IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.15422 of 2010

P.LAKSHMI .. Petitioner

Vs.

1 THE GOVERNMENT OF TAMILNADU
REP.BY THE PRINCIPAL SECRETARY TO THE
GOVERNMENT ADI DRAVIDAR WELFARE DEPARTMENT
FORT ST. GEORGE CHENNAI-9

2 THE DIRECTOR OF ADI DRAVIDAR
AND TRIBAL WELFARE DEPARTMENT CHENNAI-5

3 THE DISTRICT ADI DRAVIDAR
WELFARE OFFICER ERODE ERODE DIST. ... 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 relating to the impugned order of the third respondent in Na.Ka.No.61307/2009/Tha-I dated 15.5.2010 and quash the same and direct the respondents to sanction Invalid Pension to the petitioners husband as per Rule 36 of the Tamilnadu Pension Rules

For Petitioner : Mr.P.Rajendran

For Respondents: Mr. V.Jaya Prakash Narayanan
Spl.GP

O R D E R

The prayer in the writ petition is for a writ of certiorarified mandamus calling for the records relating to the impugned order of the third respondent in Na.Ka.No.61307/2009/Tha-I dated 15.5.2010 and quash the same and direct the respondents to sanction Invalid Pension to the petitioners husband as per Rule 36 of the Tamil Nadu Pension Rules.

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2. The case of the petitioner is that her husband joined in service in Government School in the respondent's department as Watchman on 26.10.1988. He worked in that capacity till 1990 where on 14.8.1990, the petitioner was designated as servant and has been continuously working in the school. While so, during the year 1996, he was affected by the disease of paralytic attack and he had to continuously take treatment for the said disease.

3. Even though the petitioner's husband had taken treatment continuously, he was not able to recover from his illness and for that reason he was not in a position to attend duty for a long time.

4. In that circumstances by proceedings dated 21.9.1999, the Tahsildar, Adi Dravidar Welfare Department, Sathyamangalam has written a letter to the Joint Director of Medical Services, Erode stating that since the petitioner's husband, namely, R.Palanisamy had been affected by paralytic attack and he is in Government Service, therefore, necessary medical certificates to that effect whether he can continue his Government service can be given.

5. Though such a request was made by the said authority, namely, Tahsildar, Adi Dravidar Welfare Department, Sathyamangalam, no such medical certificate was given by the concerned authority. Thereafter, by proceedings dated 17.08.2001, the third respondent had further written to the Joint Director, Medical Services, Erode stating that the petitioner's husband had requested for medical leave from 01.10.1998 to 31.10.1998 as he was suffering from paralytic attack and he was not able to walk on his own and therefore, it became necessary only with the help of others, he can move. Therefore, the situation arises where the petitioner's husband was not able to continue in the Government service. Therefore, the third respondent had requested the Joint Director, of Medical Services, Erode to issue necessary medical certificate so as to enable the authorities to grant Invalid Pension to the petitioner's husband under the relevant Pension Rules.

6. Inspite of all these communications, no medical certificate seems to have been given, declaring medical invalidity and incapacity of the petitioner's husband. Thereafter, on 14.8.2010, the petitioner's husband died. However, in the meanwhile by impugned proceedings dated 15.05.2010, in response to the request of the petitioner for sanctioning of family pension to the petitioner for the services rendered by her husband, the third respondent has stated that since the petitioner's husband worked till May 2000 and he was not able to come to service from June 2000, the salary up to May

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2000 has already been paid to the petitioner's husband. Insofar as the family pension for the petitioner is concerned, since the service rendered by her husband is very limited, it is not possible to sanction family pension and therefore, the request of the petitioner was rejected in the impugned order of the third respondent.

7. Heard both sides.

8. The learned counsel appearing for the petitioner would contend that under Rule 36 of the Tamil Nadu Pension Rules, 1978, a Government servant can be eligible to get Invalid Pension even for the minimum service or a lesser service than the one actually valid for getting minimum pension, on the health ground. The learned counsel for the petitioner would further contend that since the petitioner's husband died in 2010, the petitioner would be entitled for minimum family pension as envisaged under Rule 49 of the Tamil Nadu Pension Rules, 1978 and in this, the learned counsel would invite this attention of the Court to Rule 49(2)(a) which reads thus:

> 49. Family Pension.-(1).....
> (2)[.....]without prejudice to the provisions contained in sub-rule (3) where a Government servant dies,-
> [(a) after completion of not less than one year continuous service or at any time during his service;]

9. In view of the said rule position, the learned counsel for the petitioner would contend that the prayer of the writ petitioner has to be allowed.

