

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.18118 OF 2013

K.Jegadambal

..Petitioner

- Vs -

1. The Secretary to Government  
Transport (RW.1) Department  
Secretariat, Chennai - 9.
2. The Managing Director  
Thiruvalluvar Transport Corporation  
now known as State Express  
Transport Corporation  
Chennai 600 002.
3. The Regional Provident Fund  
Commissioner, Royapettah  
Chennai - 600 014.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to take immediate action to sanction family pension to the petitioner on receiving her willingness to forego EPF Family Pension which she has received within a time frame.

For Petitioner : No Appearance

For Respondents: Mr. S.Thangavel, Spl. GP for R-1

Mr. K.Kathiresan for R-2

Mr. T.R.Sundaram for R-3

ORDER

It is the case of the petitioner that her husband was employed in the Tamil Nadu State Transport Department as Driver on 15.6.1962 and was absorbed in the Thiruvalluvar Transport Corporation on and from 14.9.1975 and died in harness on 18.12.1984. The petitioner's husband was not paid any pension for the service rendered in the Transport Corporation on account of the fact that he had not completed 10 years of qualifying service and at that point of time, pension was not available in

the Transport Corporation. The validity of fixation of cut off date as 1.5.1975 for exercising option by the erstwhile employees on absorption in the Transport Corporation was challenged and ultimately, the Hon'ble Apex Court fixed the cut off date as 1.4.1982 with a further direction to the Corporation and the Government to add the period of service upto 1.4.1982. Since the petitioner's husband died in the year 1984, he could not pursue his case for getting pension and since the petitioner's husband is eligible for pension, as the surviving wife, the petitioner is entitled for family pension.

2. It is the further case of the petitioner that the liability of the Government to pay family pension was challenged before this Court, which ultimately ended in favour of the employees, wherein this Court held that family pension would be eligible to all the the employees, which resulted in passing of G.O. Ms. No.110, Transport Department dated 6.6.02 and G.O. Ms. No.189, Transport Depart (R.W.1) dated 13.9.04 in and by which the Government extended the family pension to all the employees of the Transport Department, who were absorbed in the Transport Corporation.

3. It is the further case of the petitioner that however, the petitioner was not paid family pension, but only EPF Family Pension of Rs.414/- per month was sanctioned by the Regional Provident Fund Commissioner on and from 1.4.1992 and in view of the above pension, the petitioner has been denied the family pension, though she is eligible for the same in the wake of the orders of the Supreme Court.

4. In the above backdrop, the petitioner earlier filed W.P. No.37108/06 before this Court to quash the condition imposed in para 10 of G.O. Ms. No.110 and for a direction to the respondents 1 to 3 to take steps to grant family pension to the petitioner from 19.12.1984, the date on which the petitioner's husband breathed his last and, this Court, by order dated 18.11.09, allowed the prayer of the petitioner. However, in view of the subsequent development vide the order of this Court dated 18.8.2020 in W.A. No.1246/02, the previous direction issued in W.P. No.37108/06 has become infructuous and, therefore, the present petition has been filed before this Court for a direction to the respondents to grant family pension to the petitioner in the light of the order of the Division Bench in W.A. No.1246/02 by allowing her to exercise the option.

5. Though the case has been repeatedly listed, however, there is no representation for the petitioner. Considering the fact that the case pertains to the year 2013 and the issue in the present case is not only of importance, as the same pertains to a senior citizen, but also attracts the directions issued by

the Division Bench in W.A. No.1246/02, this Court proceeds to dispose of the writ petition on its merits.

6. A bare perusal of the materials available on record reveals that as early as on 22.7.2013, when the case was taken up for admission, learned counsel for the Transport Corporation had fairly conceded that the Transport Corporation is willing to pay the family pension, on condition that an affidavit is filed by the petitioner willing to forego the pension that is received under EPF scheme. Though time was sought on that date to file the requisite affidavit, however, nothing has fructified till date.

7. The facts of the case are not in dispute. It is true that the petitioner has been receiving EPF Pension on and from 1.4.92, though on and from 19.12.1984, the petitioner is entitled for family pension, as per the orders of the Division Bench of this Court in W.A. No.1246/02. Once the Hon'ble Supreme Court has finally decided the issue in fixing the cut off date and providing for pension and the Division Bench of this Court had also directed the Transport Corporation to permit the employees to exercise their option for receiving either family pension or EPF Pension, the Transport Corporation, in all fairness, ought to have called upon the petitioner, as the surviving widow of her late husband, an employee of the Transport Corporation to come forward and exercise her option. However, such a course has not been taken by the Transport Corporation till date, which had prompted the petitioner to come before this Court by filing the present writ petition.

8. As has been held in a catena of decisions, pension is not a bounty and it is the legal entitlement of the employee, who has earnestly served his employer, in the prime of his career. The petitioner's husband, had served the Transport Department and subsequently the Transport Corporation before his untimely death on 19.12.1984. Therefore, on and from 19.12.1984, the petitioner, as the widow, is entitled to family pension, as the cut off date fixed by the Hon'ble Supreme Court is 1.4.1982. Therefore, this Court is of the considered opinion that the petitioner is not only entitled for family pension, but the same has to be paid on and from 19.12.1984, the date of death of her husband.

9. However, it is the admitted case of the petitioner that on and from 1.4.1992, she has been receiving EPF Family Pension of Rs.414/- from the Regional Provident Commissioner, Chennai. Once the petitioner is held to be entitled for family pension and her prayer is being considered in the affirmative, the logical course open is to direct the Transport Corporation to calculate the family pension payable to the petitioner on and

from 19.12.1984, less the EPF Family Pension received by the petitioner from 1.4.1992 and pay the same to the petitioner within a particular time frame. However, it is also to be borne in mind that the Division Bench of this Court, vide its order in W.A. No.1246/02, has directed the pensioners/family pensioners to exercise their option either for family pension or EPF Family Pension. In such circumstances, this Court is of the considered view that it would be justiciable if the petitioner is directed to submit her option within a particular time frame, as mandated in W.A. No.1246/02 and on receipt of such an option, the respondents be directed to calculate the pensionary benefits of the petitioner based on her option and settle the same to her within a particular time frame.

10. In the above circumstances, this writ petition is disposed of directing the respondent to communicate a copy of this order to the petitioner within a period of two weeks from the date of receipt of a copy of this order and on receipt of the copy of the order, the petitioner is directed to submit her option for family pension, as mandated in W.A. No.1246/02 and as sought for by her, within a period of four weeks therefrom and on such an option being exercised by the petitioner, the respondents are directed to calculate the pensionary benefits of the petitioner for payment of family pension on and from 19.12.1984, less the EPF Family Pension paid to the petitioner from 1.4.1992 and pay the family pension along with the arrears to the petitioner within a period of twelve weeks from the date of exercising of the option by the petitioner. In the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,  
Transport (RW.1) Department,  
Secretariat, Chennai - 9.
2. The Managing Director,  
Thiruvalluvar Transport Corporation,  
now known as State Express,  
Transport Corporation,  
Chennai 600 002.

3. The Regional Provident Fund,  
Commissioner, Royapettah,  
Chennai - 600 014.

+1cc to M/s.K.Kathiresan, Advocate in SR.NO..29970  
+1cc to the Government Pleader in SR.NO..30245

W.P. NO. 18118 OF 2013

MR(CO)  
RV(13/10/2020)