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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.2523 of 2015

R.Rajalakshmi

... Petitioner

Vs.

1. Government of Tamilnadu,
Rep. by its Secretary, Transport Department,
Fort St. George, Chennai - 600 009.
2. Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
No.12, Ramakrishna Road, Salem - 7. ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the first respondent to sanction/grant the petitioner DCRG, Pension which was payable to the petitioner's husband from 01.01.88 to 12.11.2004 and thereafter family pension from 13.11.2004 together with arrears and interest.

For Petitioner : Mr.R.Krishnaswamy

For Respondents : Mr.D.Raghu

ORDER

This writ petition has been filed seeking a direction to the first respondent to sanction pensionary benefits to the petitioner, which was payable to her husband from 01.01.1988 to 12.11.2004 and thereafter, family pension from 13.11.2004 together with arrears and interest.

2.According to the petitioner, her husband by name, Ramasamy, was originally appointed as a Driver on temporary basis, in the first respondent Department on 11.03.1972. Subsequently, he was made permanent and absorbed as a regular Driver with monthly time scale of pay, with effect from 01.10.1972. Thereafter, by order dated 31.03.1975, the petitioner's husband was sent to the second respondent Corporation on deputation, with effect from 01.04.1975 and was



later, promoted as a Driving Instructor and on reaching the age of superannuation, he retired from service on 30.06.1995; and he died on 12.11.2004. It is the grievance of the petitioner that though her husband had completed 10 years and 21 days of service (half of service from 11.03.1972 to 30.09.1972 + regular service from 01.10.1972 to 31.03.1982), he was not granted pension and other benefits, on the ground that he was not having 10 years of qualifying service. That apart, the petitioner was not granted arrears of pension payable to her husband from 01.01.1988 to 12.11.2004, besides family pension. In this regard, she submitted a representation dated 16.07.2014 to the respondents, which was not considered. Hence, this writ petition.

3. Upon notice, the respondents filed a detailed counter affidavit, inter alia stating that the petitioner's husband, an employee of the Tamil Nadu State Transport Corporation, has rendered a net qualifying service of 9 years, 8 months and 25 days including 50% of daily paid wages and hence, he is not eligible for monthly pension and his wife/petitioner is also not entitled for family pension.

4. The learned counsel for the petitioner submitted that while considering the issue relating to cut off date for sanction of pension payable to the Transport Corporation Employees with effect from 01.01.1988, in WA.Nos.1752 and 1827 of 2009, a Division Bench of this Court, by judgment dated 28.04.2010, observed as follows:

"5. Since they had upheld the order of the High Court, we went through the judgment of the High Court in Writ Appeal No.545 of 1998. We found that the writ petitioners in the earlier proceedings were also appointed as Conductors on the basis of daily wages. All the parties before this court in that case were appointed temporarily either as Conductors or Drivers. The writ petitioner also stands on the same footing. Then the Division Bench considered the provisions of Rule 2(b) of the Tamil Nadu Pension Rules and Rule 11 of the said Rules, They also took note of the provisions in the Government service Rules, which treated the fraction of the year equal to three months and above shall be treated as a complete one half year and reckoned as qualified service for the pensionary benefits and therefore rejected the condition of the learned Government Pleader that the writ petitioner had not completed ten years of service. Therefore, the identical issue had been raised and they had all been decided in favour of Conductors/ Drivers and this had been confirmed by the Supreme Court. So, we cannot withhold the relief for the writ petitioner herein on



the basis of the same objections, which have been rejected earlier."

In the said decision, the pensionary benefits were granted to the petitioner therein, by treating the service of three months and above as a complete one half year and reckoned the same as qualified service. Applying the same principle to the facts of the present case, wherein, the petitioner's husband had rendered a net qualifying service of 9 years, 8 months and 25 days according to the respondents, it has to be construed as he deemed to have been completed 10 years of service for sanction of pension. Therefore, the learned counsel prayed for appropriate direction to the respondents to consider the claim of the petitioner herein in her favour.

5. On the other hand, the learned counsel appearing for the respondents fairly submitted that the respondents would reconsider the representation of the petitioner and pass orders, on merits and also in the light of the aforesaid Division Bench Judgement made in the writ appeals, within a reasonable time to be fixed by this Court.

6. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court directs respondents to consider the representation of the petitioner dated 16.07.2014 and pass appropriate orders, on merits and in accordance with law and also in the light of the aforesaid judgment passed by the Division Bench of this Court in W.A.Nos.1752 and 1827 of 2009 dated 28.04.2010, within a period of six weeks from the date of receipt of a copy of this order.

7. Accordingly, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Secretary, Transport Department,
Fort St. George,
Chennai - 600 009.



WEB COPY

2. The Managing Director,
Tamil Nadu State Transport Corporation,
No.12, Ramakrishna Road,
Salem - 7.

+1CC to Mr.V.Ajay Khose, Advocate Sr.20415
+1cc to the Government Pleader Sr.20552
+1cc to Mr.D.Raghu, Advocate Sr.20368

W.P.No.2523 of 2015

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