

IN THE HIGH COURT OF JUDICATURE AT MADRAS

23.04.2019

Coram

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.No.29946 of 2018

Nagarathinam Shanmugam

.... Petitioner

vs.

1.Tamil Nadu Manual Workers
Welfare Board,
rep.by its Secretary,
G133, Chinthamani Co-operative
Commercial Complex,
Anna Nagar East,
Chennai-600 102.

2.Tamil Nadu Tailoring Workers' Welfare Board,
rep.by its Secretary,
No.8, Valluvar Kottam,
High Road, Nungambakkam,
Chennai-600 034

3.Labour Officer (Social Security Scheme),
7/11, Perumal Kadu,
Sennimalai Road,
Erode-628 002

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the first and second respondents to consider the petitioner's pending application dated 03.09.2014 r/w her representations dated 12.08.2016, 21.11.2016 and 16.07.2018 and grant pension along with arrears of pension from 13.09.2010.

For Petitioner .. Ms.N.S.Tanvi

For Respondents .. Mr.K.K.Ramesh, G.A.
for R1 to R3

ORDER

The petitioner was a tailor by profession and she was a registered member in the second respondent Board i.e. Tamil Nadu Tailoring Workers' Welfare Board. According to the petitioner, she has been renewing her membership once in every two years, as required under Clause 14(1) of the Tamil Nadu Manual Workers Social Security & Welfare Scheme, 2001 (hereinafter referred to as the 'Scheme' in short). The petitioner has also paid necessary subscription fee for renewing her membership periodically. In order to avail pensionary benefits under the Scheme, the member has to attain the age of 60 years. The petitioner attained the age of 60 as on 13.09.2010.

2. In 2012 when the petitioner, in order to avail the benefit of pension, tried to renew her membership, she was informed by the officials that no renewal was necessary, since she had crossed 60 years of age and was eligible for payment of pension. In 2014, an application for pension was submitted before the Labour Officer, Erode and the same has also been acknowledged by the Officer on 03.09.2014. Despite the submission of application, there was no response by the authority concerned for about two years. Therefore, the petitioner submitted a representation on 12.08.2016 to the Labour Officer, Erode, requesting him to process her pension application, dated 03.09.2014. However, no action has been taken till date. Therefore, the petitioner has come forward with the present writ petition, seeking for writ of mandamus directing the respondents to grant pension in terms of the application submitted by her.

3. On behalf of the third respondent, a counter affidavit has been filed. In the counter affidavit it is stated that the petitioner had not been a continuous member for five years, as per the Scheme. The renewal details of the petitioner is stated in paragraph No.8, which are extracted hereunder:

Registration date - 03.09.2001 - 02.09.2003
(Next Renewal Due date is 03.09.2003)
(From 03.09.2003 to 02.11.2003,
30 days break)

Renewal date - 03.11.2003 - 02.11.2005
(Next Renewal Due date is 03.11.2005)
(From 03.11.2005 to 17.11.2005,
15 days break)

Renewal Date -18.11.2005 - 17.11.2007
(Next Renewal Due Date is 18.11.2007)
(She renewed her membership before 61
days from the renewal due date on
14.09.2007)

Renewal date -14.09.2007 - 13.09.2009
(Next Renewal Due Date is 13.09.2009)
(From 13.09.2009 to 15.02.2010,
155 days break)

Renewal date -16.02.2010 - 13.09.2010
(She has completed her age of 60 years
on the date of 13.09.2010)

4.At this, the learned counsel for the petitioner would submit that it is not due to the fault of the petitioner that the renewal has not been granted, as the petitioner herself had taken steps to submit application for renewal. In any event, the learned counsel would submit that in 2011, the Scheme was amended and the five years continuous service has been replaced to the effect that every registered manual worker of Tamil Nadu Construction Workers Welfare Board and Unorganised Welfare Boards, who has completed 60 years of age, is eligible for pension.

