



W.P.(MD).No.16003 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 23.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.16003 of 2018
and
W.M.P.(MD).No.14267 of 2018**

V.Joseph

Vs.

... Petitioner

1.The Secretary,
Tamil Nadu Construction Worker Welfare Board,
No.8, Valluvarkottam High Road,
Nungambakkam,
Chennai – 600 034.

2.The Assistant Commissioner of Labour,
Nagercoil,
Kanyakumari District.

3.The Labour Officer,
(Social Protecting Scheme),
Nagercoil,
Kanyakumari District.

4.The Assistant Inspector of Labour,
Kulithurai,
Marthandam Post,
Kanyakumari District.

... Respondents



W.P.(MD).No.16003 of 2018

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in Reg No: 4221/12 passed by the third respondent dated 25.01.2013 and quash the same and consequently direct the third respondent to grant pension to the petitioner.

For Petitioner : Mr.C.Kishore

For Respondents : Mr.M.Lingadurai,
Special Government Pleader.

ORDER

This Writ Petition is filed to quash the order dated 25.01.2013 with a consequential relief to grant pension to the petitioner.

2. The petitioner was working as Mason and he is in the construction field for the past 40 years and he registered his name in the Construction Welfare Board on 17.05.2005 and Identity Card was issued to the petitioner with Registration No.29MSON087239. The petitioner ought to renew the card every two years and the petitioner had renewed the same on 13.07.2007. Subsequently, on 01.09.2008, the petitioner applied for getting marriage aid to



W.P.(MD).No.16003 of 2018

his son with relevant documents along with the original Identity Card in the office of the fourth respondent and the same was forwarded to the third respondent. However, despite several request, the third respondent neither granted marriage aid nor returned the application, especially did not return the original identity card. The petitioner's registration ought to be renewed in the year 2009, but the third respondent refused to renew the registration on the ground of non-production of "Original Identity Card". Hence, the petitioner approached the fourth respondent and it was informed that the original Identity Card was not available in the third respondent Office. However, the fourth respondent informed that in page 81 of the register maintained in the office of the fourth respondent shows that the petitioner's application was forwarded to the third respondent along with the original identity card. Again, the petitioner approached the third respondent and the third respondent informed that they were searching the application in the office bundles. In the meantime, the petitioner attained the age of 60 years. Hence, the petitioner approached the District Collector, Kanyakumari District, Nagercoil for pension and the same was forwarded to the respondents 1 to 3. Based on the above application, the second respondent vide proceedings dated 22.07.2011 called the petitioner to appear before the second respondent with relevant records of proof for applying



W.P.(MD).No.16003 of 2018

the marriage aid before the fourth respondent. On 27.07.2011, again the petitioner requested a copy of the application of the entry in the fourth respondent register under Right to Information Act, but the fourth respondent replied that the application was sent to the third respondent office and the third respondent vide proceedings dated 20.02.2012 called the petitioner for enquiry with relevant documents including Family Card, Voters Identity Card. On 24.02.2012, the petitioner appeared before the third respondent and the third respondent conducted an enquiry and sent a report to the first respondent. The first respondent vide proceedings dated 18.08.2011 issued a duplicate Identity Card to the petitioner. After receiving the duplicate Identity Card, the petitioner applied for pension before the third respondent on 12.04.2012. The petitioner had submitted an application before the Vilavancode Taluk Legal Service Authority on 18.07.2013. The third respondent filed a counter affidavit contended that the petitioner's application was rejected by the third respondent on 25.01.2013 itself. However, the petitioner's contention is that such rejection order was not communicated to him. In the meanwhile, the petitioner health deteriorated because of the accident and he was bedridden. After recovery, the petitioner approached this Court by way of filing of this Writ Petition challenging the impugned order dated 25.01.2013.



W.P.(MD).No.16003 of 2018

WEB COPY

3. The respondents have filed a counter stating that it is mandatory to renew the registration once in two years, whereas, petitioner never returned back to the concerned officer for renewal after 2005 and the same would be evident from the communication which was sent by the respondents to the petitioner on various dates. Moreover, the petitioner had not even applied for financial assistance for his son's marriage with his original Identity Card. The proof for submission of such application was not enclosed by the petitioner. He has been requested to submit the same by the respondents' office, but the petitioner was probing the same in the third and fourth respondent's office. In the year 2012, the petitioner was issued with the duplicate Identity Card by the third respondent vide order dated 16.03.2012. Hence, it is clear that the petitioner was making false allegations alone. Moreover, the third respondent vide letter dated 22.07.2011 directed the petitioner to submit relevant records which would indicate that the petitioner has not submitted the relevant documents and the request of the petitioner is false. In pursuance thereof, the petitioner had sent a legal notice through his Advocate on 23.01.2012 instead of appearing in person. Hence, the petitioner was asked to appear in person with relevant documents on 18.02.2012, but the never appeared. Thereafter the third



W.P.(MD).No.16003 of 2018

respondent vide order dated 20.02.2012 again directed the petitioner to appear in person with all relevant documents on 24.02.2012. The petitioner approached the Legal Services Authority for resolving the issue through complaint No.A7/ 2013 and the same was dismissed on merits. As per Rule 13(1) of Tamil Nadu Construction Workers Welfare Scheme, 1994, the eligibility for availing pension scheme is as follows:

“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”.

