents : Mr.P.S.Sivashanmugasundaram for R1
Ms.T.S.Selvarani for RR2 and 3

Mr.T.R.Sundarm (EPF) for R5

ORDER

This writ petition has been filed for the issuance of writ of mandamus directing the 4th respondent to send the proposal for pension to the respondents 1 to 3 and to give consequential directions to the respondents 1 to 3 to sanction family pension to the petitioner.

2.It is seen from the records that the husband of the petitioner originally joined the services of the erstwhile Tamil Nadu Transport Department as a Mechanic in the year 1963. On the formation of the Pallavan Transport Corporation, the husband of the petitioner was absorbed in the services of the Corporation w.e.f. 01.05.1975. The Corporation was merged with the 4th respondent Corporation herein. The husband of the petitioner was a member of the Provident Fund w.e.f.01.05.1975. He retired from services of the 4th respondent Corporation on 30.09.1997 after attaining superannuation.

3.The husband of the petitioner was sanctioned Employees' Provident Fund pension for the service rendered in the 4th respondent Corporation. After his death the petitioner is receiving the Employees' Provident Fund pension till date.

4.The petitioner has made a representation to the respondents to the effect that the petitioner is entitled for opting to a family pension by giving up the Employees' Provident Fund Pension Scheme. Since the representation was not considered, the petitioner has approached this Court seeking for appropriate directions.

5.The learned counsel for the petitioner submitted that the persons who were similarly placed like the petitioner, had approached this Court and filed W.P.Nos.5004 of 2010 and 17107 of 2010. The petitioners therein had sought for the benefit of family pension. This Court while considering the said writ petition, took into consideration the earlier order passed by the Hon'ble Division Bench. The relevant portions of the judgment is extracted hereunder:

> 5. The fact remains that the Division Bench of this Court in W.A.No.1246/2009 by the order dated 18.08.2010 [A.Loganayaki v. The Secretary to Government, Transport Department, Chennai 600 009 and Others], directed the first respondent in the said case to sanction family pension to the appellant with effect from 13.08.2004 on the basis of the statement made by the appellant to the effect that she is

prepared to exercise the option by restricting her claim to the family pension as announced by the Government in G.O.Ms.No.110 dated 06.06.2002 and the subsequent order in G.O.Ms.No.189 dated 13.08.2004. In the said decision, the Division Bench also permitted the first respondent in the said case to recover the amounts already paid under the Employees' Provident Fund Pension Scheme as hereunder:

> "16. Now the question is as to whether the first respondent was justified in rejecting the family pension on the ground that the appellant was receiving Employees Provident Fund Pension. There is no dispute that the appellant was entitled to the benefits of G.O.Ms.No.189 dated 13.08.2004. It is only the family pension under the Employees Provident Fund which alone stands in the way of her claiming family pension.
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> 22. Therefore, we are of the view that the respondents were not justified in denying family pension to the appellant solely on the ground that she was receiving pension under Employee's P.F. Scheme.
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> 23. The learned counsel for the appellant on instructions would submit that the appellant is prepared to exercise the option by restricting her claim to the family pension as announced by the Government in G.O.Ms.No.110, dated 6.6.2002 and the subsequent order in G.O.Ms.No.189, dated 13.8.2004.
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> 24. Accordingly, we direct the first respondent to sanction the family pension to the appellant with effect from 13.8.2004. Such exercise shall be completed within eight weeks from the date of receipt of a copy of this order. However, she is not entitled to the Employees' Provident Fund Pension. The first respondent is permitted to deduct the Employees' Provident Fund Pension paid to the appellant for the period from 13.8.2004, as well as the amount paid to her husband by way of Employer's contribution viz. Rs.50,788/- from the arrears payable to her. In case the arrears amount is not sufficient to recover the amount indicated above, it is open to the respondents to recover the balance from the monthly pension payable to the petitioner in 36 equal instalments."

The above said decision of the Division Bench of this Court was also upheld by the Hon'ble Apex Court as per

> the order dated 13.05.2011 by dismissing the Petition for Special Leave to Appeal (Civil) CC.8381/2011 in Secretary to Government Transport Deptt. v. A. Loganayaki & Ors.
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> 6. The above said decision of the Division Bench of this Court as upheld by the Hon'ble Apex Court would make it abundantly clear that the petitioners herein in both the matters are entitled to exercise their option to choose the benefit of family pension either under Pension Rules or under the Employees' Provident Fund Pension Scheme. As far as the petitioners are concerned, it is submitted by the learned counsel for the petitioners to the effect that the petitioners are opting to exercise their option for receiving family pension under the Pension Rules and they are also willing to refund the amounts which were already received under the Employee's Provident Fund Pension Scheme.
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> 7. Accordingly, these writ petitions are disposed of with a direction to the respondents herein to sanction family pension to the petitioners under the Pension Rules. It is open to the respondents to recover the amounts already paid to the petitioners towards family pension under the Employees' Provident Fund Pension Scheme. It is made clear that the above said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs.

6.By bringing to the notice of this Court the above judgement, the learned counsel for the petitioner submitted that the petitioner will also exercise her option for receiving the family pension under the Pension Rules and she will either refund the amount which has already been received by her under the Employees' Provident Fund Pension Scheme or she will opt for receiving the family pension by giving up the pension under the Employees' Provident Fund Pension Scheme. The learned counsel brought to the notice of this Court Paragraph No.21 of the affidavit filed in support of the writ petition wherein the petitioner has specifically stated that she is willing to forego the Employees' Provident Fund Family Pension and opt for the family pension under the Tamil Nadu Pension Rules.

