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W.A.No.2380 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24-04-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.2380 of 2022

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...

Appellant

-VS-

1.The Secretary,
Tamilnadu Udal Uzaippu Thozhilar Nala Variyam,
New No.69, Old No.35,
Thiru.Vi.Ka.Salai,
Royapet,
Chennai-600 014.

2.The Assistant Labour Commissioner,
Office of the Assistant Labour Commissioner,
(Social Security Scheme Department),
Korimedu, Salem,
Salem District.

3.The Deputy Labour Commissioner,
Office of the Deputy Labour Commissioner,
(Social Security Scheme Department),
Mettur Dam,
Salem District.

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order,
dated 17.02.2022, passed in W.P.No.25603 of 2021, on the file of this Court.



For Appellant : M/s.R.Muruga Bharathi

For Respondents : Mr.Dinesh Kumar,
Addl.Govt.Pleader.

JUDGMENT

(By *S.Vaidyanathan,J.*)

This appeal has been preferred by the employee, against the order of the learned single Judge, dated 17.02.2022, passed in W.P.No.25603 of 2021, dismissing the Writ Petition, by affirming the order of the authority, dated 04.10.2021, rejecting the grant of pensionary benefits, as the petitioner-employee was not a member for a continuous period of five years.

2. For the sake of convenience, the provisions of Clause 18 of the Tamil Nadu Manual Workers Social Security and Welfare Scheme,2006, which came into existence vide G.O.Ms.No.77, Labour and Employment Department, dated 01.09.2006, is extracted below :

"18. Pension Scheme.-

(1) Eligibility – Every registered manual worker who has completed 60 years of age is eligible for pension, if he has continued as such worker for a continuous period of not less than five years. Provided that a manual worker who has not completed 60 years of age but registered with the Board for a continuous period of five years is also eligible for pension if he has become disabled due to sickness and incapacitated from normal work.



(2) Claim.-

(a) Every registered manual worker who is eligible for pension under sub-clause (1) shall apply to the Labour Officer (Social Security Scheme) of the respective district in form VIII & VIII-A as applicable. Provided that a disabled manual worker who is eligible for pension under the proviso to sub-clause (1) shall produce to the Labour Officer (Social Security Scheme) of the respective district a certificate of proof of his disability issued by a Medical Officer not below the rank of a Civil Surgeon.

(b) The Labour Officer (Social Security Scheme) of the respective district shall examine every application for pension in accordance with the provisions of this clause and may accept or reject the claim. The decision of the Labour Officer (Social Security Scheme) of the respective district shall be final;

Provided that the Labour Officer (Social Security Scheme) of the respective district shall, before rejecting a claim for pension, give the applicant a reasonable opportunity of making his representation.

(3) Amount of pension:- The quantum of pension shall be Rs.1000/- (Rupees One Thousand only)."

3. The above clause was amended in the year 2011 vide G.O.Ms.No.36, Labour and Employment (I-2) Department, dated 28.02.2011, and the amended provision is also extracted below :

"In the said Scheme,-



(1) in clause 18, for sub-clause (1), the following sub-clause shall be substituted, namely:-

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(1) Eligibility.- Every registered manual worker who has completed 60 years of age is eligible for pension :

Provided that a manual worker who has not completed 60 years of age, but registered with the Board is also eligible for pension, if he has become disabled due to sickness and incapacitated from normal work".

4. The contention of the writ petitioner, who is the appellant herein, was that he was not contributing continuously for a period of five years, but, however, he renewed his membership in the year 2009, which was valid up to 24.11.2011.

