`IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.02.2020
CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 15515 of 2015

P.Jayaseeli ..Petitioner

Vs

1.Government of Tamil Nadu
rep.by Secretary to Government,
Industries Department Commerce,
Secretariat, Chennai -600009.

2.The Industries Commissioner and
Director of Industries and Commerce,
Secretariat, Chennai - 600009.

3.The Principal Accountant General (A&E)
Tamil Nadu, Chennai - 600018.

4.The Secretary to Government,
Finance (BPE) Department,
Secretariat, Chennai-600009.
(R4 impleaded vide order of this Court
dated 03.08.2015 in MP.NO.1/2015 IN WP.15515/15)
.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent in connection with the impugned orders passed in para 2(1) of G.O.Ms.No. 171, Finance (BPE) Dept., dt. 21.03.1989 and para 4 (g) of G.O.Ms.No. 581, Finance (BPE) Dept., dt.18.09.2006 and quash the same to the limited extent of declaration that drawal of Family Pension under Employees Pension Fund Rules as a par of entitlement of Government Family Pension Rules and further direct the Respondent to grant Government Family Pension to the petitioner, under the Tamil Nadu Pension Rules 1978 by taking into account the service rendered by the petitioner's husband from 15.06.1964 to 27.11.1981 as polisher in the Industries Department along with his service from 28.11.1981 to 07.04.1988 in the Tamil Nadu Handicrafts Development Corporation Ltd., a Tamil Nadu Government undertaking, and disburse the Family Pension to the petitioner from 08.04.1988 onwards."
(Prayer ammended as per order dated 03.08.2015 in MP.NO.2/2015 IN WP.15515/15)

For Petitioner : Ms.Akshaya Shankar
for M/s. M.Ravi

For Respondents : Mr.J.Ramesh,AGP -For R1,R2 & R4
Mr.V.Vijayshankar - For R3

O R D E R

The writ petition was initially filed for writ of mandamus for surrender the family pension under the Employment Provident Fund Scheme being received by her and to opt to Government Family Pension under the Tamil Nadu Pension Rules 1978 by taking into account the services rendered by the petitioner's husband from 15.06.1964 to 27.11.1981. Subsequently, the prayer in the writ petition has been amended as per order of this Court dated 03.08.2015. The amended prayer is as follows;

> "to call for the records of the 4th respondent in connection with the impugned orders passed in para 2(1) of G.O.Ms.No. 171, Finance (BPE) Dept., dt. 21.03.1989 and para 4(g) of G.O.Ms.No. 581, Finance (BPE) Dept., dt.18.09.2006 and quash the same to the limited extent of declaration that drawal of Family Pension under Employees Pension Fund Rules as a par of entitlement of Government Family Pension Rules and further direct the Respondent to grant Government Family Pension to the petitioner, under the Tamil Nadu Pension Rules 1978 by taking into account the service rendered by the petitioner's husband from 15.06.1964 to 27.11.1981 as polisher in the Industries Department along with his service from 28.11.1981 to 07.04.1988 in the Tamil Nadu Handicrafts Development Corporation Ltd., a Tamil Nadu Government undertaking, and disburse the Family Pension to the petitioner from 08.04.1988 onwards."

Brief facts of the case:

2. The writ petitioner's husband late Thiru D.Pandian was working as Polisher in the Industries and Commerce Departments from 15.06.1964 and subsequently he was deputed in the Tamil Nadu Handicrafts Department Corporation Ltd., and adsorbed in the said post w.e.f. 01.11.1974. Later as per orders in Pro.No. 224567/EBA/1/80, dated 28.11.1981 and G.O. Ms.No. 432, Finance (BPC) Department, dated 11.09.2007, his date of absorbtion in the said department was modified w.e.f 28.11.1981 and while in service, he died on 07.04.1988. The petitioner has submitted pension application on 29.01.2014. Since she has not received pension, she submitted representation dated 10.01.2015 for sanction of Family Pension in the light of the Judgment of this Court in W.A.No. 1246 of 2009 dated 18.06.2010 in W.P. No. 19730 of 2007 dated 28.03.2012. The said representation is still pending with the respondents, hence this writ petition.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the documents available on record.

