



W.P.No.17198 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:18.03.2024

Coram:

THE HONURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.17198 of 2017

Smt.K.Subbammal

.. Petitioner

/versus/

1.Special Commissioner and Secretary,
Transport Department,
Government of Tamil Nadu,
Fort St.George,
Chennai 600 009.

2.Managing Director,
Tamil Nadu State Transport Corporation,
(MDU DVN-II) Ltd.,
Tirunelveli.

3.Tamil Nadu State Transport Employees
Pension Fund Trust, Pallavan House,
Chennai 600 002.

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the 1st respondent's impugned communication by Government Letter No.51418/D1/2004-4 dated 23.08.2004 and in furtherance thereof in the impugned order of the 2nd respondent made in Communication No.10128/உதவு3/ததுபுர/திலி/2016, dated 10.05.2016 and quash the same as illegal and void and consequently direct the respondents to sanction and pay the monthly



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pension due under the Tamil Nadu State Transport Employees Pension Rules to the petitioner/wife of the deceased employee Karuppusamy herein effective December 2014 onwards.

For Petitioner	:Mr.K.S.Narayanan
For R1	:Mr.L.S.M.Hasan Fizal, AGP
For R2	Mr.C.Senapathi Standing Counsel (TNSTC)
For R3	:Mr.C.S.K.Sathish, Standing Counsel

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the first respondent and the learned Standing Counsel appearing for the 2nd respondent and the learned Standing Counsel appearing for the 3rd respondent and also perused the materials available on record.

2. The case of the petitioner is that the husband of the petitioner was employed in the Military Service and after leaving the same, he joined as Driver in the 2nd respondent office in the year 1979. Later, he was regularised in the year 1986. His was promoted into higher grade pay scale in 1991 as Senior Diver. He retired from his service on



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31.07.2001. In accordance with the new Pension Scheme implemented by the State Government, the 2nd respondent by its communication dated 15.10.2001, accorded payment of monthly pension at Rs.693/- after commutation adjustment with effect from 01.08.2001. The husband of the petitioner was receiving military service pension from the 2nd respondent after he was relieved from the military service and also the monthly pension from the second respondent, after his retirement in 2001 till his demise on 07.12.2014.

3. The grievance of the petitioner is that the monthly pension from the 2nd respondent was discontinued and stopped to be paid after demise of the husband of the petitioner without notice or enquiry to her. She represented the authorities for payment of monthly pension as her husband military pension alone was not sufficient and enough for her livelihood. Thereafter, the petitioner through the President of NLO Union, filed an application under RTI Act for copy of proceedings for refusal of pension payment to the petitioner. In response thereto, the 2nd respondent, in its communication dated 10.05.2016 stated that as per the letter of the 3rd respondent dated 23.08.2004, one of the civil and military



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pension alone was payable to the legal heirs of the deceased employee and accordingly, monthly pension was stopped as the petitioner is getting military pension.

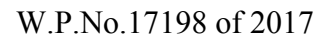
4. The learned counsel appearing for the petitioner submits that the respondents' refusal to grant monthly pension to State Transport deceased employee's legal heirs on the basis of Government Letter No.5418/D/2004-4, dated 23.08.2004, relying on G.O.Ms.No.23 dated 06.01.1996, is wholly misconceived and inapplicable to State Transport Employees Pension Fund Rules framed pursuant to the Settlement under Section 12(3) of the Industrial Disputes Act. The learned counsel further submits that the Government cannot alter or change unilaterally by any Rule or G.O to deny the said benefit to the employees. The learned counsel also submits that the communication of the 2nd respondent dated 10.05.2016 is ex-facie illegal and unsustainable in law. As per the Rule of this Court, he sought to allow this Writ Petition.

5. On behalf of the first respondent, a counter-affidavit has been filed. In the said counter-affidavit, it is stated that G.O.Ms.No.290,



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Public (Ex-Serviceman)Department, dated 05.04.2017, was issued based on the proposal of the Joint Director (i/c), Directorate of Ex-Servicemen's Welfare, sanctioning Dual Family Pension to those Spouse of Ex-Servicemen, who have been re-employed in Civil (i.e) State Government Service and earned a pension out of re-employment, prior to 01.04.2003 (i.e) prior to the introduction of Contributory Pension Scheme, in addition to Military Family Pension already drawn by them. The said G.O. was placed in the 60th Board Meeting held on 29.06.2017 before the Board of Trustees of Tamil Nadu State Transport Corporation Employees' Pension Fund Trust and the Administrator was authorised through Resolution No.12 to address the first respondent, to sanction Family Pension to the Spouse of the deceased Ex-Servicemen, who had served in the State Transport Undertaking, on the basis of guidelines issued in G.O.Ms.No.290, Public (Ex-Serviceman)Department, dated 05.04.2017. The said proposal was processed and examined in Transport Department. After getting the concurrence of Advisory Departments, G.O.Ms.No.493, Transport(E)Department, dated 13.12.2017 was issued sanctioning Family Pension for the Spouse/Un-married daughter of the deceased Ex-servicemen, who had served in the State Transport



6. It is also averred in the counter-affidavit that the certificate of the petitioner was verified by the 2nd respondent on 26.03.2018 and Family Pension is being paid from August 2018. The arrears of the pension for the period from the date of issuance of G.O.Ms.No.493, Transport (E) Department, dated 13.12.2017 (i.e.) from 13.12.2017 to July 2018 was paid to the petitioner on 03.12.2022.

7. In view of the same, the learned Additional Government Pleader appearing for the first respondent submits that the prayer sought for in this Writ Petition has become infructuous and no more adjudication is required and sought to dismiss the Writ Petition.

