BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.04.2016
CORAM :
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal(MD)No.384 of 2016
C.M.P(MD)No.2542 of 2016

1)The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam - Division III),
Karaikudi.

2)The General Manager,
Tamil Nadu State Transport Corporation,
Karaikudi Division,
Karaikudi. .... Appellants/Respondents1&2

vs.

1)Minor R.Soundara Raman,
Rep through his grandfather and
next friend K.C.Subramanian(died)
No.12/338, T-12A, Kamarajar Nagar,
Paramakudi,
Ramanathapuram District.

2)Devi,
Guardian of the Minor writ petitioner,
No.12/338, T-12A, Kamarajar Nagar,
Paramakudi,
Ramanathapuram District. ...Respondents/Writ Petitioners

3)The Administrator,
Tamil Nadu Sate Transport Corporation
Employees' Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai-2.

4 R.Kalimuthu
No.12/338, T-12A, Kamarajar Nagar,
Parakamudi,
Ramanathapuram District. ... Respondents / Respondents 3&4

Appeal filed under Clause 15 of Letters Patent, against the order made in W.P(MD)No.11005 of 2005, dated 22.04.2013.

Prayer in WP(MD). 11005/ 2005 :

Praying for the issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the 3rd Respondent in Lr.44/02/TNSTCEF/2005-3201 dated 20/01/2005 and quash the same and consequently directing the 3rd respondent herein to transfer and grant the family pension to the petitioner herein.

For Appellants : Mr.K.Sathiya Singh
For R2 : Mr.S.M.Mohan Gandhi

JUDGMENT

(Judgment of the Court was made by Mr.Justice S.MANIKUMAR)

Challenge in this appeal, is to an order made in W.P(MD) No.11005 of 2005, dated 22.04.2013, by which, the Writ Court has directed payment of family pension to the 1st respondent/son of the deceased transport corporation employee, represented by his grandfather and next friend.

2. Facts leading to the writ appeal are that V.Ravichandran, employed as Assistant Tradesman in the Tamil Nadu State Transport Corporation, Karaikudi Branch, died in harness on 03.10.1998. Thereafter, family pension was given to his wife R.Kalimuthu, 4th respondent herein. According to the 1st respondent/son of the deceased employee, family pension was given to his mother/4th respondent herein, till she was remarried on 01.09.2003. It is the case of the 1st respondent that after re-marriage in 2003, his mother/4th respondent deserted him and started living with her husband namely, S.Deiveerapandian. At that time, the 1st respondent was aged about 13 years. Grandfather, K.C.Subramaniam became the next friend and guardian, who took care of the minor 1st respondent.

3. It is the further case of the 1st respondent that his grandfather and next friend made a request for family pension, which was rejected by letter dated 20.01.2005 of the 3rd respondent/Administrator, Tamil Nadu Sate Transport Corporation Employees' Pension Fund Trust, Chennai. Hence, he was constrained to challenge the same in W.P(MD)No.11005 of 2005, for issuance of a Writ of Certiorarified Mandamus, to quash the order dated 20.01.2005 and consequently, prayed for a direction to the 3rd respondent/Administrator, Tamil Nadu Sate Transport Corporation Employees' Pension Fund Trust, Chennai, to grant family pension to him.

4. Before the Writ Court, referring to rule 20(2)(b) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, the respondents 1 to 3 in the writ petition/appellants and 3rd respondent herein, have submitted that there is no provision in the said Rules, to sanction family pension to the 1st respondent,

when his mother/spouse of the deceased employee, is alive. They have also stated that Tamil Nadu Pension Rules, 1978, is not applicable to the case of the 1st respondent. During the pendency of the writ petition, grandfather of the 1st respondent also died. Therefore, vide order dated 22.04.2013 made in M.P.No.1 of 2008 in W.P(MD)No.11005 of 2005, one Devi/2nd respondent herein, has been substituted, as guardian of the minor 1st respondent.

5. Adverting to the above contentions and submissions of the learned counsel for the parties, Writ Court in W.P(MD)No.11005 of 2005, dated 22.04.2013, set aside the order dated 20.1.2005 of the third respondent/Administrator, Tamil Nadu State Transport Corporation Employees' Pension Fund Trust, Chennai and directed Family pension to the 1st respondent minor.

