

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.02.2016

Delivered on : 16.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.1362 of 2015

R.Senbagam Appellant/Petitioner

v.

1.The Collector of
Nagapattinam District,
District Collectorate
Nagapattinam - 611 001
Tamil Nadu.

2.The Special Tahsildar,
(Social Security Scheme)
Taluk Office,
Nagapattinam - 611 001.
Tamil Nadu.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the Order dated 22.07.2015 made in W.P.No.15901 of 2015. Writ petition filed under Article 226 of the constitution of India praying for issuance of a writ of certiorarified Mandamus calling for the records in respect of the order R.C.No.2739/2005/A8 dated 24.4.2015 of the 2nd respondent informing the petitioner that the old age pension under the Indira Gandhi National Old Age Pension Scheme (IGNOAPS) that was being paid to the petitioner from 19.11.2007 has been stopped from 1st October 2014 and to quash the same for its being perverse arbitrary and illegal and to direct the respondents to continue to pay the old age pension under IGNOAPS through out for petitions life as has been ordered by this Honourable court on 23.4.2010 in W.P.No.24745 of 2009 with cost and compension for injury.

For Appellant : Mr.R.Muthukrishnan

For Respondents : Mrs.A.Sri Jayanthi
Special Government Pleader

JUDGMENT

M.VENUGOPAL, J.

The Appellant/Petitioner has preferred the present Writ Appeal as against the order dated 22.07.2015 in W.P.No.15901 of 2015 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the impugned order on 22.07.2015 in W.P.No.15901 of 2015, at paragraph 7 & 8, had observed the following:

"7. It is not in serious dispute that the two sons of the petitioner are well settled in their life, one son being a lawyer and another is employed at abroad and admittedly, the petitioner is residing in the house owned by her younger son. The learned counsel appearing for the petitioner has placed heavy reliance upon the order dated 23.04.2010 made in W.P.No.24745 of 2009; however, the Social Welfare and Nutritious Meal Programme Department of the Government of Tamil Nadu has brought forth amendment to Rule 5 of the Madras Old Age Pension rules and it is relevant to extract the same:

" Amendments

The following definition of 'destitute' shall be substituted to Rule 5 of the Madras pension Rules:

A "Destitute" is a person,

(a) without any income or source of income,
(b) without any income or source of income and owning fixed assets valuing less than Rs.50,000/- who have no relatives of 20 years of age and over of the following categories:-

i) Son;
ii) Son's son; and
iii) husband/wife and other related persons, who normally live together;

Provided that a person will be deemed to be a destitute if all the relatives falling within the categories specified above are

(a) themselves below poverty line, such a fact being proved to the satisfaction of the sanctioning authority; or

(b) continuously missing and the

sanctioning authority has satisfied him/herself by such enquiry as he/she deems necessary that the relatives are so missing;"

The said department has also issued G.O. (Ms).No.26 dated 17.04.2015 taking into consideration the proposal of the Additional Chief Secretary/Commissioner of Revenue Administration and revised the eligibility criteria and as per the same, pension under the IGNOAPS is payable to a person who is 60 years and above and he/she shall be a destitute and must belong to below poverty line family.

8. In the light of the amendments made to Rule 5 of the Madras Old Age Pension rules coupled with G.O.(Ms).No.26 dated 17.04.2015, the petitioner is not eligible to get Old Age Pension. Admittedly, no challenge has been made to the amendments made to Rule 5 of the Madras Old Age Pension rules as well as G.O.(Ms).No.26 dated 17.04.2015 issued by the Social Welfare and Nutritious Meal Programme (SW6(1)) Department and therefore, in the light of the same, this Court is not in a position to grant any relief to the petitioner."

and resultantly, dismissed the Writ Petition without costs, by granting liberty to the Petitioner, if so advised, to challenge the amendments made to Rule 5 of the Madras Old Age Pension Rules and G.O.(Ms).No.26, Social Welfare and Nutritious Meal Programme (SW6) (1)) Department, dated 17.04.2015, in accordance with law.

3. According to the Learned Counsel for the Appellant, the Learned Single Judge had committed an error in not allowing the Writ Petition wherein she had sought for quashing of the order R.C.No. 2739/2005/A8 dated 24.04.2005 of the 2nd Respondent whereby and wherein it was, among other things, informed that the old age pension under the Indira Gandhi National Old Age Pension Scheme which was paid from 19.11.2007 was stopped from 01.10.2014 as perverse, arbitrary and an illegal one. Consequently, she has sought for passing of an order by this Court in directing the Respondents to continue to pay the Old Age Pension under the aforesaid Scheme throughout her life as ordered by this Court on 23.04.2010 in W.P.No.24745 of 2009 with costs.

