

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.23700 of 2014
and M.P.No.1 of 2014

S.Dhanalakshmi

.. Petitioner

vs.

1. Government of Tamil Nadu,
Rep. by its Secretary to Government,
Environment and Forest Department,
Fort St. George,
Chennai-600 009.
 2. The Principal Chief Conservator of Forests,
Panagal Building, Saidapet,
Chennai-600 015.
 3. The District Forest Officer,
Hosur Forest Division,
Hosur Animal Husbandry Post
Mathirigi, Hosur,
Krishnagiri District.
 4. The Principal Accountant General,
(Accounts & Entitlements) Tamil Nadu,
No.361, Anna Salai,
Teynampet, Chennai-600 018.
- .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records which culminated in issuing the proceedings in Pen 33/3/13306620/11-12/ADK dated 19.10.2011 and the subsequent proceedings in Pen 34/3/13401990/FP/2013-14/ADK dated 22.10.2013, both on the file of the fourth respondent, quash the both the orders and consequently direct the fourth respondent to sanction and disburse the eligible family pension to the petitioner with arrears and accrued interest on account of the death of her husband Selvaraj, who died in service as Jeep Driver with the respondents 1 to 3, within a time frame.

For Petitioner : Mr.S.Mani
For Respondents : Mr.N.Inbanathan,
Government Advocate (Forests)

O R D E R

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus calling for the records which culminated in issuing the proceedings in Pen 33/3/13306620/11-12/ADK dated 19.10.2011 and the subsequent proceedings in Pen 34/3/13401990/FP/2013-14/ADK dated 22.10.2013, both on the file of the fourth respondent, quash the both the orders and consequently direct the fourth respondent to sanction and disburse the eligible family pension to the petitioner with arrears and accrued interest on account of the death of her husband Selvaraj, who died in service as Jeep Driver with the respondents 1 to 3, within a time frame.

2. The petitioner's husband late Selvaraj was employed in Military Service on 17.07.1964 and was an ex-serviceman and for having rendered service as a Naik, after successful completion of service, the petitioner's husband was paid pension. Subsequently, the petitioner's husband joined as Jeep Driver in the Forest Department on 11.04.1983 and is governed by the Tamil Nadu Forest Subordinate Service. Whiles, the petitioner's husband died on 14.07.1989, leaving behind his mother, the petitioner and five children as his legal heirs. On the demise of her husband, the petitioner was in receipt of family pension from the Central Government for the service rendered by her husband in the Military regime. The petitioner also sought for family pension from the respondents on the death of her husband during his employment as Jeep Driver in the Forest Department and however, the respondents did not pay family pension to the petitioner inspite of repeated requests. Ultimately, the petitioner's representation sent to the Ex-Serviceman Welfare was forwarded to the third respondent, who in-turn, by proceedings dated 05.09.2011 forwarded its recommendations to the fourth respondent and the fourth respondent, vide proceedings in Pen 33/3/13306620/11-12/ADK dated 19.10.2011 held that as per the Tamil Nadu Family Pension Rules, 1978, a family pensioner who is in receipt of Military Family Pension is not eligible for State Family Pension and therefore, the petitioner was constrained to file the present writ petition.

3. When the matter was taken up for consideration, the learned Government Advocate (Forest) has drawn the attention of this Court to the counter affidavit of the third respondent wherein it has been stated that the representation submitted by

the petitioner requesting for family pension was forwarded to the Accountant General, Chennai along with detailed pension proposal based on data of Additional Director, Ex-Servicemen Welfare Board, Chennai vide letter No.9438/2008 dated 3.04.2006 for sanction of family pension to the petitioner and the said proposal was rejected, vide impugned order dated 19.10.2011, stating that the recipient of ex-servicemen pension is not eligible for State Family Pension as per Tamil Nadu Pension Rules, 1978 and therefore, prays for dismissal of the writ petition.

4. This Court has considered the rival submissions and also perused the materials placed before it.

5. The issue as to whether the receipt of military pension would operate as a bar to claim State pension was considered by this Court in W.P.No.7299 of 2013 dated 10.01.2014 [K.Gunasundari v. The Principal Accountant General, Chennai-18 and two others] wherein this Court, by following an earlier order in Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam vs. Government of Tamil Nadu reported in 2010 (2) CWC 555 held that receipt of military pension is not a bar to receive pension from the State Government.

6. In the result, this Writ Petition is partly allowed and the impugned order in No.Pen 33/3/13306620/11-12/ADK dated 19.10.2011 and the subsequent proceedings in Pen 34/3/13401990/FP/2013-14/ADK dated 22.10.2013, both on the file of the fourth respondent are set aside and the matter is remanded back to the fourth respondent for fresh consideration and the fourth respondent shall pass appropriate orders in the light of the order dated 10.1.2014 made in W.P.No.7299 of 2013, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Government of Tamil Nadu,
Environment and Forest Department, Fort St.George,
Chennai-600 009.

2.The Principal Chief Conservator of Forests,
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Chennai-600 015.

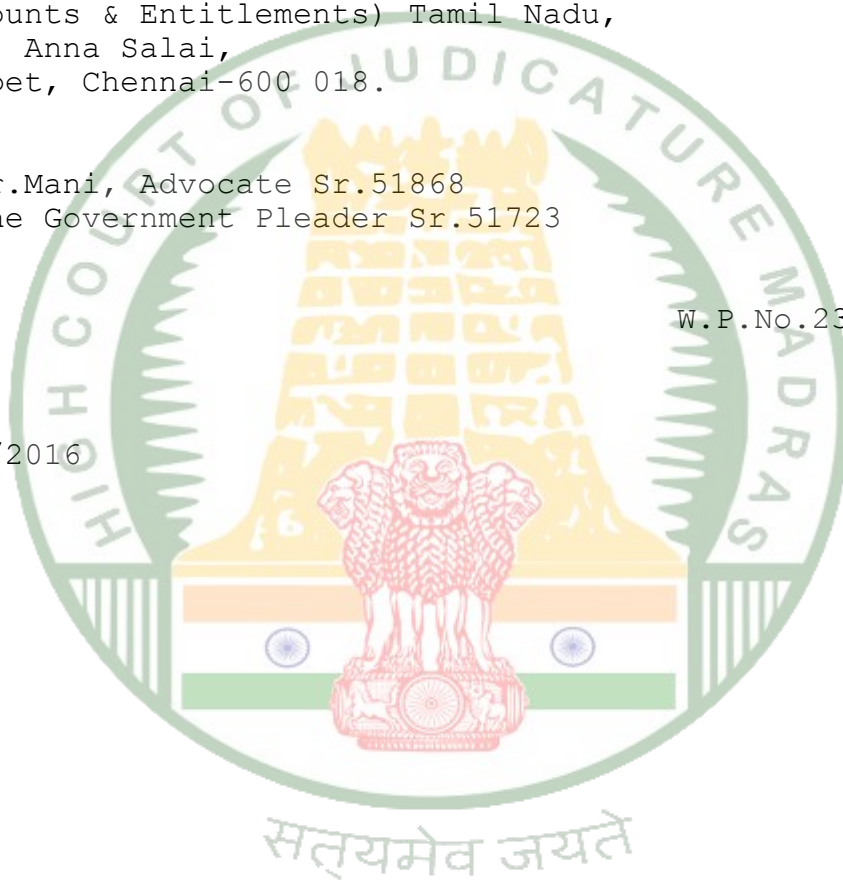
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+1cc to Mr.Mani, Advocate Sr.51868
+1cc to the Government Pleader Sr.51723

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mg[co]
srg 05/10/2016



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