4. The learned counsel appearing for the petitioner submitted that as per provisions of G.O.Ms.No. 284, Finance (BPF) Department, dated 31.03.1980, the Industries Commissioner and Director of Industries and Commerce initially absorbed the petitioner's husband permanently in the Tamil Nadu Handicrafts Development Corporation Ltd., w.e.f 01.11.1974 in an by Pro. N. 224567/EBA/1/80 dated 8.11.1981. Later as per G.O.Ms. No. 432, Finance (BPC) Department, dated 11.09.2007 modified the date of absorption as from 28.11.1981 vide Pro. No. 895/EDS.1/2002-37 dated 14.09.2013. As per the aforesaid order, the petitioner's husband declared to be in Government service till 27.11.1981. Consequently, the annual increments for the period from 01.11.1974 to 27.11.1981 was regulated notionally vide Memo No.895/EDS.1/2002-3 dated 25.09.2013.

5. The learned counsel appearing for the petitioner further submitted that the petitioner has made representation to the Industries Commissioner/2nd respondent her husband had rendered service from 15.06.1964 to 28.11.1981 to the Industries Department and if that service is taken into account along with his service in the corporation from 28.11.1981 to 07.04.1988, the petitioner would become eligible for Family Pension. But the said request was not considered.

6. The learned counsel appearing for the petitioner further submitted that this Court has considered the case of similarly placed person in W.P. No. 19730 of 2007 and issued direction to grant the benefit of Family Pension as per Tamil Nadu Pension Rules 1978, on filing an affidavit of undertaking to the effect foregoing the benefit of Family Pension under EPF Scheme. The said order also complied with by the concerned authorities. It is argued by the learned counsel for the petitioner that the aforesaid order is also applicable to the petitioner and the petitioner is also entitled to family pension on the same lines. Therefore, the representation dated 10.01.2015 submitted by the petitioner has to be considered by the respondents and the family pension to be granted to the petitioner as the petitioner's husband served more than 16 years in the Industries Department.

7. According to the petitioner, the aforesaid grounds were raised by relying upon the judgment passed by the Hon'ble Division Bench of this Court in W.A. No. 1246 of 2009 dated 18.06.2010. Based on the aforesaid order, option can be given under Rule 13(B) of the Tamil Nadu Pension Rules, therefore, the petitioner gave affidavit of undertaking to the effect foregoing the benefit of Family Pension under EPF Scheme and opted for Family Pension under Tamil Nadu Family Pension Rules.

8. Thereafter, the petitioner as sought for amendment of prayer to challenge the provisions contained in Para 2(1) of G.O. Ms.No. 171, Finance (BPE) Department dated 21.03.1989 and para 4(g) of G.O. Ms. No. 581, Finance (BPE) Department, dated 18.09.2006 and to seek consequential direction to grant the Government Pension payable under the Tamil Nadu Pension Rules, 1978 by taking into account the services rendered by the petitioner's husband namely D.Pandian. The said prayers has been amended as per order of this Court dated 03.08.2015.

9. On the other hand the learned Additional Government Pleader by reiterating the averments made in the affidavit, has submitted that as per G.O. Ms.No.171 Finance (BPE) Department, dated 21.03.1989, the Government have prescribed certain conditions for granting of Family Pension to the employees who were absorbed in the Public Sector Undertakings, which reads as follows;

i. The families of such deceased employees of the State Public Undertaking/Board should not receive any other family pension including Employees Family Pension and Life Insurance Scheme.

ii. If a Pension scheme is implemented in the State Public Sector Undertaking/Board the Government will place the required fund at the disposal of the undertaking/Board on a Pro-rata basis to enable them to grant the family pension to the families to such deceased employees.

Iii. If there is no Pension scheme in the State Public Sector Undertaking/board, the Government will bear the liability for the payment of family pension to the families of such deceased employees of the Undertaking/Board only in respect of the services put in by the deceased employee under the Government.

Therefore, the petitioner has not fulfilled the above conditions and hence the claim made by the petitioner is not correct.

10. The learned Additional Government Pleader further submitted that pursuant to the orders issued by the Government in G.O (Ms). No. 284 Finance (CFC) Department, dated 31.03.1980

and in G.O. Ms.No. 432 Finance (BPE) Department, dated 11.09.2007, the services rendered by the petitioner's husband D.Pandian from 15.06.1964 to 27.11.1981 have been taken into Government service and proposal was sent to Accountant General, Chennai -18 vide Industries and Commerce Department office Lr.No.3677/ADA2/2014, dated 19.03.2014 and the Accountant General, Chennai have admitted the proposal vide its Lr.No. P33/13311467/3/PPO No. D3311467 dated 08.05.2014 duly sanctioning the Death-cum-Retirement Gratuity to the tune of Rs.6826/- and rejected the family pension, since the petitioner was receiving pension under Employees Provident Fund Scheme.