4. The categorical stand of the Appellant is that the 2nd

Respondent's act of stopping the old age monthly pension under IGNOAPS from October 2014 without any notice, enquiry or Court Order is not tenable and the same being arbitrary one, because of the simple reason that in W.P.No.24745 of 2009, on 23.04.2010, the 1st Respondent/The Collector of Nagapattinam District had sanctioned the old age monthly pension payment to her under IGNOAPS with effect from 19.11.2007 throughout her life and that the 2nd Respondent paid the said pension payment to her for the aforesaid periods.

5.The Learned Counsel for the Appellant/Petitioner projects an argument that in the impugned order in R.C.No.2739/2005/A8 dated 24.04.2015, the 2nd Respondent had assigned a reason/justification for stopping the payment of monthly old age pension payment under IGNOAPS to the Appellant from 1st October 2014 that she is leading her life comfortably under the care and protection of her two sons and that she is living in R.C.C. house worth at Rs.10,00,000/- built and owned by her younger son and that she being looked after by her married daughter residing nearby and therefore, she is not a destitute living in below the poverty line, is an ill-conceived one.

6.The Learned Counsel for the Appellant/Petitioner brings it to the notice of this Court that the Appellant/Petitioner is 83 years old widow, who lost her husband 40 years ago and that she does not own any immovable property and she is a single person in the household and by taking into all these facts, the stoppage of monthly pension under IGNOAPS from 01.10.2014 to her is nothing but depriving Appellant's dignity and security during her old age of 91 years.

7.Per contra, it is the submission of the Learned Special Government Pleader for the Respondents that the Appellant/Petitioner is not a destitute and that she is not entitled to claim old age pension. That apart, the Respondents take a stand that the field level enquiry by the Village Administrative Officer of Kattumavadi Village and the Revenue Inspector of Thirumarugal reveals that the Appellant/ Petitioner has two sons viz., (1) Muthukrishnan (Elder son) is an Advocate in High Court and (2) Ramachandran returned from abroad and living at Kumbakonam and further that she is living in R.C.C. Building to the value of Rs.10,00,000/- (owned by her younger son Ramachandran at Kattumavadi Village). Continuing further, the Appellant's daughter is also residing on the opposite to Appellant's residence and Appellant's son-in-law (an Ex-serviceman) is receiving Central Government Pension.

8.In fact, the plea taken on behalf of the Respondents is

that the Appellant/Petitioner is under the support of her son's and daughter, who are well to do and economically sound and therefore, she is not a destitute to claim the old age pension in question.

9. On behalf of the Respondents, an argument is projected to the effect that the Appellant/Petitioner's ineligible status was brought to the notice of the 2nd Respondent/Special Tahsildar (Social Security Scheme), Taluk Office, Nagapattinam, Tamil Nadu as early as 2009 and that is why the payment of Old Age Pension was ordered to be stopped in the year 2009 itself and in short, the Appellant/Petitioner cannot take advantage of the introduction of amendments to the Madras Old Age Pension Rules.

10. The Learned Special Government Pleader for the Respondents contends that G.O.(Ms).No.26, Social Welfare and Nutritious Meal Programme (SW(1)) Department, dated 17.04.2015, had changed the eligibility criteria and as such, the Appellant/Petitioner is not entitled to get the relief as per claim made by her in the Writ Petition.

11. During the last leg of arguments, the Learned Special Government Pleader for the Respondents submits that since the Appellant/Petitioner is not at all a 'destitute' within the ambit of Madras Old Age Pension Rules (which includes Indira Gandhi National Old Age Pension Scheme), she is not entitled to get the relief of Old Age Pension as a matter of right.

12. At this juncture, this Court very pertinently points out that the Appellant/Petitioner earlier filed W.P.No.24745 of 2009 against one Union of India represented by its Secretary, Ministry of Rural Development, Krishi Bhawan, New Delhi and two others, seeking to quash the impugned order contained in the letter No.17185/SW6/2008 dated 19.02.2009 issued by the 2nd Respondent therein and to direct the Respondents to grant/sanction/pay to her the said monthly pension with effect from 19th November 2007 under/pursuant, inter alia, to G.O.(Ms).No.217 dated 16th November 2007 issued by the 2nd Respondent therein. This Court, on 23.04.2010, had allowed the Writ Petition directing the 3rd Respondent/The Collector of Nagapattinam District to sanction the old age pension as per the Indira Gandhi National Old Age Pension Scheme with effect from 19.11.2007, within a period of eight weeks from the date of receipt of a copy of the order.

13. As far as the present case is concerned, it is not in dispute that the Appellant/Petitioner was not given the monthly pension payment from October, 2014. In fact, the said monthly pension payment was stopped from 1st October 2014, without any prior notice or conducting any enquiry in this regard. It cannot be gainsaid that the order dated 23.04.2010 in W.P.No.24745 of

2009 filed by the Appellant/Petitioner [in which the present Respondents are parties] has become final, conclusive and binding between the inter se parties.

