

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.9959 of 2015 and
M.P.No.1 of 2015

Saraswathy

... Petitioner

-vs-

1.The Accountant General of Tamilnadu,
Office of the Principal Accountant General
(Accounts and Entitlements) Tamilnadu,
No.361, Anna Salai, Teynampet,
Chennai - 600 018.

2.The Block Medical Officer,
Government Primary Health Centre,
Savadipalayam, T.R.Palayam (PO)
Kangeyam (via) Tirupur (Dt) 638 701.

3.The Deputy Director of Health Services,
Office of the Deputy Director of Health Services,
Dharapuram.

... Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, to call for the records of the third respondent in R.No.3980/A4/2010 dated 03.02.2011 and quash the same and consequently direct the first respondent to pay the family pension to the petitioner.

For Petitioner : Mr.N.Stalin

For Respondents : Mr.K.V.Dhanapalan

Addl. Govt.Pleader for R2 and R3

ORDER

Heard both sides.

2. The petitioner's husband was an Ex-serviceman. He served as Nayak in the Indian Army. He retired from service on 01.09.1989. After retirement, he joined as Hospital Worker in the Department of Public Health and Preventive Medicine on 18.07.1990. He died on 04.03.2009 leaving behind the petitioner, two daughters and one son as his legal heir. The petitioner is receiving a sum of Rs.4,545/-

as family pension from the Army. According to the petitioner, she is entitled to receive family pension for the service rendered by her husband with the second respondent. Hence, she made an application for family pension on 04.10.2010. However, the same was declined by the impugned order on the ground that she is in receipt of Family Pension for the service rendered by her husband in the Army.

3. The learned counsel for the petitioner has relied on a communication dated 17.01.2013 of the Ministry of Defence, Government of India as well as the judgment of this Court reported in 2010 (2) CWC 555 [Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam, rep. by its President and another v. Government of Tamil Nadum, rep. by its Secretary, Transport Department and others]

4. On the other hand, the learned Additional Government Pleader sought to submit that the communication dated 17.01.2013 would not be applied to the case of the petitioner.

5. Considering the submissions made by the learned counsel on either side, I am of the view that the communication dated 17.01.2013 of the Government of India covers the issue in question. In this context, it is relevant to extract paragraph 3 of the communication dated 17.01.2013:-

"3. The above recommendation of the Committee has been accepted by the Government and the President is pleased to decide that the families of Armed Forces pensioners who got re-employed in Civil Departments/PSUs/Autonomous bodies/Local Funds of Central/State Governments after getting retired from military service and were in receipt of military pension till death, shall be allowed to draw Family Pension from military side in addition to the family pension, if any, authorised from the re-employed civil department subject to fulfillment of other prescribed conditions as hitherto. "

6. Further, in the judgment rendered in Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam (cited supra), this Court held that pensioners are entitled to get pension for military service as well as service rendered in the Government. In this context, it is necessary to extract the following passages in paragraphs 18 and 26:-

"18. From the above referred provisions of the Rules, it is evident that a pensioner is entitled to receive Military Pension and also Transport Employee Pension, subject to the option provided in Rule 16 of the Tamil Nadu Pension Rules to be given by the pensioners. The pensioner can continue to draw

military pension or to retain the gratuity received, which are discharged from military and in that case, the former Military service shall not count as qualifying service or to cease to draw his pension and refund, the pension already drawn and the value received for commutation or the part of Military pension or the amount of DCRG including service gratuity, if any, and given the previous military service as qualifying service as provided in Rule 16 of the Tamil Nadu Pension Rules. Thus, it is clear that a choice is given to the ex-servicemen, who got employed in Transport Corporations either to continue to draw the military pension or forego the military service for the purpose of Transport Corporation pension or to refund everything received towards terminal benefits received on retirement from military service and claim the entire military service as part of the pensionable service in the Transport Corporations.

26. Bearing the above said principles and payment of family pension to the widows of the pensioners being not a charity, and the pensioners were paid both military pension and service pension during their lifetime, the Respondents are bound to pay family pension to the Petitioners herein, even though they are receiving Military family pension after the demise of the pensioners. However, the family pensioners are eligible to get Dearness Allowance only for one pension (either for Military Family Pension or for Transport Corporation Pension) in terms of the Supreme Court judgments reported in Union of India v. G.Vasudevan Pillay, 1995 (2) SCC 32 and in Haryana S.E.B. v. Azad Kaur, 2000 (2) SCC 227."

7. In the light of the above, the impugned order dated 03.02.2011 is quashed and the respondents are directed to pay family pension to the petitioner for the service rendered by her husband in the Government of Tamil Nadu from the date of his death, including arrears. The payment shall be made within a period of two months from the date of receipt of a copy of this order.

8. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

svki

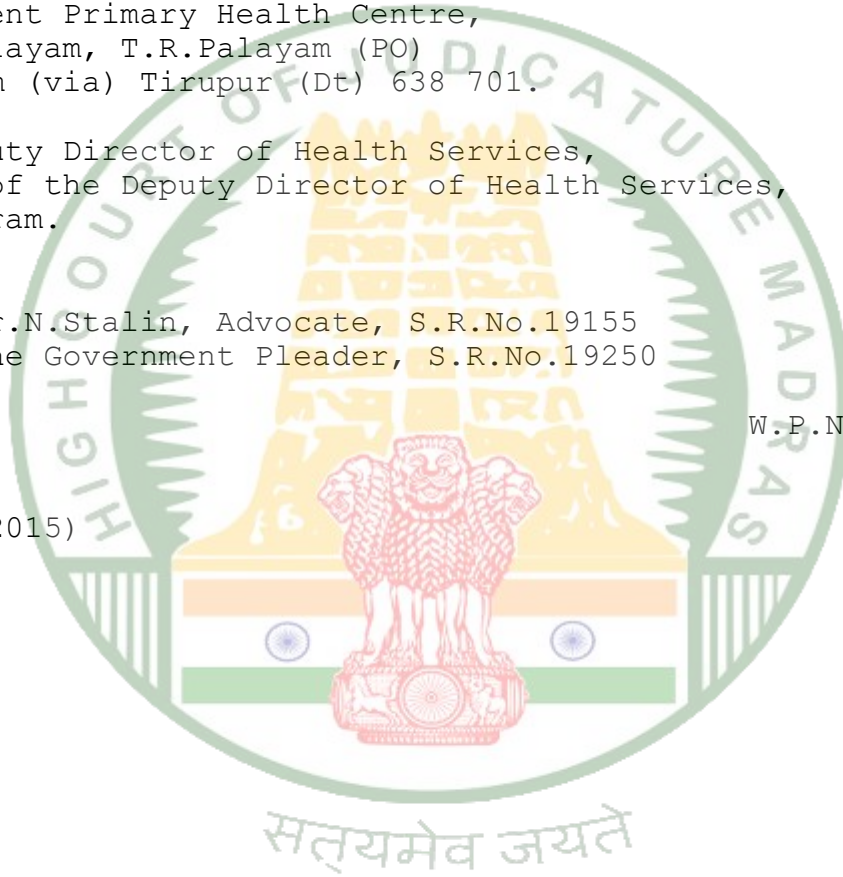
To

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Dharapuram.

+lcc to Mr.N.Stalin, Advocate, S.R.No.19155
+lcc to the Government Pleader, S.R.No.19250

W.P.No.9959 of 2015

SR(CO)
CA(15/05/2015)



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