> ''7. The provisions of the Tamil Nadu Pension Rules have been framed so as to give reprieve to the members of the family of the deceased employee. Therefore, the Rule has to be interpreted in such a manner that it sub-serves the purpose for which it was enacted and any interpretation which is given which would have the effect of defeating the very purpose of Rule cannot be accepted as the same would be violative of Articles 14 and 21 of the Constitution of India."

6. Assailing the correctness of the abovesaid order, and inviting the attention of this Court to rule 20(2)(b) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, Mr.K.Sathiya Singh, learned standing counsel for the appellant corporation, reiterated that the Rules do not say that if the spouse is remarried, family pension has to be given to the son or daughter, as the case may be.

7.Responding to the above, Mr.S.M.Mohan Gandhi, learned counsel for the 2nd respondent submitted that Tamil Nadu Pension Rules, 1978, enables the son or daughter, to get family pension, even after remarriage of the spouse and therefore, the said Rules has to be applied to the facts on hand. He also submitted that after remarriage, mother deserted the 1st respondent. Notwithstanding the submission of the learned counsel appearing for the parties, on the applicability of two sets of Pension Rules, on the aspect, as to whether the contention of the 1st respondent that he was deserted, after remarriage of the spouse/mother of the 1st respondent, we directed the learned Government counsel for the corporation, to ascertain from the school records of the 1st respondent, as to whether the said submission is factually correct.

8.Reverting, he has produced the application form of the 1st respondent for admission to A.V. Higher Secondary School, Paramakudi, Transfer Certificate and other documents.

Heard the learned counsel for the parties and perused the materials available on record.

9. There is no dispute that Mr.V.Ravichandran, father of the 1st respondent Assistant Tradesman in the Tamil Nadu State Transport Corporation, Karaikudi Branch, died in harness on 03.10.1998. R.Kalimuthu/4th respondent herein and mother of the 1st respondent/son, was paid family pension, till her remarriage on 01.09.2003 with one S.Deiveerapandian. It is the case of the 1st respondent that after re-marriage, R.Kalimuthu/mother had deserted him and started living with her husband and at that time, he was aged 13 years, and looked after by his grandfather.

10. Tamil Nadu Pension Rules have been framed in 1978 and these Rules shall apply to all Government Servants appointed to services and posts in connection with the affairs of the State which are borne on pensionable establishments whether temporary or permanent, but shall not apply to-

(a)persons in casual and daily rated employment;
(b)persons paid from contingencies;
(c)persons employed on contract except when the contract provided otherwise;
(d)members of the All-India Services;
(e)persons entitled to the benefit of a Contributory Provident Fund;
(f)persons who are entitled to the benefits under the Factories Act, 1948 and the Employees' Provident Fund Act, 1952, excluding those who are governed by Statutory Service Rules and belong to pensionable service.

11.The word, 'family pension' is defined under Rule 3(e) of the Tamil Nadu Pension Rules, 1978, as, 'family pension, 1964' admissible under Rule 49 but does not include dearness allowance.

12.Perusal of the Pension Payment Order in PPO.No.0118, dated 15.07.2002 of the Managing Director, Tamil Nadu State Transport Corporation, (Kumbakonam Division III) Ltd., Karaikudi, shows that the application of R.Kalimuthu, wife of the deceased V.Ravichandran, has been considered for grant of family pension, as per the Tamil Nadu State Transport Corporation Employees' Pension Fund Scheme only. According to R.Kalimuthu, on 01.09.2003, she remarried one S.Deiveerapandian and thereafter, a representation dated 27.09.2003, is stated to have been made to the General Manager, Tamil Nadu State Transport Corporation, Karaikudi Division, to pay family pension to her son, through her.

13.Referring to the said representation of the mother, K.C.Subramaniam, grandfather and next friend of the 1st respondent, is stated to have sent a further representation on 06.01.2005.

