IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

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THE HON'BLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.1300 of 2022

P.Saratha ... Petitioner

Vs.

1.The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd,
Pallavan Illam,
Anna Salai, Chennai – 600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
Pallavan Salai,
Chennai – 600 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Mandamus, directing the 2nd respondent to revise the pension by taking note of entire service of the petitioner's husband including non employment period and to pay pension arrears from the date of retirement i.e., from August 2017 to September 2021 with 10% interest.

For Petitioner : Mr.T.Karkivelan

For Respondents : Mr.R.Balaji
for R1
Mr.C.S.K.Sathish
for R2

ORDER

The petitioner's husband was working as a driver in the first respondent/corporation. While so, he was non-employed and the application for approving his non employment was pending approval. The second respondent sought to dismiss the petitioner's husband from service with effect from 17.11.2008 and filed an application for approval of the dismissal order under Section 33(2)(b) of the Industrial Dispute Act.

2. When the said matter was pending, none of the benefits were paid and therefore the petitioner's husband filed C.P.No.385 of 2013 and the same was pending. While so, the petitioner's husband reached the age of superannuation on 31.07.2017. After attaining the age of superannuation, the petitioner's husband and the first respondent/Management came to an compromise and entered into a Joint Memorandum of Compromise on 27.05.2019. As per the Joint Memorandum of Compromise, the respondent/Management agreed to not press the dismissal order dated

17.11.2008 and the petitioner would be deemed to be in service till his date of retirement i.e, upto 31.07.2017.

3. The pay of the petitioner's husband has been notionally fixed. In the meanwhile, for the period of non-employment, petitioner's husband has to calculate the contribution payable to the contributory pension fund on such notional pay fixation and has to pay the same. The said terms were recorded in the appropriate proceedings including the computation petition and the matter was closed. Thereafter, the petitioner's husband died on 04.03.2021.

4. It is the case of the petitioner is that during the life time of the petitioner's husband, no pension was paid. Thereafter, no arrears or any family pension is being sanctioned to the petitioner. As per the contributory pension scheme, the petitioner's husband was entitled to pension as specified under the Rules and after his death, the petitioner being the widow was also entitled for family pension, for the amount as specified in the scheme. None of the amounts are paid. Hence, the writ petition.

5. The learned counsel appearing on behalf of the second respondent/corporation would submit that as per the terms of compromise, the petitioner undertook to pay contribution without interest. Since the petitioner's husband did not deposit the said amount, the first respondent could not further forward the pension proposal.

6. The learned counsel appearing on behalf the second respondent/ employees pension fund trust would submit that the second respondent was not even a party to the compromise. Unless contribution of both the employer and the employee is received and the pension proposals are duly made, there is no question of payment of any pension or family pension. If only the contributions are duly paid, the pension will be calculated and thereafter will be released to the petitioner.

7. In reply thereof, the learned counsel for the petitioner would submit that it is true that Mr.Parthasarathy late husband of the petitioner did not make any payment. According to her, when he was already under non employment from the year 2008, unless, the respondents settled the benefits, he was not in a position to pay the arrears towards contributory pension

scheme. In any event, the petitioner has now filed an affidavit before the respondents that all the arrears of contribution being a sum of Rs.2,36,299/- can be deducted from the arrears of pension/family pension payable by the respondents.

8. I have considered the rival submissions made on either side and perused the materials placed before this Court.

9. It can be seen from the order which was passed pursuant to the Memorandum of Compromise dated 03.03.2020, that the petitioner's husband was deemed to be in service till his superannuation on 31.07.2017. However, he was not entitled to any back wages, and his pay has been notionally fixed by the respondents. For the said notional fixation, it is the petitioner's husband who was liable to pay contributions to the Contributory Pension Scheme. Admittedly, the said amount is not paid.

10. It is seen that the order was passed in the year 2020 pursuant to the Memorandum of Compromise in the year 2019. Subsequently, on 04.03.2021, the petitioner's husband was also died. The petitioner has also

filed an affidavit dated 07.07.2021, that the entire contribution can be deducted from the amount payable to her towards terminal benefits.

11. Therefore, considering the over all facts and circumstances of this case, this Writ Petition is disposed of on the following terms:

(i).The first respondent is directed to process the pension proposal and send the particulars to the second respondent/Employees Pension Fund Trust.

(ii).The second respondent/Employees Pension Fund Trust shall calculate both the arrears of pension payable till lifetime of the petitioner's husband and also the family pension payable to the petitioner and further to calculate the total sum payable to the petitioner;

(iii).Out of the said total sum payable, the arrears of contribution which according to the petitioner is a sum of Rs.2,36,299/- or such sum, as the case may be, shall be deducted and balance amount shall be paid to the petitioner and the monthly family pension shall be paid to the petitioner;

(iv). In view of the delay on the part of the petitioner's side in paying the contribution, the petitioner will not be entitled to any interest whatsoever on the payment;

(v).The first respondent Management is directed to submit necessary proposals along with the calculation of contribution to the second respondent, and the respondents shall complete the above exercise as directed by this Court within a period of 12 weeks from the date of receipt of a copy of this order.

12. This writ petition stands disposed of. No costs.

10.04.2024

Index : Yes
Speaking Order:Yes
Neutral Citation :No

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To

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D.BHARATHA CHAKRAVARTHY, J.

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