

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 2319 of 2018
and
C.M.P. No. 18464 of 2019

Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Rep. by its Managing Director,
Rangapuram,
Vellore - 632 009.Appellant/Second Respondent

-vs-

1. N. RaniFirst Respondent/Petitioner
2. The Government of Tamil Nadu,
Rep. by its Secretary,
Transport Department,
Secretariat,
Fort St. George,
Chennai - 600 009.Second Respondent/First Respondent

PRAYER:- Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the order in W.P. No. 5114 of 2014 dated on 22.11.2016.

W.P.5114 of 2014:- To call for the records from the respondent pertaining to the order in letter No. 18137 / SANI 12 /TNSTC(V)LTD/VELLORE DIST/2006,dated 20.06.2011 of the second respondent quash the same and consequently direct the respondents forthwith to pay monthly pension commutation amount and family pension to this petitioner as per Tamil Nadu State Transport Corporation Employers pension rules without reference to the receipt of defence pension / family pension with arrears.

For Appellant : Mr. S. Sairaman

For Respondents: Mr. A. Lakshminarasimhan (for R1)
Mrs. A. Sri Jayanthi,
Special Government Pleader
(for R2)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

In this Writ Appeal, the parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The chronological sequence of events leading to the filing of this Writ Appeal are given below:-

- (i) The husband of the Petitioner, viz., S. Natarajan served in the Indian Army for more than 15 years and was receiving pension from the Ministry of Defence.
- (ii) Thereafter, the said S. Natarajan was recruited as Driver in the Tamil Nadu State Transport Corporation and was absorbed in Pattukottai Azhagiri Transport Corporation in the year 1975 and as he got medically invalidated, he was terminated from service on 31.05.1982.
- (iii) In addition to military pension, the said S. Natarajan was receiving pension from the Government of Tamil Nadu through Pattukottai Azhagiri Transport Corporation till his death on 29.08.1998 and documents have been produced in support of the same in Writ Petition.
- (iv) When the Petitioner, as wife of the said S. Natarajan, on his demise made an application to the Respondents for the payment of family pension, the same was rejected by order No. 18137/W.A.12/T.N.S.T.C.(V)/V/Z/2005 dated 20.06.2011.
- (v) The Petitioner challenged the said order of rejection dated 20.06.2011 in W.P. No. 5114 of 2014 before this Court and has sought for consequential direction for payment of pension and commutation amount to the Petitioner as per the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, without reference to the receipt of family pension for defence service.
- (vi) The Learned Judge, who heard the Writ Petition, by order dated 22.11.2016 following the decision of this Court in Tamil Nadu Arasu Pokkuvrathu Madurai Thozhilalar Sangam -vs- Government of Tamil Nadu [(2010) 2 CWC 555], allowed

the Writ Petition.

(vii) The Review Application No. 56 of 2017 filed by the First Respondent was also dismissed by order dated 02.02.2018 by the Writ Court.

(viii) The First Respondent has preferred this intra-court appeal against the order dated 22.11.2016 in W.P. No. 5114 of 2014 passed by the Learned Judge of this Court.

3. We have heard Mr. S. Sairaman, Learned Counsel appearing for the Second Respondent, Mr. A. Lakshminarasimhan, Learned Counsel appearing for the Petitioner and Mrs. A. Sri Jayanthi, Learned Special Government Pleader appearing on behalf of the First Respondent and perused the materials placed on record, apart from the pleadings of the parties.

4. The Learned Counsel for the Second Respondent submitted that the husband of the Petitioner, viz., S. Natarajan retired from service and died on 29.08.1998 and that since the Tamil Nadu State Transport Employees Pension Fund Rules would be applicable only to the persons, who were on the rolls as on 01.09.1998 or had been employed thereafter, the Petitioner cannot claim any benefit under the said Rules. It is further highlighted that the decision of this Court in Tamil Nadu Arasu Pokkuvrathu Madurai Thozhilalar Sangam -vs- Government of Tamil Nadu [(2010) 2 CWC 555], relates to cases where the concerned employees were on the rolls of the Second Respondent on 01.09.1998 and the ratio laid down in that decision cannot be extended to the case of the Petitioner. We find considerable force in that contention.

5. At the same time, the Learned Special Government Pleader appearing for the First Respondent has brought to the notice of this Court that the Government of Tamil Nadu by G.O. (Ms.) No. 290, Public (Ex-servicemen) Department dated 15.04.2017 has ordered for sanction of Dual Family Pension to those families of ex-servicemen who have been re-employed in Civil (i.e.) State Government Service and earned a pension out of re-employment prior to 01.04.2003 (i.e.) before introduction of the Contributory Pension Scheme in addition to Military Family Pension already drawn by them, and it was open to the Petitioner to make an application in that regard to the concerned authority in the Government of Tamil Nadu for sanction of family pension.

6. In view of the aforesaid submissions made by the Learned Special Government Pleader appearing for the First Respondent, the Petitioner is permitted to make necessary application supported by proof of pension received by her husband, S. Natarajan, till his death, and other necessary

particulars along with a copy of this order, for sanction of family pension under Rule 49 of the Tamil Nadu Pension Rules, 1978, to the concerned authority in terms of G.O. (Ms.) No. 290, Public (Ex-Servicemen) Department dated 15.04.2017 issued by the Government of Tamil Nadu. If such application is made, the concerned authority under the Tamil Nadu Pension Rules, 1978, shall consider the same and pass necessary orders for grant of family pension and communicate the decision taken to the Petitioner within a period of four weeks from the date of receipt of that application and disburse the arrears of family pension within a period of another two weeks thereafter, apart from paying the family pension for future months on the dates on which it falls due.

7. In the result, the Writ Appeal is allowed and the order dated 22.11.2016 in W.P. No. 5114 of 2014 is set aside and the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

vjt

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Rangapuram,
Vellore - 632 009.

2. The Secretary to the Government
of Tamil Nadu,
Transport Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.A.Lakshinarasimhan, Advocate, SR.No.27902
+1cc to Mr.S.Sairaman, Advocate, SR.No.28342

W.A. No. 2319 of 2018

Kj (CO)
Kak (03/04/2019)