Considering the letters dated 30.10.2004 and 08.01.2005 respectively, the Administrator, Tamil Nadu Sate Transport Corporation Employees' Pension Fund Trust, Chennai, has rejected the request of K.C.Subramaniam, grandfather and next friend of the 1st respondent, stating that, as per the Tamil Nadu State Transport Corporation Employees' Pension Fund Scheme, it is not feasible. According to the 1st respondent, in the year 2005, he was studying Standard IX.

14. The Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, have been framed and a separate fund has come into operation from 01.09.1998. Mr.V.Ravichandran, father of the 1st respondent died on 03.10.1998. Part VI of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, deals with Pensionary Benefits. As per rule 12 of the Rules, pensionary benefits and eligibility for pensionary benefits to a member or his family, under the Scheme shall be as indicated in Rule 13 to 20. Any interpretation of the rules pertaining to pensionary benefits and also eligibility for pension shall be as per the interpretation given by the Government.

15.Rule 20 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, deals with Benefits to the Family and the same is extracted hereunder:-

''**20.Benefits to the Family**

(1) In the event of death of an employee while in service after having rendered continuous service of 7 years or more, the rate of family pension payable shall be equal to 50% of the last pay drawn from the date following the date of death of the employee for a period of 7 years or period upto the date on which deceased employee would have attained the age of 65 years, had he survived, which ever is less. For the balance period, the **widow/widower** is eligible for pension at the rate of 30% of basic pay last drawn **till the lifetime of the spouse or her remarriage**, which ever is earlier.

2.Family Pension

a) Family Pension shall be admissible to the family of the member who has rendered less than 7 years but not less than one year of service from the date following the date of death of the member while in service at the rate of 30% of basic pay last drawn and the contribution for the period has been paid into the Fund, **till the lifetime of the spouse (widow/widower)**

Exception : In respect of employees who has rendered less than one year of service, the family pension may also be allowed to the family of a member who die in harness, provided that the deceased employee immediately prior to his appointment was examined and declared fit for employment.

b)**<u>After the death of the spouse, the first child is eligible for family pension at the rate of 30% upto the period till he or she attains the age of 25; in the case of male child, family pension is admissible till he attains the age of 25 years or getting employment, whichever is earlier, and in the case of female child, family pension is eligible till she attains the age of 25 or the date of her marriage whichever is earlier.</u>**

c)if the first child becomes ineligible for family pension, the next child will become eligible for family pension and the subsequent children are eligible for family pension in the chronological order, as indicated in clause 20(2)(b), but the Family Pension is eligible only for one child at a time.

d)if the eligible child is mentally retarded or physically handicapped, he or she is eligible for family pension till death.

e)the minimum family pension payable shall be Rs.1275/- or the amount that may be revised from time to time.

f)If a member is not married, he can nominate his father/mother to receive family pension, as in the case of spouse, and they are eligible for family pension till their lifetime. If a member who is not having a family at the time of death can nominate a person to receive the family pension.

3) Death of a Pensioner

a) In the case of death of a pensioner before he attains the age of 65, the spouse is eligible for family pension at the rate at which the pensioner was getting pension at the time of his death or 50% of the last pay drawn at the time of retirement whichever is less till the period the pensioner would have attained the age of 65 years if he is alive, and after that period, the family pension will be at the rate of 30% of the pay last drawn by the member at the time of retirement.

b) **<u>In the case of children, the other terms and conditions mentioned in para 20(2)(b)(c) and (d) will be applicable.</u>**

4) Disappearance of a Member/Pensioner

If a member disappears while in service, or a pensioner disappears, his family is entitled for family pension after the lapse of two years from the date of police complaint (FIR). The legal heir shall have to furnish an indemnity bond before claiming for family pension. The legal heir shall become eligible for pensionary benefits from the third year.''

16. Rule 49 of the Tamil Nadu Pension Rules, 1978, dealing with family pension, reads as follows:-

''49.Family pension. - (1) The provision of this rule shall apply to a Government servant entering service in a pensionable establishment whether temporary or permanent on or after the 1st April 1964, or who was in service on the 31st March 1964 and came to be governed by the Tamil Nadu Government Servants Family Pension Rules, 1964, except the following namely,-

(i) Government servants who retired before the 1st April 1964, but are re-employed on the date or thereafter.