5. The tabular column of the order of the authority, dated 04.10.2021, which was impugned in the Writ Petition, is extracted below :

வ. எண்	பதிவு எண்/பேரெழுத்து	பதிப்பித்தல் விவரம்		பதிப்பித்தல் விடுபட்ட காலம்	
		முதல்	வரை	முதல்	வரை
1	13.03.2000 (பதிவு எண்:06TA/L1532)	-	12.03.2002	12.03.2002	11.12.2002
2	-	12.12.2002	11.12.2004	11.12.2004	31.01.2005
3	-	01.02.2005	31.01.2007	31.01.2007	09.08.2007
4	10.08.2007 (பதிவு எண்:06TA/L71433)	-	09.08.2009	09.08.2009	24.11.2009
5	-	25.11.2009	24.11.2011	-	-



6. The appellant would submit that he renewed his membership for the period from 25.11.2009 to 24.11.2011 before the date of attaining the age of superannuation on 31.05.2010 and that the condition stipulated in the unamended provision i.e., continuous period of five years is not required to enable a member to get pension as per the amended provision.

7. The respondents have filed a counter affidavit and an additional counter affidavit, wherein, it has been stated that the employee has attained the age of superannuation on 31.05.2010. In paragraph 4 of the additional counter affidavit, it has been stated as follows :

"4. It is respectfully submitted that the Appellant / Petitioner renewed his membership in the years 2002, 2005 and 2009. But those renewals have not been continuous ones. He renewed his membership with the following break-up periods :

From 12.03.2002 to 11.12.2002

11.12.2004 to 31.01.2005

31.01.2007 to 09.08.2007

09.08.2009 to 24.11.2009

The Appellant / Petitioner was registered as member on 13.03.2000. That membership was valid for 2 years. On the expiry of 2 years on 12.03.2002, he had not renewed his membership. His next renewal fell due on 11.12.2004. But, he had not renewed up to 31.01.2005. Again, his renewal fell due on 31.01.2007. He had not renewed till



09.08.2007. Next renewal was also not made by him on 09.08.2009, but renewed on 24.11.2009. With these break-ups, it is evident that his membership was not continuous for 5 years in any spell."

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8. A reading of the amended provision would make it very clear that every registered manual worker, who has completed 60 years of age, is eligible for pension. Membership for a period of five years has been deleted by the amendment, which is extracted supra. Since the Social Security Scheme, 2006, as amended, is a beneficial and welfare legislation, it is sufficient if a manual worker is registered, and there is no need for continuous membership for a period of five years. The learned single Judge has proceeded on the basis of the unamended provision.

9. Though it has been contended by the respondents that the amendment has come into effect only in the year 2011 and that the appellant - employee attained the age of superannuation on 31.05.2010, the said contention cannot be accepted. The words used in the provision is, "every registered manual worker, who has completed 60 years of age, is eligible for pension". In 2009, when the appellant - employee renewed his membership, he had not completed 60 years of age and he attained the age of superannuation only on 31.05.2010. Though the amendment had come into effect in February, 2011, for those who have already registered, which has been admitted by the respondents in the counter, which is extracted supra, we are of the view that the benefits of the social welfare legislation cannot be denied, by giving a rigid interpretation to



deprive the members the pensionary benefits. To put it otherwise, a harmonious interpretation has to be given to the amended provision, and reading the unamended and the amended provision together and depriving the registered manual worker the pensionary benefit will brittle down the provisions of the Act, for the purpose it has been brought into force. The Manual Workers Scheme came into force in the year 1982 and the beneficial scheme was introduced in the year 1994. The Scheme, which has come into effect with effect from 2006 depriving the manual workers the nominal amount of Rs.1000/- per month when he is admittedly a member would defeat the purpose of the beneficial legislation and the object of the provisions of the Act. Hence, we are of the view that the pensionary benefits due to the appellant - employee on and from the date of completion of 60 years have to be extended. The arrears of the pensionary benefits have to be paid within a period of four months from the date of receipt of a copy of this order. The pensionary benefits payable to the appellant – employee from the month of MAY,2023, shall be paid along with other persons, who have registered their names in the said Scheme.

10. Writ Appeal is allowed and the order impugned of the learned single Judge is set aside. No costs.

Index : Yes
Internet : Yes
Speaking Order
dixit

(S.V.N.,J.) (R.K.M.,J.)
24-04-2023



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- To
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