10. Per contra, the learned Special Government Pleader would contend that Rule 36 of the Tamil Nadu Pension Rules, 1978 provides for Invalid Pension. The pre-requisite for the same is that the Government servants must have been declared by the appropriate medical authority to be permanently in incapacity for further service in accordance with the instructions on the subject. In this regard, the learned Special Government Pleader invites the attention of this Court to Rule 36 of the Tamil Nadu Pension Rules, 1978 which reads thus:

> 36. Invalid Pension. - (1) A Government servant who is decided by the appropriate medical authority to be permanently in incapacity for further service in accordance with the instructions on the subject, may be granted invalid pension.

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11. The learned Special Government Pleader further submits that since the petitioner's husband has never been declared or decided by the appropriate medical authority to be permanently in incapacity for further service, no question of Invalid Pension would arise in case of the petitioner's husband and since the petitioner's husband is not even eligible to get Invalid Pension, the question of giving family pension to the petitioner would not at all arise as no family pension under the Rule shall be payable to the family of a Government servant, who dies after retirement unless at the time of his death he was in receipt of or eligible to be paid any of the pension mentioned in Rule 49(2) of the Tamil Nadu Pension Rules under the heading "Note".

12. In that view of the rule position, the learned Special Government Pleader would contend that the petitioner is not entitled for any reliefs as claimed in the petition and hence, he wants the writ petition to be dismissed.

13. This Court has considered the rival submissions made by the respective counsels.

14. It is not in dispute that the petitioner was in service from 26.10.1988 and as he became sick in the year 1996, he was absent from service, of course, intermittently. This position has been confirmed by the third respondent in the very impugned order itself where the third respondent has stated that the petitioner had worked till May 2000 and he had been absent only from June 2000 and he ultimately, died on 14.8.2010. Also, by proceedings dated 21.9.1999, the Special Tahsildar, AdiDravidar Welfare, Salem has requested to the Joint Director of Medical Services, Erode to issue certificate after verifying the physical status of the petitioner's husband as to whether he was fit for continuation of service. Thereafter, by proceedings dated 17.8.2001, the third respondent himself has written to the Joint Director of Medical Services, Erode to examine the physical fitness of the petitioner's husband and to give certificate enabling the authorities to sanction Invalid Pension to the petitioner's husband. Inspite of these communications sent on behalf of the respondents to the medical department authorities, it seems that no action had been taken on that and no certificate on the medical side declaring the physical incapacity of the petitioner's husband was issued.

15. In the result, it made the respondents disable to accede to the request of the petitioner's husband for Invalid Pension and ultimately, ended in the impugned order where family pension asked for the petitioner also has been rejected, citing the reason that the petitioner's husband has rendered only very

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minimum service and it is not eligible for considering the family pension. In this regard, Rule 49(2)(a) can be usefully referred to whereby even the lesser than one year service would make the legal heir of the Government servant, eligible to get family pension and this legal position has not been in much dispute. Moreover, the medical incapacity of the petitioner's husband was noticed and atleast twice, the employer of the petitioner's husband including the third respondent had requested the medical authorities to issue a certificate in that regard which for the reasons best known to the concerned authorities had not been considered. Had the authorities examined the physical fitness of the petitioner's husband in time and a conclusion arrived at, therein, the petitioner's husband would have been in a position to claim Invalid Pension as contemplated under Rule 36 of the Pension Rules which chance was refused to the petitioner's husband without any valid reason.

16. Moreover, now, that the petitioner is a widow of the deceased Government servant, who is otherwise entitled to get family pension under the rule quoted above i.e., Rule 49 (2) (a). Therefore, at any rate, the very minimum family pension for the livelihood of the petitioner can be sanctioned to the petitioner. Even the same has been refused by the respondents in the order impugned. Therefore, this Court is of the opinion that the impugned order is unsustainable as it goes against the spirit of Tamil Nadu Pension Rules and hence, it is liable to be quashed and accordingly, is quashed.

17. In the result, the writ petition is allowed in part with a direction to the respondents to calculate the family pension payable to the petitioner under the Tamil Nadu Pension Rules, especially Rule 49(2)(a) and sanction the same by disbursing the arrears also to the petitioner 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. No costs.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

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+ 1 cc to Mr.P.Rajendran, Advocate Sr.63406

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