(ii) Government servants who are employed in Government Industrial Undertakings whom the Factories Act, 1948 (Central Act LXIII of 1948) or the Employees Provident Funds Act, 1952 (Central Act XIX of 1952) are applicable excluding those who are governed by statutory service rules and belong to pensionable service.

(iii) Government servants who belong to non-pensionable service namely persons paid from contingencies, work charged staff, casual labour and contract officers.

(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;

(b) after retirement from service and was in receipt of pension on the date of death, the family of the deceased shall be entitled to al family pension (hereinafter in this rule referred to as family pension), the amount of which shall be determined as follows:

1.Below Rs. 200	30 per cent of pay	Minimum of Rs. 50
2.Rs.2000 and above but below Rs.800	15 per cent of pay	Minimum of Rs.60
3.Rs.800 and above	12 per cent of pay	Maximum of Rs.300, and Minimum of Rs. 150

Provided that family pension shall be payable to the family of a Government servant who dies before the completion of one year continuous service, if he was declared fit for Government service by the appropriate medical authority prescribed under the relevant rules immediately prior to his appointment.

NOTE. -

(i) The rules do not prohibit the grant of family pension to the family of a Government servant who commits suicide.

(ii) No family pension under these rules 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 pad any of the following classes of pension, namely.-

Compensation, Invalid, Retiring or Super-annuation

pensions.
(iii) The Government servants who have been compulsorily retired on or after 1st April 1964 and who are in receipt of pension are entitled Family Pension under these rules.
(iv) Notwithstanding the pendency of any disciplinary proceedings against the deceased Government servant concerned family pension shall subject to the provisions in sub-rule (4), be payable to the family of the deceased Government servant.
(2-A) The family pension payable to a family of a Government servant or a retired Government servant who died on or after the 1st April 1979, shall be regulated as under, provided he has completed continuous qualifying service for a period of not less than two years.
G.O. Ms. No. 317/23.7.09 w.e.f. 1/7/1996
(2) in rule 49-
(a) in sub-rule (2-A)-
(i) in clause (i), for the expression "Rs.375" and "Rs.1250", the expression "Rs.1275" and "Rs.6570" shall respectively be substituted;
(ii) in clause (ii), for the expression "Rs.375", the expression "Rs.1275" shall be substituted (b) in sub-rule (3), in clause (a), for the expression "Rs.1250", the expression "Rs. 6570" shall be substituted.
(iii) In the case of death after retirement, the quantum of family pension as calculated above shall not exceed the uncommuted value of super-annuation pension A flat rate of family pension (x x x x] shall be sanctioned to the eligible member of the family of the Government servant who died in service after retirement and who were hitherto not eligible for family pension.
Explanation. - The date of disappearance of the Government servant shall be reckoned from the date on which the complaint is lodged with the police.
(3)(a) In the event of death of a Government servant while in service after having rendered not less than seven years continuous service, the rate of family pension payable shall be equal to 50 per cent of the pay last drawn or twice the family pension admissible under sub-rule (2) or (2-A) as the case may be in clause (i) for the expression "Rs.375" and 1250" the expression "1275" and Rs.6570" shall respectively by substituted. Whichever is less and the amount admissible shall be payable from the date following the date of death of the Government servant for a period of seven years or for a period up to the date on which the deceased Government servant would have attained the age of 65 years had be survived whichever is less.

NOTES-
1.In the case of widows or widowers governed by the

Extraordinary Pension Rules, Madras, the child allowance, if any, shall be paid in addition.

2.-----

3.The pension payable, shall first be calculated at 50 per cent of the pay last drawn. Simultaneously the pension admissible as per the table under sub-rule (2) shall be determined, with reference to the maximum and minimum limits specified. The amount thus arrived at, shall then be doubled. The resultant amount, or 50 per cent of the pay last drawn whichever is less, the amount of the family pension admissible under this sub-rule.

