

In the High Court of Judicature at Madras

Dated : 03.3.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Appeal No.2773 of 2012 and MP.No.1 of 2012

The Chairman, Chennai Port Trust,
Rajaji Salai, Chennai-1.

...Appellant

Vs

Mrs.Mariammal

...Respondent

APPEAL under Clause 12 of the Letters Patent against the order dated 22.8.2012 made in WP.No.1122 of 2012.

Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus, to direct the respondent to pay family pension and arrears of family pension to the petitioner due to her son late Ravikumar with 12% interest.

For Appellant : Mr.M.M.Shanmugam & Mr.S.Jayakumar

For Respondent : Mrs.N .Beulah John Selvaraj

Judgment was delivered by V.Ramasubramanian,J

This writ appeal is directed against an order passed by the learned Judge in a writ petition filed by the respondent, directing the appellant to pay family pension and arrears of family pension to the respondent, consequent upon the death of her son.

2. Heard Mr.M.M.Shanmugam and Mr.S.Jayakumar, learned counsel appearing for the appellant and Mrs.Beulah John Selvaraj, learned counsel appearing for the respondent.

3. The respondent's son was employed in the appellant Port Trust and he died in harness on 1.12.2006. He remained a bachelor. He was a Hindu by birth and hence, the respondent was left behind by him as the only legal heir as per the Hindu Succession Act, 1956.

4. Therefore, consequent upon the death of her son, the respondent made a claim for payment of family pension. But, citing

Chapter X of the Chennai Port Trust (Pension) Regulations, 1987, the appellant rejected the claim for payment of family pension. Aggrieved by the said order, the respondent filed a writ petition in W.P.No. 1122 of 2012 on the file of this Court. The said writ petition was allowed by a learned Judge, by an order dated 22.8.2012. As against the said order, the Chennai Port Trust has come up with the above appeal.

5. The only question that arises for consideration in the above appeal is as to whether the mother of a deceased employee is entitled to claim family pension, especially when the definition of the expression 'family' does not include the mother of the deceased servant under Regulation 46 in Chapter X of the Chennai Port Trust (Pension) Regulations, 1987 or not.

6. Regulation 46 in Chapter X of the Chennai Port Trust (Pension) Regulations, 1987 reads as follows :

"Chapter X : Family Pension :

46. (i) In respect of an employee governed by Pension Scheme, family pension at the prescribed rates is payable.

(a) To the family of an employee who dies while in service after completing a continuous service of not less than one year.

(b) To the family of an employee in receipt of a pension including compassionate allowance who dies after retirement.

(ii) Family for the purpose of this rule shall mean and include -

(a) wife in the case of male employee or husband in the case of female employee provided in all these cases the marriage took place before the retirement of the employee.

(b) wife and husband shall include respectively judicially separated wife and husband.

(c) Son including legally adopted son who has not attained the age of 21 years and unmarried daughter including legally adopted unmarried daughter who has not attained the age of 24 years.

Note : The above provision shall not include son/ daughter born after retirement."

7. Sub-Regulation (2) of Regulation 46 defines 'family' to mean and include wife in the case of a male employee and husband in the case of a female employee. Clause (b) of Sub-Regulation (2) of Regulation 46 makes it clear that wife and husband would also include respectively the judicially separated wife and husband. Clause (c) of Sub-Regulation (2) makes it clear that son would include legally adopted son, who has not attained the age of 21 years and unmarried daughter would include legally adopted unmarried daughter, who had not attained the age of 24 years.

8. It appears from Sub-Regulation (2) of Regulation 46 that the definition of the expression 'family' is not only inclusive, but also exhaustive. Therefore, primarily the contention of the appellant that the benefit of the regulation would not apply to the mother of the deceased Government servant cannot be found fault with.

9. However, the learned Judge relied upon the decision of the High Court of Punjab and Haryana in State of Punjab Vs. Kharak Singh Kang [1998 (118) PLR 403] where a Division Bench of the Punjab and Haryana High Court was concerned with the question as to whether the parents of a deceased Government employee can be excluded from the definition of the expression 'family' and denied the benefit of family pension or not. The Division Bench of the Punjab and Haryana High Court was concerned in the said case with a scheme known as Family Pension Scheme, 1964, under which, the employees of the State of Punjab and Haryana were entitled to the benefits. The definition of the expression 'family' in the said Scheme also did not include parents. However, the Punjab and Haryana High Court upheld the claim on the ground that there is no rationale for exclusion of the parents.

10. Similarly, a Division Bench of this Court in Regional Commissioner Vs. Mrs. Chellam decided on 5.1.2008 in W.A.No.3409 of 2002, was concerned with the Employees' Family Pension Scheme, 1971 and the definition of a similar expression in the Employees' Provident Fund Scheme, 1952. The definition of the expression 'family' in Regulation (2)(vii) of the Employees' Pension Scheme 1995, did not include the mother in that case. However, the Division Bench of this Court upheld the view taken by a learned Single Judge on the basis of a decision of the Gauhati High Court. Therefore, the learned counsel for the respondent contended that the order of the learned Judge upholding the claim of the respondent cannot be interfered with.

