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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 12787 of 2019

1. G.Minnaladevi
2. S.Perundevi
3. K.Bakthavatsalu
4. R.Velayudham
5. C.Ponnusamy
6. P.Janakiraman
7. R.Ramakrishnan
8. A.Chakaravarathy
9. N.Chandrasekaran
10. J.Ramachandran

...Petitioners

-vs-

1. The State of Tami Nadu
Represented by its Secretary to Government,
Transport Department,
Fort St. George,
Chennai - 600 009.
2. The State of Tamil Nadu,
Represented by its Secretary to Government,
Finance Department,
Fort. St.George,
Chennai-600 009.
3. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Division,
Ponnerikarai,
Chennai- Bangalore National Highway,
Kancheepuram-631 552.
4. The Metro Transport Corporation (TN) Chennai,
Represented by its Managing Director,
Pallavan House,
Anna Salai,
Chennai-600 002.



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

6. The Assistant Provident Fund Commissioner, (pension),
Employees Provident Fund Organization,
Sub-Regional Office,
Vellore,
Vellore District.

7. The Assistant Provident Fund Commissioner (Pension),
Employees Provident Fund Organization,
Sub-Regional Office,
Tambaram,
Kancheepuram District

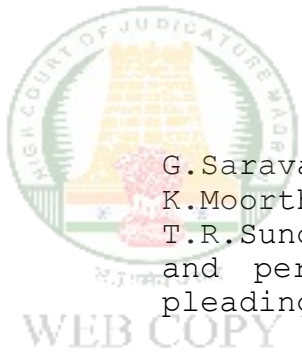
...Respondents

Prayer:- Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari Mandamus, calling for the records of the First Respondent herein relating to the G.O. Ms. No. 110 Transport Department dated 06.06.2002 quash the condition specified in paragraph 7(a) of G.O. Ms. No. 110 Transport Department dated 06.06.2002 direct the Respondents to extend the benefit of family pension to the Petitioners and arrears of family pension as per G.O. Ms. No. 189 Transport Department, dated 13.08.2004 for the service rendered in the State Transport Department by following the Judgments in W.P. No. 1246 of 2009 dated 18.12.2010, W.P. No. 10631 of 2012, W.P. No. 10632 of 2012 , W.P. No. 10633 of 2012 , W.P. No. 10634 of 2012, W.P. No. 10635 of 2012, dated 19.04.2012 W.P.No. 12284 of 2012 , W.P. No. 12285 of 2012, W.P. No. 12286 of 2012, W.P. No. 12287 of 2012, dated 27.04.2012, W.P. No. 30061 of 2005, W.P. No. 31276 of 2005, dated 07.06.2013 on the file of this Hon'ble court, irrespective of the coverage of family pension under the Employees Provident Fund Pension Scheme 1995 under the Employees Provident Funds and Miscellaneous provision Act 1952.

For Petitioners : Mr. K.Shanmugakani
For Respondents : Mrs. C.Sangamithirai
Special Government Pleader (For R1 & R2)
Mr. G.Saravanakumar (For R3)
Mr. K. Moorthy (For R4)
Mr. T.R.Sundaran (For R5 to R7)

O R D E R

Heard Mr. K.Shanmugakani, Learned Counsel for the Petitioners, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First and Second Respondents, Mr.



G.Saravanakumar, Learned Counsel for the Third Respondent, Mr. K.Moorthy, Learned Counsel for the Fourth Respondent and Mr. T.R.Sundaran, Learned Counsel for Fifth to Seventh Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Third to Tenth Petitions are retired employees of Tamil Nadu State Transport Corporation and the First and Second Petitioners are the respective wives of A.Ganesan and C.R.Sampath, who are its deceased employees. The grievance ventilated by the Petitioners is that pension/family pension has been denied to them in para 7(a) of G.O. Ms. No. 110, Transport Department dated 06.06.2002 issued by the Government of Tamil Nadu and the same had been challenged in this Writ Petition.