4.In the case of a Government servant deputed to the Corporation of Madras or Tamil nadu Housing Board and who retires or dies while under that institution, the pay including special pay drawn by him at the time of retirement or death, as the case may be shall be taken into account in calculating the family pension.

(b) After the expiry of the period referred to in clause (a) the family in receipt of family pension under that clause, shall be entitled to family pension at the rate admissible under sub-rule (2).

(c) In the event of death of a Government servant after retirement, the family pension as determined under clause (a) shall be payable for a period of seven years, or for a period upto the date on which the retired deceased Government servant would have attained the age of 65 years had he survived, whichever is less.

(3-A) The amount of family pension finally determined under this rule shall be expressed in whole rupees and where the family pension contains fraction of a rupee, it shall be rounded off to the next higher rupee:

Provided that in no case a family pension in excess of a maximum family pension prescribes under this rule shall be allowed.]

(4) Where an award under the Extra-ordinary Pension Rules is admissible, no family pension under this rule shall be authorised.

(5) [omitted]

(6) The period for which the family pension is payable shall be as follows:-

(i) **in the case of a widow or widower upto the date of death or remarriage, whichever is earlier**;

(ii) in the case of a son until he attains the age of twenty five years;

(iii) in the case of an unmarried daughter, until she attains the age of twenty-five years or until she gets married whichever is earlier:

Provided that if the son or daughter of a Government servant including the son or daughter, born after retirement from the marriage solemnized before or after retirement of a Government servant, is suffering from any disorder or disability of mind including mentally retarded or is physically crippled or disabled, whether such handicap manifests before or after retirement or death while in service of a Government servant so as to render him or her unable to earn a living even after attaining the age of 25 years in the case of the sons and 25 years in the case of the daughter, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:-

(j) if such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor children in the order set out in clause (iii) of sub-rule (8) until the last minor child attain the age of 25 and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him/her for life.

(ii) if there are more than one such son or daughter suffering from disorder or disability of mind including mentally retarded or who are physically crippled or disabled, the family pension shall be paid, -

(a) in the order of their birth, irrespective of the sex of the child and the immediate younger of him or her will be eligible for family pension only after the elder above him or her becomes ineligible for family pension.

(b) in cases of twin children to such twin children in equal shares. In the event of any of such children ceasing to be eligible for family pension his or her share of family pension will become payable to the other such child and when both such children become ineligible for family pension the family pension will become payable to the next eligible child or twin children, as the case may be;

(iii) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor;

(iv) before allowing the family pension for life to any such son or daughter the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible the exact mental or physical condition of the child.

(v) the person receiving the family pension as guardian or such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to

suffer from disorder or disability of mind or continues to be physically crippled or disabled.
(vi) such daughter shall not be eligible for family pension from the date on which she gets married.
(vii) the family pension payable to such son or daughter shall be stopped if he or she starts earning his (or) her livelihood.
(viii) it shall be the duty of the guardian of such son or daughter to furnish every month to the Treasury or Bank, as the case may be a certificate to the effect that he or she has not started earning his or her livelihood; and in the case of such daughter that she has not yet married.
(ix) In the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the Government Servant or the pensioner as the case may be, and in case no such nomination has been furnished to the Head of Office by such Government servant or pensioner during his life time, to the person nominated by the spouse of such Government servant of family pensioner, as the case may be, later on.
(7)(a)(i)Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares.
(ii) **On the death of a widow, her share of the family pension shall become payable to her eligible child**:
Provided that if the widow is not survived by any child, her share of family pension shall be payable to the other widows in equal shares or if there is only one such widow, in full to her.
(b) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner:
Provided that on the share or shares of family pension payable to child Or children or to a widow or widows ceasing to be payable, such share or shares shall be payable to the other widow or widows and or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.
(c) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from a divorced wife or wives the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the Government servants or pensioner had

