

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.17541 OF 2012

AND

M.P.NO.1 OF 2012

K.Palaniammal

... Petitioner

Vs.

1.The Managing Director
Tamil Nadu Transport Corporation
Salem Division
12, Ramakrishna Salai, Salem - 7.

2.The Administrator
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust
Chennai - 2.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed in Letter No.19209/D/2004-11 dated 16.11.2006 Transport (D) Department, Secretariat, Chennai and order passed in No.1070.ஒ.ஊ-1/1.த.அ.போ.க/சேலம்/2011 dated 01.09.2011 quash and thereby direct the respondents to given compassionate appointment or sanction the family pension on the death of her husband S.Kariamalai.

For Petitioner : Mr.A.R.Nixon

For Respondents: Mr.D.Raghu
Standing Counsel

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O R D E R

The petitioner's husband was appointed as a Driver under the respondents on and from 06.05.1981. While he was in service, a charge memo came to be issued on 29.10.2001. Thereafter, on the basis of the enquiry conducted by the respondents, he was dismissed from service. Against the order of dismissal, he raised an industrial dispute before the Labour

Court, Salem. The Labour Court, Salem, by its order dated 17.01.2005 in I.D.No.160 of 2003 has upheld the order of dismissal, but however, modified "dismissal" into one of "discharged" for the purpose of grant of monetary benefits to the petitioner. Thereafter, the petitioner's husband died on 11.10.2005. The writ petitioner herein, made a representation to the respondents for grant of family pension, which was rejected. Against which, she filed a writ petition in W.P.No.11043 of 2011 for compliance of the award passed by the Labour Court and for disbursement of the benefits. This Court, by its order dated 20.06.2011, has directed the respondents to disburse the benefits within three months in the following lines:

"5. It is the case of the petitioner that the Award in I.D.No.160 of 2003 has become final inasmuch as the respondent Corporation has not challenged the same. If that be the case, the respondent has to implement the said Award. The learned Standing Counsel submits that as on date, he does not have any written instructions as to whether the Award has been challenged or not. It is seen from page 13 of the typed set of papers that the respondent Corporation has replied by their letter dated 26.8.2007 stating that the petitioner's husband having been dismissed from service, his legal heirs are not entitled to any benefits.

6. As noticed above, the order of dismissal passed by the respondent Management has been converted into one of discharge from service and the Labour Court also in its Award has clearly held that on account of such conversion of the punishment, the petitioner's husband is entitled to the benefits admissible to him, which shall be paid by the management within a period of three months. Therefore, the reason assigned by the respondent Corporation for denying the benefits to the petitioner is not tenable."

2. After considering the request, the respondents have passed the impugned proceedings No.1070/இ.ஊ-1/1.த.அ.பொ.க/சேலம்/2011 dated 01.09.2011, wherein it is stated that as per Rule 21 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, the petitioner is not entitled to any monetary benefits as per the clarification issued by the Government. The clarification issued by the Secretary to Government, Transport Department, Secretariat, Chennai, vide Letter No.19209/D/2004-11, dated 16.11.2006 states that the removal or discharged from

service will enable a person to get some monetary benefits, but without sanction of pension. Aggrieved over the same, the petitioner is before this Court.

3. The learned counsel for the petitioner would contend that Rule 21 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules applies to the case of dismissal or removal from service and it will not apply to the case of discharge from service and therefore, the petitioner is entitled to monetary benefits including pension and the denial of the same is illegal and hence, the impugned order is liable to be set aside.

4. Per contra, learned counsel for the respondents would vehemently contend that it is an admitted fact that the petitioner's husband was dismissed from service. When it was challenged before the Labour Court, Salem, by raising an industrial dispute, the punishment was upheld by the Labour Court. However, for giving the monetary benefits, "dismissal" was modified into one of "discharge". In the result, the dismissal order is still remain intact, but the family members were entitled to certain monetary benefits. Those benefits were given by the respondents, but the writ petitioner is not entitled to sanction of pension. In view of the award passed by the Labour Court, Salem and in view of Rule 21 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, a person, dismissed from service is not entitled to pension or pensionary benefits. In that view of the matter, the petitioner is not entitled to pension and therefore, the order passed by the respondents, in the light of the clarification issued by the Government is legally sustainable and the order does not warrant any interference and therefore, he seeks dismissal of the writ petition.

5. I have considered the rival submissions.

6. The admitted facts remains that the petitioner's husband was dismissed from service and the dismissal order was upheld by the Labour Court. However, considering the pathetic circumstances of the family members of the dismissed employee, the Labour Court has modified the punishment of "dismissal" into one of "discharge" for the purpose of grant of monetary benefits. After deciding so, a direction was given to the respondents to settle all the monetary benefits within a period of three months. This award was passed during the lifetime of the employee. If at all there was any doubt about the settlement of the monetary benefits, the respondents ought to have filed a clarification petition before the concerned Labour Court. If it is not agreeable to them, they should file an appeal against the order / award passed by the Labour Court. However, the

respondents have allowed the award become final.

7. It is relevant to state that the petitioner has approached this Court by way of writ petition in W.P.No.11043 of 2011 for the implementation of the award passed by the Labour Court. The respondents have produced a letter dated 26.08.2007 that the petitioner's husband was dismissed from service and therefore, she is not entitled to any benefits. Such contention was negatived by this Court and a direction was given to the respondents to disburse all the monetary benefits to the petitioner. Even at that time, it was not clarified with regard to sanction of pension. The direction issued by this Court was to settle the monetary benefits within a period of three months.

8. Be that as it may, a perusal of Rule 21 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules reveals that if a member is removed or dismissed from service, he/she is not entitled to claim pension or pensionary benefits.

"21. GUARANTEE OF PENSIONARY BENEFITS

a) The payment of benefits will be guaranteed by the Pension Trust. Provided further, a member removed or dismissed from service shall have no claim over pension / pensionary benefits."

9. As per the above Rule, a member, who is removed or dismissed from service alone is not entitled to pension. Whereas, as discussed above, the order of punishment was modified from "dismissal" into one of "discharge" entitling the employee to get all monetary benefits. Since the order was not clarified as to what are monetary benefits, which is due to the petitioner, it shall be presumed that it includes pension also. In the absence of any specific rules, it should be construed that the discharged employee is entitled to pension also.

10. In the instant case, the writ petitioner is the wife of the deceased employee and therefore, she will be entitled to get family pension. In that view of the matter, the impugned order passed by the first respondent dated 01.09.2011 in so far as it rejects the claim of the petitioner for family pension is set aside and so far as the prayer for compassionate appointment is concerned, it cannot be considered at this distance of time and that request stands rejected.

11. In the result, the writ petition is partly allowed with direction to the respondents to provide family pension and other monetary benefits due to the petitioner within a period of

twelve weeks from the date of receipt of a copy of this order.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

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Sub Assistant Registrar

TK

To

- 1.The Managing Director
Tamil Nadu Transport Corporation
Salem Division
12, Ramakrishna Salai,
Salem - 7.
- 2.The Administrator
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust
Chennai - 2.

+1cc to Mr.D.Raghu, Advocate, S.R.No. 14623
+1cc to Mr.A.R.Nixon, Advocate, S.R.No. 15046

W.P.NO.17541 OF 2012

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GN(30/07/2020)

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