

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2015

CORAM

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

W.P.No.14118 OF 2015

L.Ratnagirishwaran
rep by his Younger Brother and
Court appointed
Guardian Sri L.Gopalan [PETITIONER]

Vs

- 1 The Accountant General (Accounts & Entitlements)
Office of the Accountant General
(Accounts & Entitlements) Tamilnadu
361 Anna Salai, Teynampet,
Chennai-18.
- 2 Pension Pay Office
First Floor, EVK Sampath Maaligai
DPI Campus, College Road, Chennai-6.
- 3 The Secretary
Finance (Pension) Department
Secretariat, Govt. of Tamilnadu
Fort St. George Chennai-600 009.
- 4 The Director of Collegiate Education
Chennai.
[R-4 is suo-motu impleaded as per order dt.17.6.15
in W.P.14118/2015] [RESPONDENTS]

Writ petition is filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the 3rd respondent relating to the order in letter No. 77010B/Fin(Pension) Department/2006-1 dated 29.01.2010 quash the same and direct the respondent to pay family pension to the petitioner without reference to the income criteria introduced by G.O.(MS) No.327 Finance (Pension) Department dated 30.08.2001.

For Petitioner : Mr.I.Abrar Md.Adbulla
For Respondents : Mr.V.Vijayashankar - R1

Mr.S.Gunasekaran - R2 and R3
Govt. Advocate

O R D E R

With the consent of the learned counsel appearing on either side,
the Writ Petition is taken up for final disposal at the admission
stage itself.

2.The father of the petitioner was working as Principal, Government Raja's College, Pudukottai, and after rendering more than three decades of service, he retired from service on 05.01.1960. He died on 03.03.1995. The mother of the petitioner pre-deceased his father on 27.8.1982.

3.The petitioner is a mentally retarded handicapped person. He has two brothers and two sisters. The father of the petitioner left behind these five persons as his legal heirs. The petitioner's father has also left a house property at Adayar, Chennai.

4.While so, one Thiru L.Gopalan, younger brother of the petitioner herein filed M.H.O.P.No.339 of 2003 before the Principal Judge, City Civil Court, Chennai, to appoint him as the guardian for the mentally retarded person namely L.Rathnagiriswaran, petitioner herein, son of late Prof.S.Lakshminarayanan. The Principal Judge, passed an order on 06.08.2003, in M.H.O.P.No.339 of 2003, appointing Thiru L.Gopalan, as the guardian for the person and property of the mentally challenged L.Ratnagiriswaran (writ petitioner). Thereafter, another Petition was filed viz. M.H.O.P.No.828 of 2003, by L.Gopalan, guardian of the petitioner herein, seeking permission to deposit 1/5th share of the mentally challenged Rathnagiriswaran, (writ petitioner herein) on the sale of petition property. The total sale consideration of the petition property was Rs.1,77,93,000/- and the 1/5th share of the petitioner herein comes to Rs.38,69,000/-. Ultimately, the Principal Judge, City Civil Court, Chennai passed an order on 31.12.2003, granting permission to the petitioner's guardian L.Gopalan, to deposit the writ petitioner's 1/5th share amount of Rs.38,69,000/- in the name of the writ petitioner into the Union Bank of India, Ashok Nagar Branch, Chennai and also permitted the petitioner's guardian L.Gopalan to withdraw the accrued interest from the Bank once in six months directly, for maintaining the mentally retarded writ petitioner.

5.While so, an Application was filed by the Guardian of the writ petitioner for family pension on the death of Government Servant/pensioner in Form 14 and the Principal Accountant General has also forwarded the said Application to the District Treasury Officer. However, the Joint Secretary to Government addressed the Accountant General vide impugned communication dated 29.01.2010, by stating that since the petitioner derives income from the petition property, which exceeds Rs.2,550/- per month, he is not eligible for family pension. At this juncture, it would be useful to extract the impugned order dated 29.01.2010, which reads as follows:

"I am to invite attention to your letter third cited and to clarify that, "In as much as, Thiru L.Ratinagiriswaran is entitled to a share of property and if any income from the above property exceed Rs.2,550/- p.m., he is not eligible for sanction of family pension. If the income from the property is less than Rs.2,550/- p.m. family pension payment can be made to the mentally retarded son."

6.The impugned order was passed based on G.O.Ms.No.327 Finance (Pension) Department dated 30.08.2001. Paragraph No.3 of G.O.Ms.No.327, reads as follows:

"3.The Government also direct that in the case of sons/daughters including widowed/divorced daughters, family pension shall be sanction till he/she attains the age of 25 years or upto the date of his/her marriage/re-marriage whichever is earlier. The family pension in respect of sons/daughters including widowed/divorced daughters shall be discontinued/not admissible when the eligible son/daughter starts earning a sum of Rs.2,550/- from employment in State or Central Government undertaking or Corporation or Autonomous Body or local fund or private employment or self-employment, etc."

7.In my view, when no restriction is placed in the Statutory Rule viz. Tamil Nadu Family Pension Rule to receive family pension, particularly in the case of mentally retarded child, the issuance of a Government Order (i.e. G.O.327) of this nature, taking away the right to receive the family pension, which was guaranteed by the Tamil Nadu Pension Rules, cannot be sustained. For better appreciation Rule 49 (6) (ix) of Tamil Nadu Pension Rule is extracted hereunder:

"Rule 49 (6) (ix) --

In the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the Government servant or the pensioner as the case may be, and in case no such nomination has been furnished to the Head of Office by such Government servant or pensioner during his life time, to the person nominated by the spouse of such Government servant or family pensioner, as the case may be, later on."

8.In any event, I am of the view that even if G.O.Ms. No.327 which was relied on by the learned Government Advocate would be sustained, the impugned order could not take away the right of the petitioner for family pension. As per paragraph No.3 of G.O.Ms.No.327, only the earning of a sum of Rs.2,550/- per month could be a bar for receiving family pension. Interest earned through the Fixed Deposit in these circumstances cannot be termed as 'earnings', from employment as contemplated under paragraph No.3 of G.O.Ms.No.327. Hence, G.O.Ms.No.327 could not be relied on by the Government to deny family pension to the petitioner, a mentally retarded person.

9.As stated above, no such restriction is placed in the Rules, that the mentally retarded person could not be paid family pension, if he earns more than a sum of Rs.2,550/- per month. If no such condition is prescribed in the Statutory Rule, the Government cannot pass an order depriving family pension to a mentally retarded person.

10.Hence, the impugned order is quashed and the third respondent is directed to send proposal for family pension to the petitioner from the date of death of his father, within a period of eight weeks from the date of receipt of a copy of this order to the first respondent. On receipt of such proposal, the first respondent is directed to authorise the same, within a period of four weeks thereafter.

The Writ Petition is allowed accordingly. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1 The Accountant General (Accounts & Entitlements)
Office of the Accountant General
(Accounts & Entitlements) Tamilnadu
361 Anna Salai, Teynampet,
Chennai-18.
 - 2 Pension Pay Office
First Floor, EVK Sampath Maaligai
DPI Campus, College Road, Chennai-6.
 - 3 The Secretary
Finance (Pension) Department
Secretariat, Govt. of Tamilnadu
Fort St. George Chennai-600 009.
 - 4 The Director of Collegiate Education
Chennai.
- +1 cc to Mr.R.Subramanian, Advocate,SR.32516
+1 cc to Mr.V.Vijay Shankar, Advocate,Sr.32729
+1 cc to Government Pleader,Sr.32965.

Ak(co)
krd 16/7

सत्यमेव जयते

W.P.No.14118 OF 2015

WEB COPY