

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.27834 of 2014

Mrs.Savithri

... Petitioner

Vs.

1. The Secretary to Govt.,
Finance Department,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2. The Director,
Treasuries and Accounts,
Panagal Maligai,
Saidapet,
Chennai-600 015.

3. The Treasury Officer,
District Treasury,
Kancheepuram,
Kancheepuram District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records from the third respondent pertaining to the orders issued in Letter No.O.Mu.8181/2014/G1, dated 11.06.2014 of the third respondent, quash the same and consequently direct the respondents forthwith to sanction monthly family pension to the petitioner.

For petitioner : Mr.K.R.Gunashekar

For respondents: Mr.R.Venkatesh, Govt. Advocate

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records from the third respondent pertaining to the orders issued in Letter No.O.Mu.8181/2014/G1, dated 11.06.2014 of the third respondent, quash the same and consequently direct the respondents forthwith to sanction monthly family pension to the petitioner.

2. It is the case of the petitioner that her Late Husband M.R.Gopal was an Ex-Service man and he retired after rendering more than 24 years of Military Service. While her husband was receiving Army Pension, he was re-employed in the State Government Service as Basic Servant in the office of the Treasury Officer, Kancheepuram. He retired from State Government Service on superannuation on 30.04.1983 after rendering service for more than 17 years. Thereafter, he was receiving pension from the State Government from 01.05.1983, without counting his Military Service. He was also getting Army Pension from the Central Government. It is further stated that the petitioner's husband died on 08.5.1993, leaving behind four children. She is getting meagre Army Family Pension from the Central Government, but she has not been sanctioned Family Pension with effect from 09.05.1993 from the State Government by the respondents herein. In this regard, she made a representation, dated 30.04.2014 to the third respondent for sanction of Family Pension, but the same has been rejected by the impugned order on the ground that the Government had not issued any orders for sanction of Civil Family Pension in addition to the Army Family Pension. The petitioner's husband was receiving Army Pension for military service and Civil Pension for the service rendered under the State Government, without counting the Military Service till his death on 08.05.1993. Since the petitioner's representation was rejected by the impugned order, she has filed this Writ Petition for the relief stated supra.

3. The third respondent has filed counter affidavit adverting to the averments made in the writ petition.

4. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that in identical circumstances, in W.P.No.7299 of 2013, dated 10.01.2014, this Court allowed the Writ Petition by observing as follows:

"7. When the matter is taken up for consideration, the learned counsel for the petitioner by relying upon the judgment reported in 2010 (2) CWC 555 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam Vs. Govt. of Tamil Nadu), submitted that in an identical set of facts, this Court has given direction to the authorities concerned to sanction family pension to the petitioners therein. The relevant portion in the said judgment runs as follows:-

"25. In this case, the pensioners, while living, were granted Transport Corporation pension without counting their military service. The said position is not in dispute. The widows or other persons are getting family pension from the Central Government for the military service rendered by the pensioners.

For the services rendered to the Transport Corporations, their widows and eligible wards are entitled to get family pension from the Transport Corporation also.

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 1995 (2) SCC 32 (Union of India Vs. G.Vasudevan Pillay) and in 2000 (2) SCC 227 (Haryana S.E.B., Vs. Azad Kaur).

27. In fine, the impugned orders are set aside and these writ petitions are allowed. The respondents are directed to sanction and pay family pension to the widows of the retired employees of the Transport Corporations as well as to the eligible persons. The concerned respondent is directed to release the family pension payable to the eligible family pensioners with arrears, within a period of eight weeks from the date of receipt of a copy of this order and continue to pay family pension so long as they are eligible to get family pension. No costs. Consequently, connected miscellaneous petitions are closed."

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8. The dictum laid down in the above said judgment is squarely applicable to the present facts of the case also. In view of the above said judgment, I am of the opinion that receiving pension from Military is not a bar for the petitioner to receive pension from the Fire & Rescue Services Department. However, as observed in the above said judgment, the petitioner is eligible to get Dearness Allowance only for one pension (either for Military Family Pension or for Family Pension from Fire & Rescue Services Department).

9. In fine, applying the above said dictum, the present writ petition is allowed. The respondents are directed to sanction family pension to the petitioner. The respondents are further directed to release the family pension payable to the petitioner with arrears, within a period of eight weeks from the date of receipt of a copy of this order, and to continue to pay the family pension so long as the petitioner is eligible to get family pension. No costs."

5. The dictum laid down in the above said judgment is squarely applicable to the facts of the present case also. In view of the above said judgment, I am of the opinion that receiving pension from Military is not a bar for the petitioner to receive pension from the services rendered in the State Government. However, as observed in the above said judgment, the petitioner is eligible to get Dearness Allowance only for one pension, either for Military Family Pension or for Family Pension from the State Government.

6. Accordingly, applying the above said dictum, the present Writ Petition is allowed. The respondents are directed to sanction Family Pension to the petitioner. The respondents are further directed to release the Family Pension payable to the petitioner with arrears, within a period of eight weeks from the date of receipt of a copy of this order, and to continue to pay the Family Pension so long as the petitioner is eligible to get the Family Pension. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

cs

Copy to

1. The Secretary to Govt.,
Finance Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

WEB COPY

2. The Director,
Treasuries and Accounts,
Panagal Maligai,
Saidapet,
Chennai-600 015.

3. The Treasury Officer,
District Treasury,
Kancheepuram,
Kancheepuram District.

+1cc to M/S.K.R.Gunashekar, Advocate Sr.63328

+1cc to the Government Pleader Sr.63949

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srg 16/12/2016



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