8. In the counter-affidavit filed by the 2nd respondent it is stated that as per the Government letter No.5418/D/2004-4, dated 23.08.2004, the widows of the deceased Ex-servicemen, who had re-employed in the State Transport Undertaking are not entitled to get double family



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pension. They can opt to get under any one of the scheme whichever is advantageous to them vide, Rule 49-13B of Tamil Nadu Pension Rules. If double family pension has been allowed previously, one family pension should be stopped by adopting the above norms and as such, the claim of the petitioner for double pension is untenable.

9. The learned counsel appearing for the petitioner has placed a reliance on a judgment of this Court in *Deputy Secretary to the Government of Tamil Nadu, Transport Department, Chennai 600 009 and others v. Chandramani and others reported in [2015-III-L.L.J-172(Mad)]* to substantiate his argument.

10. On perusal of the same, it appears that in an identical circumstances, the learned Single Judge of this Court held that the widows of retired employees of Transport Corporations as well as other eligible persons are entitled to get family pension from the Transport Corporation and set aside the order passed by the petitioners therein and allowed the writ petitions. Aggrieved by the order of the learned Single Judge, the respondents therein have preferred the writ appeals. The



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Division Bench of this Court has considered the issue of whether the widows of the retired employees of the Transport Corporation, who got employment, after serving in the Army/Navy/Air Force are entitled to get family pension, while receiving the military family pension. After elaborately consideration of the issue, the Division Bench dismissed the writ appeals filed by the respondents therein holding in paragraph Nos.11 and 12, which are extracted herein under:-

“11. Rule 20 is not subject to any condition and therefore, when employees rendered requisite number of service, their family is entitled to family pension as per Rule 20 (2) of the Tamil Nadu State Transport Corporation Employees’ Pension Fund Rules. As rightly submitted by the learned counsel appearing for the first respondent, in the judgment rendered in W.A. No. 220 of 2007, the Hon’ble Division Bench did not consider the Tamil Nadu State Transport Corporation Employees’ Pension Fund Rules. The Hon’ble Division Bench considered only the scope of Rule 49 (13-A) and (13-B) of the Tamil Nadu Pension Rules. Therefore, the same can not be considered as precedent binding upon this Court. As stated supra, the law has been dealt elaborately in the judgment reported in Government of Tamil Nadu v. Tamil Nadu Government Transport Retired Employees Welfare Association (supra) and the principle regarding the eligibility to get two pensions has been clearly laid down in the said judgment and the in the judgment reported in P. Arumugam v. Registrar, Tamil University, Thanjavur supra also right to



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get two pensions from two authorities was recognised and held that the service rendered in the State Government is quite distinct and different from the service rendered in the Tamil University and therefore, a person who is getting pension from the State Government is also entitled to get pension from the Tamil University if he satisfies the requirements as per the provisions of the Tamil University Act and Rules. Further, as rightly held by the learned single Judge that admittedly, the husbands of the writ petitioners were receiving pension from the military as well as from the State Transport Corporation on the retirement from the State Transport Corporation and only after their death, when the widows of the retired employees claimed family pension, that was denied. If the interpretation of the appellants were to be accepted, the husbands of the writ petitioners were not entitled to get pension from the appellant as they were receiving pension from the military. However, they were given pension by the State Transport Corporation. Further, there is no question of contribution by the employees in the State Transport Corporation to become eligible to claim family pension as per the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules. As held by the Hon'ble Division Bench in the judgment reported in Government of Tamil Nadu v. Tamil Nadu Government Transport Retired Employees Welfare Association (supra), the writ petitioners are governed by the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules and Rule 20 deals with Family Pension to the employees and if they satisfy the requirements as stated therein, they are entitled to claim pension and the receipt of military pension



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and the receipt of pension under the Tamil Nadu State Transport Employees' Pension Fund Rules are two different pensions paid for the different services rendered by the persons in two different organisations and that cannot be denied by invoking the provisions of the Tamil Nadu Pension Rules, 1978 wherein no similar provision is found in the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules which is governing the writ petitioners and the appellants in the matter of pension. Hence, we do not find any merit in these Writ Appeals.

12. In the result, the Writ Appeals are dismissed and the connected Miscellaneous Petitions are also dismissed. The impugned Common Order dated 07.09.2010 made in Writ Petition Nos. 10425 of 2007, 31130 of 2005 and 36941 of 2005 are sustained. No order as to costs."

11. Admittedly, in the present case also, the petitioner, who is the wife of the deceased employee, worked under the 2nd respondent Corporation, sought for family pension, after demise of her husband and the same was denied by the respondents on the ground that already she is getting military family pension.

12. The learned Additional Government Pleader appearing for the 1st respondent, on instructions, submits that against the judgment of the



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Division Bench, they preferred S.L.P.(C)No.30402 of 2015 before the Hon'ble Apex Court and the same was dismissed on 22.08.2023.

13. In view of the facts and circumstances of the case, in the considered opinion of this Court, the decision relied on by the learned counsel appearing for the petitioner is squarely applicable to the facts and circumstances of the present case and the petitioner is entitled for the relief sought for in this Writ Petition.

14. Accordingly, this Writ Petition is allowed with the following directions:-

(i)The impugned communication by the first respondent-Government vide letter No.5418/D/2004-4, dated 23.08.2004 and the order of the 2nd respondent dated 10.05.2016 are hereby set aside.

(ii)The respondents are directed to sanction and pay the monthly pension due under the Tamil Nadu State Transport Employees Pension Rules to the petitioner with effect from December 2014 onwards.



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(iii)The arrears, if any, shall be paid to the petitioner, within a period of six weeks, from the date of receipt of a copy of this order.

15. There shall be no order as to costs.

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Index:yes/no

Internet:yes/no

Speaking order:non speaking order

Neutral citation:yes/no

To

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BATTU DEVANAND,J

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