14. In this connection, it is not out of place for this Court to make a relevant mention that the Government of Tamil Nadu in G.O.(Ms).No.217, Social Welfare and Nutritious Meal Programme (SW6) Department, dated 16.11.2007 had mentioned that the Secretary, Ministry of Rural Development, Government of India, in his D.O. Letter No.J-11013/1/2007-NSAP dated 23.09.2007 had approved the modification of the eligibility criteria for Central Assistance under the National Old Age Pension Scheme (NOAPS) and further that, as per the existing criteria pension under National Old Age Pension Scheme (NOAPS) was granted to a person aged 65 years or higher and a destitute. Added further, it was also mentioned that with the new decision this criteria stood modified and pension under the National Old Age Pension Scheme (NOAPS) has to be now granted to a person who is 65 years or higher and belonging to a household below the poverty line according to the criteria prescribed by the Government of India and it was further decided that: (i) the scheme be named as "Indira Gandhi National Old Age Pension Scheme"; (ii) the scheme, be formally launched on 19.11.2007; (iii) the States be asked to certify that all eligible persons have been covered; and (iv) the pension be credited, where feasible, into a post office or public sector bank account of the beneficiary etc. Even in the impugned order of the 2nd Respondent dated 24.04.2015 in R.C.No.2739 /2005/A8, in Reference portion, there is no whisper about the G.O.(Ms).No.217, Social Welfare and Nutritious Meal Programme (SW6) Department, dated 16.11.2007 issued by the Government of Tamil Nadu.

15. It cannot be lost sight of that even though the Appellant/ Petitioner has not challenged the amendment made to Rule 5 of the Madras Old Age Pension Rules as well as the G.O. (Ms).No.26, Social Welfare and Nutritious Meal Programme (SW6 (1)) Department, dated 17.04.2015, yet, this Court is of the considered view that when the order passed by this Court in W.P.No.24745 of 2009 dated 23.04.2010 is in favour of the Appellant/Petitioner and the same has become final and binding between the parties and apart from that, the reality of the matter is that the impugned order dated 24.04.2015 of the 2nd Respondent, stopping the payment of Old Age Pension to the Appellant from October 2014, without issuance of prior notice or hearing the objections/representation of the Appellant, is invalid and illegal, because of the simple reason that not only by stopping the payment of Old Age Pension to the Appellant, it concerns of 'Civil Consequences' and also that the impugned order is in negation of the Principles of Natural Justice, as

opined by this Court.

16. On a careful consideration of respective contentions and although the Respondents placed reliance on the amendment to Rule 5 of the Madras Old Age Pension Rules coupled with G.O. (Ms).No.26, dated 17.04.2015 [in regard to change of eligibility criteria relating to Pension Scheme implemented under Social Security Scheme] and also this Court, taking note of the attendant facts and circumstances of the instant case in an encircling manner, comes to an inescapable conclusion that the impugned order dated 24.04.2015 in R.C.No.2739 /2005/A8 of the 2nd Respondent stopping the old age pension to the Appellant/Petitioner from October 2014 was an illegal one, because of the simple reason that before stopping the old age monthly payment pension from October 2014, no prior notice or enquiry was issued/ conducted in the subject matter in issue, especially when the stoppage of monthly old age pension is one of civil consequences. Suffice it for this Court to relevantly point out that the Principles of Natural Justice were not adhered to by the 2nd Respondent prior to passing of the impugned order dated 24.04.2015 in so far as the Appellant/Petitioner was concerned. As such, this Court interferes with the impugned order of the Learned Single Judge in W.P.No.15901 of 2015 dated 22.07.2015 as well as the impugned order of the 2nd Respondent dated 24.04.2015 in R.C. No.2739/2005/A8 and set aside the same, in furtherance of substantial cause of Justice. Consequently, the Writ Appeal succeeds.

17. In fine, the Writ Appeal is allowed. The order dated 22.07.2015 in W.P.No.15901 of 2015 of the Learned Single Judge as well as the order dated 24.04.2015 in R.C.No.2739/2005/A8 of the 2nd Respondent are set aside by this Court for the reasons assigned in this Writ Appeal. The Respondents are directed to continue to pay the Old Age Pension to the Appellant/Petitioner under IGNOAPS from October 2014 onwards, as per order passed by this Court dated 23.04.2010 in W.P.No.24745 of 2009. The arrears, in this regard, is directed to be paid by the Respondents to the Appellant/Petitioner within a period of six weeks from the date of receipt of copy of this Judgment. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Collector of
Nagapattinam District,
District Collectorate
Nagapattinam - 611 001
Tamil Nadu.

2.The Special Tahsildar,
(Social Security Scheme)
Taluk Office, Nagapattinam - 611 001.
Tamil Nadu.

+ 1 cc to Government Pleader Sr.9116

+ 1 cc to Mr.R. Muthukrishnan, Advocate SR.9750(02.03.16)

W.A.No.1362 of 2015

RSK(CO)
Eu 25.02.16



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