From the aforesaid rule, it is clear that either a worker has to work continuously for five years before attaining 60 years of age else if he falls sick, atleast he ought to have registered with the Board for continuous five years to become eligible for pension, whereas, the petitioner neither produced the documents for continuous work nor produced the concrete document for registration. Moreover, the petitioner has challenged the impugned order after the delay of 5 years. Hence, the respondents prayed to dismiss this Writ Petition.



W.P.(MD).No.16003 of 2018

4. Heard Mr.C.Kishore, learned counsel for the petitioner and Mr.M.Lingadurai, learned Special Government Pleader for the respondents and perused the records.

5. Admittedly, the petitioner is a registered member of the Scheme on 17.05.2005. The renewal of such registration falls on 13.07.2007. The contention of the petitioner is that he had renewed on 13.07.2007, but this fact is refuted by the respondents by stating that the petitioner has not renewed in the year 2007 and also not renewed subsequently. The Scheme provides for renewal on payment of Rs.10 for the lapse of renewal within the prescribed period. Therefore, the contention of the respondents that the petitioner has not renewed, is erroneous. The respondents ought to have renewed the application after receiving the penalty charge of Rs.10/- for every year.

6. The next contention that was raised by the petitioner is that on 01.09.2008, the petitioner had applied for getting marriage aid for his son to the fourth respondent and the application along with the original Identity Card was forwarded to the third respondent. But the application was lost in the office of the third respondent, but the third respondent now deny that the application was



W.P.(MD).No.16003 of 2018

not received. This is refuted by the petitioner by stating that the fourth respondent informed that in page 81 of the register maintained in the office of the fourth respondent shows that the petitioner's application was forwarded to the third respondent along with the original identity card. Therefore, this Court is of the considered opinion that the original identity card is lost in the office of the third respondent.

7. The 2nd respondent has submitted that the petitioner had not submitted original identity card, hence the marriage aid was not granted. As stated supra the identity card was lost in the third respondent office and hence by citing the reason that the petitioner has not produced the original ID card, the respondents cannot deny the marriage aid to the petitioner.

8. The second respondent denied pension to the petitioner, since the petitioner has not produced any original Identity Card. Admittedly, the Identity Card was lost in the third respondent Office and the third respondent subsequently has issued a duplicate Identity Card on 24.02.2012. Therefore, the contention of the respondents that original Identity Card was not produced, also fails. Admittedly, the petitioner was not having original Identity Card on



W.P.(MD).No.16003 of 2018

the subsequent dates after 01.09.2008 because it was lost in the third respondent office. The third respondent failure cannot be fastened on the petitioner. Therefore, the respondent cannot deny the pension to the petitioner by citing the reason of lost original ID card.

9. The next contention that was raised by the respondents is that the petitioner was not registered continuously for the past 5 years. Therefore, after attaining 60 years, he is not eligible for the pension. The petitioner could not renew the application every 2 years because he lost his original Identity Card in the third respondent office. But the respondents are having power to renew the same by taking Rs.10/- per year as belated renewal charge. Subsequently the same provision was deleted. Even according to the respondents, the penalty charge of Rs.10/- was also dispensed for belated renewal from 01.09.2006 onwards. Therefore, the petitioner is deemed to be member even if the membership card is not renewed.

10. Moreover, the renewal for every two years was changed to renewal for every five years. This amendment was effective from 18.11.2014. This submission is recorded.



W.P.(MD).No.16003 of 2018

WEB COPY

11. The pension and other benefits like the marriage aid are granted to the workers like construction workers, weavers etc., which is a beneficial legislation. But this Court is of the considered opinion that the approach of the respondents to the issue on hand is not appreciable.

12. For the reasons stated supra, this Court is passing the following order:

- a. The impugned order is quashed.
- b. The petitioner is the register member of the scheme from 17.05.2005
- c. His renewal falls on 17.05.2007, but the renewal provision was dispensed from 01.09.2006 and hence the respondents restrained to claim renewal of membership
- d. The respondents shall pay the pension to the petitioner on attaining the age of 60 years. The petitioner is also entitled to accrued pension from the date of attaining 60 years of age.
- e. The respondents shall pay the marriage aid to the petitioner by accepting the duplicate ID card.
- f. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



W.P.(MD).No.16003 of 2018

WEB COPY

13. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

23.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr
To

- 1.The Secretary,
Tamil Nadu Construction Worker Welfare Board,
No.8, Valluvarkottam High Road,
Nungambakkam,
Chennai – 600 034.
- 2.The Assistant Commissioner of Labour,
Nagercoil,
Kanyakumari District.
- 3.The Labour Officer,
(Social Protecting Scheme),
Nagercoil,
Kanyakumari District.
- 4.The Assistant Inspector of Labour,
Kulithurai,
Marthandam Post,
Kanyakumari District.



WEB COPY



W.P.(MD).No.16003 of 2018

S.SRIMATHY, J.

Nsr

W.P.(MD).No.16003 of 2018

23.03.2023