3. Learned Counsel for both sides accept that the claim of an employee similarly placed to the Third to Tenth Petitions and the said A.Ganesan and C.R.Sampath has been decided by the Division Bench of this Court in A.Loganayaki -vs- Secretary to Government, Transport Department, Chennai (order dated 18.08.2010 in W.A. No. 1246 of 2009), where it has been held as follows:-

"21. Tamil Nadu Pension Rules also contains provisions for rooting situations like this. Pension Rules provides that in case the employee has received the Employee's contribution of Provident Fund and subsequently opts for family pension, the pensioner or the spouses shall refund such contribution in monthly installments not exceeding 36 in number, the first installment beginning the following month in which he/she exercised the option. Therefore, it was not open to the Respondent to deny the family pension solely on the ground of receiving the Employer's share of Provident Fund. It is also a matter of record that the Government have issued a proceeding dated 02.06.2006 requesting all the Collectors and District Treasury Officers to take necessary steps to implement Tamil Nadu Pension Rules, 1978 by calling upon the pensioners to exercise their option to receive only one pension in case they are eligible for more than one pension. The case of the appellant is clearly covered by rule 13(b). The appellant entitled to the family pension as per G.O. Ms. 189 dated 13.08.2004. Therefore, the appellant should have been given an opportunity to exercise her option. This aspect was not considered by the Learned Single Judge.

22. Therefore, we are of the view that the Respondents were not justified in denying family



pension to the Appellant solely on the ground that she was receiving pension under Employee's P.F. Scheme.

23. The Learned Counsel for the Appellant on instructions would submit that the Appellant is prepared to exercise the option by restricting her claim to the family pension as announced by the Government in G.O. Ms. 110, dated 06.06.2002 and the subsequent order in G.O. Ms. No. 189, dated 13.08.2004.

24. Accordingly, we direct the First Respondent to sanction the family pension to the Appellant with effect from 13.08.2004. Such exercise shall be completed within eight weeks from the date of receipt of a copy of this order. However, she is not entitled to the Employees' Provident Fund pension. The First Respondent is permitted to deduct the Employees' Provident fund Pension paid to the Appellant for the period from 13.08.2004, we well as the amount paid to her husband by way of Employer's contribution viz., Rs. 50,788/- from the arrears payable to her. In case the arrears amount is not sufficient to recover the amount indicated above, it is open to the Respondents to recover the balance from the monthly pension payable to the Petitioner is 36 equal installments.

25. The Writ Appeal is disposed of as indicated above. No costs."

3. In view of the same, Learned Counsel for the Petitioner states that the Petitioners are also prepared to exercise same option by restricting their claim for pension/family pension as announced by the Government in G.O. Ms. No. 110, Transport Department dated 06.06.2002 and the subsequent Governmental Order in G.O. Ms. No. 189, Transport Department dated 13.08.2004 and he has also made an endorsement to that effect in the court record.

4. In such circumstances, this Court is inclined to pass the following order:-

- (i) each of the Petitioners in the Writ Petition shall send another copy of their representation dated 26.07.2008 to the First Respondent along with the copy of this order, which shall be immediately examined by the First Respondent;



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(ii) if it is found that any details or supporting documents satisfying the eligibility criteria for the benefits claimed had not been produced, the deficiencies in that regard shall be informed in writing to the Petitioners requiring the same to be furnished within a time frame of not less than 15 clear working days in that regard;

(iii) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioners to explain their position in that regard and a reasoned orders shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment; and

(iv) in the event that the Petitioners are found entitled to be extended the benefits granted in the order dated 18.08.2010 in W.A. No. 1246 of 2009 passed by the Division Bench of this Court, the eligible amount of arrears of pension/family pension (after deductions, if any) shall be paid within 30 days from the date of passing of that order, apart from pension/family pension for future months on the due dates.

In fine, the Writ Petition is disposed on the aforesaid terms.
No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State of Tamil Nadu
Transport Department,
Fort St.George,
Chennai-600 009.
2. The Secretary to Government,
The State of Tamil Nadu,
Finance Department,
Fort. St.George,
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3. The Managing Director,
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7. The Assistant Provident Fund Commissioner (Pension),
Employees Provident Fund Organization,
Sub-Regional Office,
Tambaram,
Kancheepuram District

+1cc to Mr.K.Moorthy, Advocate, SR.NO.28227
+1cc to Mr.K.Shanmugakani, Advocate, SR.NO.27844
+1cc to Government Pleader, SR.NO.28392

W.P. No. 12787 of 2019

PMK(CO)
KKV/15/06/2022