she not been so divorced:
provided that on the share of family pension payable to such a child or children or to a widow or widows ceasing to be payable such share or shares shall be payable to the other widow or widows and or to other child or children otherwise eligible in equal shares, or if there is only one widow or child, in full, to such widow or child.
(7-A) Where family pension is payable to more than one person, each share containing fraction of a rupee, shall be rounded off to the next higher rupee (Except in cases where family pension, if all the shares are put together exceed the maximum limit of family pension admissible):
Provided that if a family pension (exceptional and rare) where the share of family pension as so rounded off under this sub-rule when added, causes an excess over the maximum limit, such case shall be referred to the Government.
(8) (i) Except as provided in sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time.
Explanation. - For the purpose of this rule the twin children born at a single birth shall be treated as of the same age and made eligible for family pension in equal shares.
(ii) If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.
(iii)(a) If sons and unmarried daughters are alive, the eligible male or female children will be entitled for family pension in the order of their birth, irrespective of the sex of the child, and the immediate younger of him or her will be eligible for family pension only after the elder above him or her becomes ineligible for family pension.
(b) In the case of twin children family pension is payable to such twin children in equal shares in the event of anyone of such children ceasing to be eligible for family pension, his or her share of family pension will become payable to the other such child and when such children become ineligible for family pension, the family pension will become payable to the next eligible child or twin children, as the case may be.
(9) --------
(10) Where family pension is granted under this rule to minor, it shall be payable to the guardian on behalf of the minor.

(11) In case both wife and husband are Government servants and are governed by the provisions of this rule

and one of them dies while in service or after retirement, the family pension in respect of the deceased shall become payable to the surviving husband or wife, and in the event of the death of the husband or wife, the surviving child or children shall be granted the two family pensions in respect of the deceased parents, subject to the limits specified below, namely. _
(a)(i) if the surviving child or children is or are eligible to draw two family pensions at the rate mentioned in sub-rule (3), the amount of both the pensions shall be limited to two thousand five hundred rupees per mensem;
(ii) if one of the family pensions ceases to be payable at the rate mentioned in sub- rule (3) and in lieu thereof the pension at the rate mentioned in sub-rule (2) becomes payable, the amount of both the pensions shall also be limited to 1(two thousand and five hundred rupees per mensem;
(b) if the family pensions are payable at the rates mentioned in sub-rule (2), the amount of two pensions shall be limited to 1(one thousand two hundred and fifty) rupees per mensem.
(11-A) Where female Government Servant or male Government servant dies leaving behind a judicially separated husband or widow and there is no child or children the family pension in respect of the deceased shall be payable to the person surviving:
Provided that wherein a case the judicial separation is granted oh the ground of adultery and the death of the Government servant take place during the period of such judicial separation, the family pension shall not be payable to the person surviving if such person surviving was held guilty of committing adultery.
(11-B) (a) Where a female Government servant or male Government servant dies leaving behind a judicially separated husband or widow with a child or children, the family pension payable in respect of the deceased shall be payable to the surviving person provided he or she is the guardian of such child or children.
(b) Where the surviving person has ceased to be the guardian of such child or children, such family pension shall be payable to the person who is the actual guardian of such child or children.
(11-(c) (a) If the person who in the event of death of a Government servant while in service or after retirement, is eligible to receive family pension under this rule, is charged with the offence of murdering the Government servant or for abetting in the commission of such an offence, the claim of such a person including other eligible member or members of the family to receive the

family pension shall remain suspended till the conclusion of the criminal proceedings instituted against him.

(b) If on the conclusion of the criminal proceedings referred to in clause (a) the person concerned.-

(i) is convicted for the murder or abetting in the murder of the Government servant, such a person shall be debarred from receiving the family pension which shall be payable to other eligible member of the family from the date of death of the Government servant;

(ii) is acquitted of the charge of murder or abetting in the murder of the Government servant, the family pension shall be payable to such person from the date of the death of the Government servant.

(11-D) Where the family pension is payable to a son or daughter born after retirement, or after the January 1979, such family pension shall be payable with effect on and from the 1st January 1989.)

(12)(a)(i) As soon as a Government servant has completed one year's service, he shall give details of his family in Form 3 to the Audit Officer, if he is a self drawing Government servant and to the Head of Office, if he is a non-self drawing Government servant:

Provided that a Government servant holding a lien or suspended lien on a non-self drawing service or post and holding a self drawing service or post in a temporary or officiating capacity shall furnish the details of his family in Form 3 to the Head Office:

(ii) if the Government servant has no family, he shall furnish the details in Form 3 as soon as he acquires a family.