7.The learned Standing Counsel appearing on behalf of the Corporation submitted that, pursuant to the orders passed by this Court, the Government has passed G.O.(Ms)No.34 Transport (RW1) Department, dated 04.03.2016 wherein the Government had carefully considered the orders passed by this Court and had directed the authorities to sanction family pension. The learned counsel specifically brought to the notice of this Court Paragraph No.4 of the Government Order and the same is extracted hereunder:

> 4.The Government after careful examination have decided to implement the orders of the Hon'ble High Court of Madras, dated 05.09.2012 in W.P.Nos.5004 of 2010 and 17107 of 2010 and accordingly sanction minimum family pension from time to time to the 263 legal heirs of the deceased erstwhile Tamil Nadu Transport Department employees under Rule 49 of Tamil Nada Pension Rules 1978 with effect from the date of issue of orders or the date of stoppage of Employees Provident Fund pension whichever is later, after deducting the dues, if any, from the family pension admissible to them so as to avoid recovery already received by them under the Employees Provident Fund.

8.The learned counsel submitted that the Government Order makes it very clear that the family pension under Rule 49 of the Tamil Nadu Pension Rules will come into effect only from the date of issue of orders or the date of stoppage of Employees' Provident Fund Pension, whichever is later, after deducting the dues, if any, from the family pension admissible to the concerned person. The learned counsel submitted that the petitioner has now made a request in this writ petition for payment of final pension w.e.f.03.02.2017 and according to the learned counsel, the petitioner will not be entitled to receive family pension from 2017, since the petitioner is already receiving the Employees' Provident Fund Family pension till date.

9.Mr.P.S.Sivashanmugasundaram, the learned Government Advocate appearing on behalf of the 1st respondent reiterated the said submissions and specifically stated that the claim made by the petitioner can be considered only in accordance with G.O.(Ms)No.34 Transport (RW1) Department, dated 04.03.2016.

10.This Court has carefully considered the submissions made on either side and also the materials available on record.

11.The admitted facts in this case is that the husband of the petitioner was working with the Tamil Nadu State Transport Department from the year 1963 onwards and thereafter he was absorbed into the 4th respondent Corporation and he had opted for the Employees' Pension Scheme, 1995. He ultimately retired from his services on 30.09.1997. During his life time he was receiving the Employees' Provident Fund Family Pension and after his death, the petitioner, being his wife, has continued to receive the pension. The petitioner now wants to opt for Family Pension under the Tamil Nadu Pension Rules. The entitlement of the petitioner to make such an option is provided under G.O.(Ms) No.34 Transport (RW1) Department, dated 04.03.2016. This Government Order came to be passed pursuant to the judgement of this Court made in the writ petition W.P.Nos.5004 of 2010 and 17107 of 2010. The Government Order itself provides the manner in which the option can be made and the entitlement of receiving the family pension under the Tamil Nadu Pension Rules.

12.The petitioner has taken a very specific stand in the affidavit to the effect that she will forego the Employees' Provident Fund Family Pension and will opt for the Family Pension under the Tamil Nadu Pension Rules. This was also reiterated by the learned counsel appearing on behalf of the petitioner.

13.In view of the above, the petitioner is directed to submit a fresh representation to the 4th respondent clearly spelling out her option to forego the Employees' Provident Fund Family Pension and to opt for Family Pension under the Tamil Nadu Pension Rules. This representation shall be given within a period of one week from the date of receipt of copy of this order. Immediately on receipt of representation made by the petitioner, the 4th respondent shall collect all the service details of the husband of the petitioner and the other details regarding the pension received under the Employees' Provident Fund Family Pension, till date and forward the same to the 5th respondent. On receipt of the same, the 5th respondent shall stop the payment of the pension under the Employees' Provident Fund Family Pension and shall forward the papers to the 5th respondent. The 4th respondent shall thereafter forward the entire records to the 3rd respondent. The 3rd respondent shall consider the entitlement of the petitioner for receipt of Family Pension under the Tamil Nadu Pension Rules and forward the same to the 2nd respondent. The 2nd respondent shall thereafter issue the Government Order and thereafter the petitioner can start receiving the Family Pension under the Tamil Nadu Pension Rules. The whole process shall be completed within a period of 12 weeks from the date of receipt of copy of this order.

14.This writ petition is disposed of with the above directions. No Costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Government of Tamil Nadu,
   Finance Department,
   Fort St. George, Chennai - 600 009.

2. The Principal Secretary,
   The Government of Tamilnadu,
   Transport Department,
   Fort St.George, Chennai-9.

3. The Accountant General,
   O/o the Accountant General,
   Teynampet, Chennai - 18.

4. The Managing Director,
   Metropolitan Transport Corporation Ltd.,
   Pallavan Illam, Pallavan Salai,
   Chennai-2.

5. The Regional Provident Fund Commissioner,
   Employees' Provident Fund Organisation,
   Royapettah, Chennai - 600 014.

6. The Public Prosecutor,
   High Court, Madras.

+1cc to Mrs.S.Rajeni Ramdass, Advocate, SR.No.101981.
+2cc to Mr.T.R.Sundaram, Advocate, SR.No.101788.

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KK(CO)
CSR: 29/01/2020