

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.36778 of 2015

V.Mallika

Petitioner

Vs.

1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035.

2.The Divisional Accountant,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai 600 035.

3.Mrs.Jaya

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to direct the respondents to sanction the family pension in equal shares to the petitioner and to the third respondent from the date of death of petitioner's husband viz., G.Vardhan (PPO No.1140).

For Petitioner : Mr.R.Sreedharan

For Respondents : Mr.V.Anandhamurthy
1 and 2

ORDER

By consent, the writ petition is taken up for final disposal. In view of the order proposed to be passed in this writ petition, notice to third respondent is not necessary.

2. The petitioner would state that she married late G.Vardhan, who was working as Driver in Tamil Nadu Housing Board on 10.02.1977 and during the wedlock, she gave birth to three children. While so, the petitioner's husband also married the third respondent.

3. The petitioner would further state that her husband retired from service on 31.07.1998 and died on 11.09.2004 leaving behind the petitioner and three children as his legal heirs. The Tahsildar, Ambattur issued the legal heirship certificate to the petitioner. She applied for family pension in the month of February 2006 to the second respondent. As per Rule 10 of the Tamil Nadu Extraordinary Pension Rules, the petitioner is entitled for family pension. But, the second respondent wrongly disbursed the entire family pension to the third respondent.

4. The learned counsel for the first and second respondents submitted that the third respondent filed Original Petition No.542 of 2011 and obtained an order from the Court for receiving entire family pension and hence, the first respondent rejected the representation of the petitioner by stating that she was not added as a party in the said case. He further submitted that unless an order is obtained from the Court, the first and second respondents cannot disburse any pension amount to the petitioner.

5. Heard the submissions of Mr.R.Sreedharan, learned counsel appearing for the petitioner and Mr.V.Anandamurthy, learned counsel appearing for the first and second respondents.

6. Rule 10 (i) and (ii) of the Tamil Nadu Extraordinary Pension Rules reads as follows:

"Subject to the provision contained in the note below Rule 11 award shall be made to the widow or widower and children or parents of a Government servant as follows:

(i) If a Government servant is killed, or dies of injury received as a result of special risk of office,

a) a gratuity of the applicable amount specified in Schedule III; and

b) a pension the amount of which shall not exceed the applicable amount specified in Specified III;

(ii) if the Government servant is killed or dies of injuries received as a result of risk of office a pension the amount of which shall not exceed the applicable amount specified in Schedule III:

Provided that, if the pay of the

deceased Government servant was less than Rs.200/- the monthly pension or the sum of pensions that may be granted under this rule, shall not, irrespective of the rates (including the minimum limits) specified in Schedule III, exceed the limit of one-half of his pay, and if in any case, the sum of such pensions calculated under Schedule III exceeds the limit of one-half of his pay such a pro rata reduction shall be made in the amount of each individual pension as will reduce the sum to such limit.

NOTE: If a Government servant dies leaving behind two or more widows the pension or gratuity admissible under this rule to the widow shall be divided equally among all the widows."

7. A perusal of Note appended to Rule 10(ii) of the Tamil Nadu Extraordinary Pension Rules, reveals that if a Government servant dies leaving behind two or more widows the pension or gratuity admissible under this rule to the widow shall be divided equally among all the widows. Hence, the petitioner is entitled to pension.

8. Though the petitioner has prayed for a larger relief, this Court considering the facts and circumstances, permits the petitioner to give one more representation enclosing this order along with relevant documents within a period of two weeks. On receipt of the same, the respondents are directed to consider the claim of the petitioner in the light of the Rule 10(ii) of the Tamil Nadu Extra-ordinary pension Rules and pass orders on merits and in accordance with law, after giving opportunity to the petitioner as well as to the third respondent, within a period of eight weeks therefrom and communicate the decision taken, to the petitioner.

9. This writ petition is disposed of accordingly. No costs.

-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035.

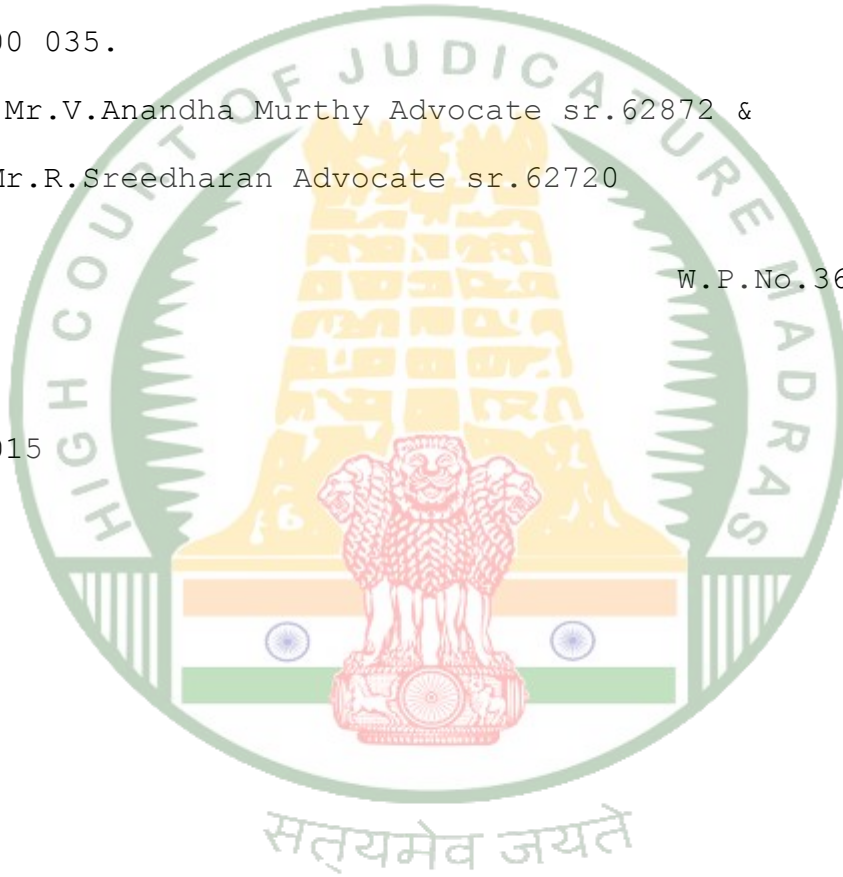
2.The Divisional Accountant,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai 600 035.

+2 ccs to Mr.V.Anandha Murthy Advocate sr.62872 &
63133

+1 cc to Mr.R.Sreedharan Advocate sr.62720

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