11. The learned Additional Government Pleader further submitted that the Government by relying upon the order passed by this Court in W.P.Nos. 3067 & 3068 of 2010 dated 08.08.2011 filed by the 61 Tansi absorbee pensioners and 6 family family pensioners, have issued orders in G.O.Ms.No. 78, Finance (BPE) Department, dated 24.03.2015 by stipulating tow conditions, which are as follows;

> a). To sanction Family Pension to 61 TANSI absorbee pensioners who have filed the W.P. No.3067/2010 and 6 family pensioners (spouses of the TANSI absorbee pensioner) who have filed the W.P.No. 3068/2010 in the Hon'ble High Court of Madras after receipt of an undertaking from such petitiioners to the effect of foregoing their benefit of Family Pension under Employees Provident Fund Scheme and subject to confirmation from the EPF Authorities.
>
> b) Payment of Family Pension to such petitioners shall be made effective from the next day on which their Family Pension (being drawn by such petitioners under EPF scheme) is stopped by EPF authorities (which shall be on any day after the date of issue of this order) based on the undertaking furnished by the petitioners to the EPF authorities with regard to foregoing their benefit of Family Pension under EPF Scheme."

In view of the above, the petitioner has not made any representation or affidavit of undertaking as per the above conditions, hence she is not entitled for the benefits as per the said G.O.

12. On a perusal of documents, it is necessary to extract the paragraphs Nos. 13 & 14 of the counter affidavit filed by the 2nd respondent, which reads as follows;

> "13. With reference to the averments made in paragraph 12 of the affidavit, it is submitted that the petitioner has not submitted any representation to the office of Industries and Commerce. If the petitioner had submitted any representation then the same would be attended

> without any omission, therefore the averment submitted is not sustained before a court of law.
>
> 14. With reference to the averments made in paragraph 13 of the affidavit, it is submitted that the surrendering of Employees Provident Fund family pension by the petitioner should be made before the Employees Provident Fund Organisation and the acceptance of the same by the authorities, is vested only with them.”

13. Upon considering the submissions made by either side and the statement made in paragraphs 13 &14 of the counter affidavit filed by the 2nd respondent, this Court is of the view that though the petitioner has amended the prayer challenging the G.O. Ms.No. 171, Finance (BPE) Department, dated 21.03.1989, the petitioner has not raised any additional grounds challenging the aforesaid G.O. Therefore the contentions raised by the learned counsel for the petitioner based on the earlier grounds are not sustainable. Further, the petitioner and the legal heir of the petitioner after exercising their option for receiving the family pension under the Employees Provident Fund Scheme, now challenging the same citing the aforesaid G.O. Ms.No. 171, Finance (BPE) Department, dated 21.03.1989 very belatedly. Therefore, this Court cannot accept the submissions made by the learned counsel for the petitioner.

14. Therefore, without pleadings, this Court cannot interfere with the G.O. Ms. No. 171, Finance (BPE) Department, dated 21.03.1989, hence the stand taken by the learned counsel for the petitioner is rejected.

15. In view of the paragraphs 13 & 14 of the counter affidavit filed by the 2nd respondent and considering the fact that the petitioner has also made representation, the petitioner is directed to produce a copy of the said representation to the 1st respondent and the same shall be considered by the 1st respondent, if the petitioner satisfies the conditions of the G.O. Ms. No. 171, Finance (BPE) Department, dated 21.03.1989, as expeditiously as possible, within a period of four months from the date of receipt of a copy of this order.

16. With the above observations and directions, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Industries Department Commerce,
Secretariat, Chennai -600009.

2.The Industries Commissioner and
Director of Industries and Commerce,
Secretariat, Chennai - 600009.

3.The Principal Accountant General (A&E)
Tamil Nadu, Chennai - 600018.

4.The Secretary to Government,
Finance (BPE) Department,
Secretariat, Chennai-600009

+1cc to Mr. V.Vijayshankar , Advocate SR.No. 16640
+1 cc to Government Pleader Sr.No. 17202

W.P.No. 15515 of 2015

A.SK(28/07/2020)