5.In this case, the petitioner has attained the age of 60 years in September 2010 and if the beneficial provision of the Scheme is applied to persons, who attained the age of 60 years even prior to the amendment of the Scheme, the petitioner is entitled to be paid pension is the contention of the learned counsel for the petitioner.

6.The learned counsel for the petitioner would also submit that in an identical case, the learned Judge of this Court has allowed a similar claim in W.P.21348 of 2016 (M.Venkatraman vs. 1.The Secretary, Tamil Nadu Manual Workers Social Security and Welfare Board No.G-133, Chinthamani Complex, G-Block, 1st Mai Road, Anna Nagar East, Chennai-600 102 and another), vide order dated 20.03.2017, on the basis of the amendment which was brought on 28.02.2011 by G.O.Ms.No.36, Labour and Employment (1-2) Department. The operative portion of the order passed by the learned Judge from Paragraph Nos.4 to 7 are reproduced hereunder.

"4. It appears that the scheme was amended by the Government Order passed in G.O(MS) No.36, Labour and Employment (1-2) Department, dated 28.02.2011. In pursuant to which, Section 18(1) was amended as follows:

"Every register manual worker who has

completed 60 years of age is eligible for pension".

8. The above amendment is applicable only those who are completed 60 years of age on or after 28.02.2011. In the case of petitioner, this amendment is not applicable because he completed 60 years of age on 30.05.2010."

5.The fact that the petitioner was eligible to be a member of the scheme, is not in dispute. Further, the fact that he renewed it in the year 2008, is not in dispute. Admittedly, he has completed the age of 60 years. The scheme is the welfare one. Though the petitioner has not renewed the membership for 5 years continuously, the fact that he is eligible and got himself renewed in the year 2008, would be enough to make him entitled for the scheme benefit. Especially, when Section 18(1) has been amended, thereafter, by removing the restrictions of 60 years, the amendment has to be applied in favour of the petitioner as otherwise it will create a parity between those, who have retired prior and after to the date of the Government Order.

6.Thus, considering the object of the amendment and taking note of the fact that the petitioner is otherwise entitled to, this Court is inclined to set aside the order impugned.

7.Accordingly, the order impugned is hereby set aside and the writ petition is allowed. Consequently, the respondents are directed to grant pension to the petitioner by treating him on par with those who have retired after 28.02.2011 and pass appropriate orders in this regard within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

7.This Court is in agreement with the submission made by the learned counsel for the petitioner. The facts that the petitioner has completed the age of 60 years and she being a registered member of the Scheme are all not disputed by the respondents and therefore, the petitioner is entitled to be paid pension, as admissible to her, on the date of her retirement i.e. 13.09.2010.

8.The stand of the respondents that the petitioner has not renewed her membership and has not been a member continuously for a period of five years cannot be appreciated in view of the subsequent amendment, which came into effect from 28.02.2011. In any event, the non-renewal of membership cannot be held against the members of the Scheme, since that would be too harsh, as the members are eligible for pension when they are otherwise registered under the Scheme during the period of their employment as 'tailors'. In any event, once the amendment has been brought in 2011, that amended Scheme should have been applied to the petitioner. Further, the learned Judge of this Court has allowed a similar claim by an employee and the order passed by the learned Judge is squarely applicable to the present case in favour of the present petitioner also.

9.In view of the above, the writ petition is allowed and there shall be a direction to the respondents to pay admissible pension to the petitioner, on par with those who have retired after 28.02.2011. The respondents shall calculate the arrears of pension from October 2010 to till date and shall continue to pay admissible pension to the petitioner. The direction of this Court shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

Labour Officer (Social Security Scheme),
7/11, Perumal Kadu,
Sennimalai Road,
Erode-628 002

+1 CC to Mr. D.NAGASAILA, Advocate SR.NO.38584

+1 CC to the Government Pleader SR.NO.39127

W.P.No.29946 of 2018

CO(GP)

VC (03/06/2019)