



WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 06.02.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE C.KUMARAPPAN**

W.A(MD)No.552 of 2013

1.S.Parvathi(Died)

2.S.Rajendran

3.Latha

4.Arul Selvam

5.S.Mahesh

(Appellant 2 to 5 are substituted as Lrs of the deceased sole appellant as per order of this Court made in C.M.P(MD)No.5729 of 2023 in W.A(MD)No.552 of 2013, dated 3.7.2023)

...Appellants/Petitioners

.Vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
No.18, Shree Complex,
Madurai Road,

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2.The General Manager,
Tamil Nadu State Transport Corporation
Kumbakonam Division-II Limited,
Periyamilaguparai,
Trichy-1.

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act praying this Court to set aside order passed by this Court in W.P.No.6546 of 2005, dated 11.09.2009 and consequently to direct the first respondent to pay pension to the appellant from the date of death of her husband under the Provident Fund Pension Scheme with pension arrears from 10.01.1986 together with interest.

For Appellants : Mr.S.Arunachalam

For Respondent-1 : Mr.N.Dilip Kumar

For Respondent-2 : Mr.Jagadeesh Balan

JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

The first appellant is the widow of the Transport Corporation employee who died on 10.01.1986 while he was working as Checker in Tamil Nadu State Transport Corporation, Kumbakonam Division. According to the first appellant,



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her husband was earlier employed in Cholan Transport Coproation Limited, Kumbakonam and thereafter, transferred to Dheeran Chinnamalai Transport Corporation, Trichy. Her specific case is that her husband, a member of Provident Fund Pension Scheme and being duly contributing under the scheme after introduction of the Family Pension Scheme, 1971, is entitled for the benefit covered under the Scheme, 1971. While so, on the death of her husband, she had not been provided with the benefits under the Family Pension Scheme, 1971. Hence she had been repeatedly represented the authority to provide her the employees family pension. However, the same has been declined to her and hence, the Writ Petition seeking a writ of mandamus was filed. The said request was denied by the Transport Corporation as well as the Provident Fund Department on the premise that the representaiton of the Petitioner was taken up for consideration and found that the employee had not opted for the Family Pension Scheme and therefore, on the death of her husband, she is not eligible of family pension. The Provident Fund Department vide communication, dated 30.03.2004, informed the Transport Department about this fact and also relied upon the judgment of this Court made in ***W.P.No.1267 of 2000, dated 12.6.2000*** to substantiate the reason for not providing the family pension under Family



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Pension Scheme, 1971. The learned Single Judge, after considering the averments made in the counter of the respective respondents, had dismissed the Writ Petition, assigning the following reasons:

“6.Inasmuch as the Commissioner who is the competent authority, has given a specific reply that the Petitioner’s husband had not opted for the Family Pension Scheme or in the alternative, he was not in the pension scheme, the Petitioner is not entitled to claim the relief. It is also further clearly pointed out that the management which had inadvertently deducted a sum of rs.224/- was also refunded and when that being so, the claim made by the Petitioner that she is entitled to the family pension under a particular scheme which would clearly say that a party who has not given his consent in allowing his inclusion in the scheme will not be eligible to have the relief is to be rejected. In this case, the petitioner is not able to produce any document or any communication that her husband had given his willingness to participate in the pension scheme, 1971 nor that he was contributing any amount regularly towards the said pension scheme. The Management, which had wrongly deducted a sum of Rs.224/- had duly refunded to the Petitioner. In any event, the order of this Court in W.P.No. 1267 of 2000, dated 12.2.2002 wherein also an identical



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circumstance prevailed including deduction of money under the provident fund scheme for more than a year and ultimately, it was refunded stating that the amount was wrongly deducted without the willingness of the Petitioner therein, any this Court held that once a person has not given his consent and even if any amount is deducted under the scheme, be refunded and he is not entitled to any benefit under the scheme, clearly applies to the facts of this case. Hence, the Writ Petition is not maintainable.”

2. Being aggrieved by the said order, the widow of the employee has preferred the intra Court appeal on the ground that the Transport Corporation which has collected the Family Pension Contribution from the employee, had failed to remit it to the Provident Fund Department and failed to inform about his enrolment under the scheme. Having collected the contribution, the failure on the part of the Transport Corporation to inform about the enrolment of the employee under the Family Pension Scheme, has disentitled the appellant to get her benefits.

3. To substantiate the above plea, the learned counsel for the appellant/Writ



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Petitioner rely upon the communication of the Transport Department, dated 18.11.2004, wherein, the statement of Family Pension Fund recovered details for Subramaniam, husband of the Writ Petitioner, has been provided. The said communication indicates that Subramaniam has been assigned with F.B.F Number as TN/6929/1115 from 1.4.1974 and from that order, it is seen that the employer has been collecting contribution from the employee and also matching contribution provided by the employer.

4.The learned counsel for the second respondent/Transport Department submitted that the contribution collected from the employee has been taken into account while settling the retirement benefits to the employee and the request of the Petitioner to extend the benefit of the Family Pension Scheme, 1971, would not be acceded to, for the reason that he has not opted for the scheme and when the request of the Writ Petitioner was brought to the notice of the Employees Provident Fund Organization, the Employees Provident Fund Organization vide communication, dated 8.8.2005 informed the Writ Petitioner as well as the Transport Department about the non-option for the scheme during his lifetime disentitled his family members to get the benefit under the Family pension



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Scheme, 1971. The learned counsel representing the Transport Department relying upon the summary of Statement of accounts, submitted that under the head FBF, a sum of Rs.20,000/- along with gratuity of Rs.14135.55/- and the aid amount was refunded by way of cheque.

5.The learned counsel for the appellant would submit that the payment of Rs.20,000/- is not in respect of Family Pension, but it is only under the Provident Fund Scheme. This Court, though find some reasonable force in the said submission, we are unable to entertain the said submission of the learned counsel for the appellant for the simple reason that when the Statement of accounts in the year 1986 is made with specific mention that Rs.20,000/- towards Family Pension Scheme was received without any protest and for the first time in the year 1989, after a lapse of 3 years, a representation has been given and thereafter the Writ Petition is filed only in the year 2003.The Transport Department, having paid a sum of Rs.20,000/- towards Family Pension Fund and if it is not in the said head, the beneficiary should have immediately protested or agitated within a reasonable point of time.The said protest is found missing in this case and therefore we are unable to entertain the submission made by the learned counsel for the



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appellant/Writ Petitioner.

6. Accordingly, the order of the learned Single Judge is confirmed, while dismissing the Writ Appeal filed by the appellant/Writ Petitioner. There is no order as to costs.

[G.J.,J.] [C.K.,J.]

06.02.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Sub-Regional Office,
No.18, Shree Complex,
Madurai Road,
Trichy-8.

2. The General Manager,
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JUDGMENT MADE IN
W.A(MD)No.552 of 2013

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