

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4296 of 2015

Rahima Bivi

...Petitioner

Vs

1. Under Secretary to Government of Tamil nadu
Public (Political Pension - III) Department,
Secretariat, Fort St. George,
Chennai - 600 009

2. The District Collector,
Trichy District, Trichy.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to grant family freedom fighter pension payable on the death of the petitioner's father Samsugani to the petitioner without cancelling the widow pension within the stipulated time prescribed by this Court pursuant the respondent dated 12.12.2014 given to the 1st Respondent.

For Petitioner : Mr.T.Muruganantham

For Respondents : Ms.P.Rajalakshmi
Government Advocate

O R D E R

Heard Mr.T.Muruganantham, learned counsel appearing for the petitioner and Ms.P.Rajalakshmi, learned Government Advocate, who accepts notice for the respondents. With the consent of either side, the writ petition itself is taken up for final disposal at the admission stage.

2.The petitioner's father is a freedom fighter and he was drawing pension paid by the Government of Tamilnadu. He passed away on 11.12.2012 and the petitioner's mother pre-deceased her father. As on date, there are three legal representatives for her father, namely, petitioner, her sister and her brother. The petitioner is a physically challenged person and she was married, out of the wedlock, she has daughter. However, her husband has passed away at a young age and she is a young widow with a minor child.

3. The petitioner has applied to the State Government for grant of monetary benefit, which was sanctioned to the young widow and she is receiving the same. Thereafter, the petitioner has submitted an application for grant of family pension on account of the demise of her father, who is a freedom fighter and drawing State Government Pension by enclosing the no objection letter from her two sibilings. The 1st respondent has passed an order on 27.11.2013 stating that since the petitioner is receiving the amount sanctioned by the Government for young widow, she is not entitled for grant of freedom fighter pension.

4. It is to be noted that grant of freedom fighter pension is as per scheme formulated by the Government which has a statutory force and the entitlement to pension is as per the scheme, merely because the petitioner is receiving a small honorarium sanctioned by the State Government on account of having become widow at a young age cannot be a ground to reject the petitioner's application for Family Pension under Freedom Fighter Pension Scheme.

5. In my view, the amount which is paid by the Government to the petitioner or for any widow cannot operate as a dis-qualification for being considered for grant of family pension under Freedom Fighter scheme. In fact Madurai Bench of this Court in similar circumstances considered the issue in W.P.(MD)No.1457 of 2008, wherein the request for granting of Freedom Fighters Family Pension was rejected on the ground that the applicant therein was receiving civil service pension and therefore, he is not entitled for two pensions. The Madurai bench of this Court in the above cited order quashed the said proceedings and directed the payment of Freedom Fighters Pension in addition to the service pension, this order was implemented by the Government vide letter 47640/PP-IV/2008-2 dated 12.10.2009 and the operative portion of the order reads as follows:-

...2. Tmt.Vallithayammal of Dindigul District filed a Writ petition (MD) No.1457/2008 in the High Court of Madras at Madurai Bench for granting of Freedom Fighters Family Pension those who are receiving the Civil pension. The Hon'ble High Court of Madras at Madurai Bench has allowed the Writ Petition and ordered that considering the laudable object in granting the Freedom Fighters' Pension, as per the Scheme framed by the Government of Tamil Nadu in the line of the Scheme framed by the Union Government, it is beyond any cavil that the receipt of Freedom Fighters' pension is not a disqualification to receive Civil Pension Rule 13(B) of the Tamilnadu Pension Rules, 1978 was inserted only for the purpose of avoiding grant of two civil service pension to the very same pensioner and it has nothing to do with the pension payable to a freedom fighter. Therefore, the Hon'ble Court do not find any reason to sustain the order of the first respondent dated 17.12.2007. In the result, the Madurai Bench of Madras High Court quashed the order dated 17.12.2007 and directed to pay the Freedom Fighters pension to the petitioner in addition to the service pension, which she

has been receiving on account of the service rendered by her deceased husband in the State Civil Service.

3. The above judgment has been examined in detail by the Government and to decide to accept the orders passed by the Hon'ble High Court of Madras at Madurai Bench by relaxing the Rule/Sub-rule 13(B) of rule 49 of Tamilnadu Pension Rules, 1978.

4. I am therefore directed to inform that the orders passed by the Government in the reference 1st cited is treated as "withdrawn". I am also directed to request you to maintain the status quo in this matter.

5. This order issues with the concurrence of Finance Department - vide its U.O.No.1851/FS/P/2009, dated 28.07.2009...."

6. In the light of the above, though the petitioner has not sought for to quash the order dated 27.11.2013, this Court in order to give appropriate relief to the petitioner intends to mould the relief in this Writ Petition. Accordingly, the letter dated 27.11.2013 in letter no.37371/Ao-2/2013-1 is set aside and the respondents are directed to consider the petitioner's application for grant of family pension under Freedom Fighters' Scheme within a period of four months from the date of receipt of copy of this order.

7. With the above observation, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Under Secretary to Government of Tamil nadu
Public (Political Pension - III) Department,
Secretariat, Fort St. George,
Chennai - 600 009

2. The District Collector,
Trichy District, Trichy.

+ 1 cc to Mr.T. Murugananthan Advocate SR.9475
+ 1 cc to Mr. Advocate SR.
+ 1 cc Government Pleader Sr.9416

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EV (CO)

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