11. Today, the learned counsel for the appellant produced a copy of the letter dated 2.3.2015 received by him from the Management of the appellant. In the said letter, it has been stated that after a Bipartite Wage Negotiation Committee (BWNC) Settlement signed on 19.1.2010 between the employees of the Port Trust and the Management and with effect from 1.1.2007, the definition of the expression 'family' has been extended to include the dependent parents of the deceased employee. It would be useful to extract the communication received by the learned counsel for the appellant, as it contains the details about the amendment. It reads as follows :

"With reference to the above, it is to inform that according to the Bipartite Wage Negotiation Committee (BWNC) settlement with effect from 1.1.2007 signed on 19.1.2010, the family definition is extended to the dependent parents of the deceased employee had left behind neither a widow nor a child. The above provision is included in the amended Chennai Port Trust Pension Regulations and has been approved by the Board vide B.R.No.191 dated 21.1.2015.

Considering the above amendment, the Ministry's approval has been sought for. On obtaining Ministry's approval and after Gazette Notification, the benefit of family pension will be extended to the dependent parents of the deceased employee with effect from 1.1.2007."

12. In view of the above, it appears that the appellant itself has considered the issue in favour of the employees, who die in harness leaving behind dependent parents. The fact that the respondent was a dependent upon her son is not in dispute. The respondent's husband himself was employed in the Dock Labour Board as a Mazdoor on temporary basis. He was medically invalidated and he resigned. Therefore, the respondent's son got appointment on compassionate grounds. The respondent's husband having resigned his job, did not get any benefit. The respondent also did not get family pension upon the death of her husband. The respondent's only hope was her son, who died as a bachelor in harness on 1.12.2006. The scheme that is now pending approval with the Ministry, pursuant to the Bipartite Wage Negotiation Committee Settlement, is to take effect from 1.1.2007. Therefore, the respondent would be entitled to the benefit of family pension at least with effect from 1.1.2007.

13. Accordingly, the writ appeal is disposed of partly modifying the order of the learned Judge making the respondent entitled to family pension with effect from 1.1.2007, subject, however, to

approval of the Ministry. The arrears arising out such entitlement shall be disbursed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the above MP is closed.

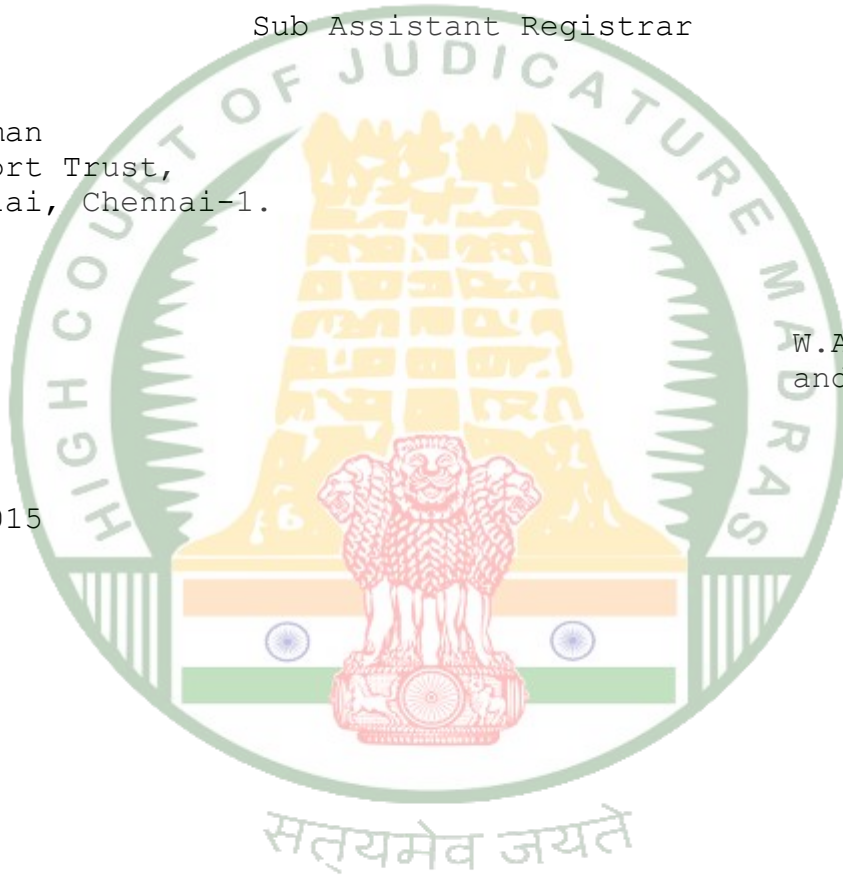
Sd/-
Assistant Registrar

//True Copy//

To
Sub Assistant Registrar
The Chairman
Chennai Port Trust,
Rajaji Salai, Chennai-1.

mp(co)
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W.A.No.2773 of 2012
and MP.No.1 of 2012



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