



WEB COPY



W.P.No.15696 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.15696 of 2017

Rahimunnisha

... Petitioner

Vs.

1.The Regional Provident Fund Commissioner,
Regional Office,
S-1, Tamil Nadu Housing Board, Phase – III,
Sathuvachari, Vellore – 632 009.

2.The Assistant Provident Fund Commissioner,
S-1, Tamil Nadu Housing Board, Phase – III,
Sathuvachari, Vellore – 632 009.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling records from the 2nd respondent relating to the impugned order No.TN/VLR/18501/Help Desk/2016-17 dated 13.04.2017 and quash the same and direct the respondents to pay family pension to the petitioner from the date of death of her husband and for every month as per Employees' Pension Scheme 1995 and award costs.

For Petitioner : Mr.R.Rajaram

For Respondents : Mr.P.K.Panneer Selvam



W.P.No.15696 of 2017

ORDER

WEB COPY

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records from the second respondent relating to the impugned order No.TN/VLR/18501/Help Desk/2016-17 dated 13.04.2017 and quash the same and direct the respondents to pay family pension to the petitioner from the date of death of her husband and for every month as per Employees' Pension Scheme 1995 and award costs.

2. The case of the petitioner is that, her husband A.Agamath Basha was working as Beedi rolling worker with M/s.G.W.A.Khader, 100 Beedi Contractor, No.1/187, New Mosque Street, Kannamangalam, Thiruvannamalai District – 632 311. He joined the service on 01.10.1985 and his date of commencement of P.F. Membership was on the same day. Thus, it is clear that he became the members of the Employees' Provident Fund and the employer contribution was paid duly. However, her husband passed away on 30.04.1987 while he was in service. Thereafter, the second respondent accepting Form 20 settled the Provident Fund amount of Rs.5,076/- vide Cheque No.440368 dated 12.04.2017. Subsequently, the family pension claimed under Form 10D was rejected by the second respondent on



W.P.No.15696 of 2017

13.04.2017 on the ground that no records available with the employer for ascertaining the fact that the death occurred while her husband was in service. Challenging the same, the above writ petition is filed.

3. The learned counsel for the petitioner submits that, the employer of petitioner's husband contributed to the Provident Fund at the relevant point of time, subsequently, her husband died in the year 1987. Thereafter, the second respondent disbursed the provident fund amount of Rs.5,076/-, however, refused to provide family pension, which is not sustainable. Though there is a delay in filing the application for claiming family pension, however, the delay is not a ground for rejecting the petitioner's application. Accordingly, he prays for allowing the writ petition.

4. The learned counsel appearing for the respondents submits that, as per the requirements of the Employees' Provident Fund and allied schemes, the employer is required to maintain the records and submit the statutory returns. The employer is required to forward the claim application in respect of the deceased employees. Though the petitioner is an illiterate, the employer in relation to her husband is supposed to have informed the



W.P.No.15696 of 2017

petitioner about the benefits due to her and should have forwarded the claim application in time. Moreover, the employer, namely M/s.G.W.A.Khader, 100 Beedi Contractor is a necessary party to the present case, however, the employer was not impleaded as a party in this writ petition. He further submits that, in order to confirm that the petitioner's husband died while in employment, the relevant records should be made available. However, the employer has categorically stated that the records were not available due to lapse of time. The records relating to payment of the Employees' Provident Fund (EPF) contributions in respect of the deceased member had also crossed the period of retention adopted by the respondent Organization and are not available, at this point of time. In the absence of these records, the benefits under the Family Pension Scheme could not be paid to be petitioner. In support of his contention, he relied upon the judgement of the Apex Court in the case of *C.Jacob Vs. Director of Geology & Mining & Another* reported in *2008 AIR SCW 7233*.

5. Heard the learned counsel for the petitioner as well as the learned counsel appearing for the respondents and perused the materials available on record.



W.P.No.15696 of 2017

6. The petitioner claimed that her husband was employed with M/s.G.W.A.Khader, 100 Beedi Contractor in the year 1985 and he died in the year 1987 and the provident fund amount of Rs.5,076/- was disbursed to the petitioner in the year 2017. Thereafter, the petitioner made an application under Form 10D for family pension. From the materials placed before this Court, it is seen that the petitioner has made the application claiming family pension after a lapse of three decades before the provident fund authority, however, there is no proper explanation for delay in approaching the authority for family pension and the similar issue was considered by the Apex Court in catena of decisions. In view of the judgment relied upon by the learned counsel appearing for the respondents, the claim made by the petitioner is not maintainable. Hence, the prayer sought for by the petitioner cannot be granted and the writ petition is liable to be dismissed.

7. Accordingly, the Writ Petition is dismissed. No costs.

27.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp



WEB COPY



W.P.No.15696 of 2017

M.DHANDAPANI, J.

sp

To

- 1.The Regional Provident Fund Commissioner,
Regional Office,
S-1, Tamil Nadu Housing Board, Phase – III,
Sathuvachari, Vellore – 632 009.
- 2.The Assistant Provident Fund Commissioner,
S-1, Tamil Nadu Housing Board, Phase – III,
Sathuvachari, Vellore – 632 009.

W.P.No.15696 of 2017

27.07.2023