(b) The Government servant shall communicate to the Audit Officer or the Head of Office, as the case may be any subsequent change in the size of his female child.

(c) The Audit Officer shall on receipt of the said From 3, Keep it in safe custody and acknowledge receipt of the said From 3, all further communication received from the Government servant in this behalf.

(d) The Head of Office shall, on receipt of the said Form 3, paste it in the service book of the Government servant concerned and acknowledge receipt of the said From 3 and all further communications received from the Government servant in this behalf.

(e) The Audit Officer or the Head of Office, as the case may be on receipt of communication from the Government servant regarding any change in the size of family shall incorporate such a change in From 3.

(13) For the purposes of this rule,-

(a) continuous service means service rendered in a temporary or permanent capacity in a pensionable establishment and does not include-

(i) period of suspension, if any,
(ii) period of service, if any rendered before attaining the age of eighteen Years; and
(iii) period of extraordinary leave without medical certificate.
(b) family, in relation to a Government servant means-
(i) (a) Wife in the case of a male Government servant or husband in the case of a female Government servant; (b) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.; and
NOTE.- Wife and husband shall include respectively judicially separated wife and husband.
NOTE.- Where the appointing authority referred to in sub-rule (3) of Rule (6) decides that for reasons to be recorded in writing, a child or children from a judicially separated deceased female Government servant should receive the family pension in preference to judicially separated husband of the deceased Government servant, such husband shall not be regarded as covered by the expression family.
(ii) son who has not attained the age of twenty-five years and unmarried daughter who has not attained the age of twenty-five years including such son and daughter adopted legally adopted and also such son or unmarried daughters born through illegitimate wife before retirement and such son or daughter born after retirement, on or after 1st January 1979.
(iii) legally adopted son and daughter, father failing which the mother, in the case of an unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant.
(c)" pay" means the emoluments as specified in Rule 30:
Provided that in a case in which average emoluments as referred to in Rule 31 are treated as emoluments for the purpose of Death-cum-Retirement Gratuity refers to in Rule 45, such average emoluments shall be treated as pay:
Provided further that if the emoluments of the deceased Government servant have been reduced during the last ten months of his service other than as penalty, the average emoluments as referred to in rule 31 shall be treated as pay.
NOTE 1- On behalf of deputation (Duty) allowance while on deputation to other Government shall also be taken into account as pay for the purpose of this rule. NOTE 2.- 2 [...]

(13-A) A military pensioner, who on retirement from military service on retiring pension, Service pension, or invalid pension is governed for the grant of ordinary family pension under military rules and is re-employed in a civil service or civil post before attaining the age of superannuation, shall for the purpose of eligibility for the family pension under this rule or the family pension already authorised under military rules be governed as follows:-

(a) If he dies while holding a civil post, his family be allowed family pension under this rule, or the family pension authorised at the time of retirement or discharge from the military service, whichever is more advantageous to the family.

(b) If he has an appointment to a civil service or post, opted to retain military pension for the past military service.

(i) and retires from the civil re-employment without earning any pension therefor his family shall be entitled for family pension as authorised at the time of his retirement or discharge from the military service;

(ii) retires from the re-employment after becoming eligible for pension therefor, he shall exercise an option at the time of applying for pension for the civil service either to be governed by family pension under this rule or to avail of family pension benefits, as authorised at the time of his retirement or discharge from the military service and such option once exercised shall be final.

(c) If an appointment to a civil service or post, he has opted to surrender military pension and count the military service for civil pension, his family shall be entitled to family pension under this rule.

(13-B) Family Pension admissible under this rule shall not be granted to a person who is already in receipt of family pension or is eligible therefor under any other pension rules:

Provided that a person, who is otherwise eligible for family pension under this rule, may opt to receive family pension under this rule, if he forgoes family pension admissible from any other rules.

(14) Nothing contained in this rule shall apply to -

(a) a re-employes Government servant who had retired before the 1st April 1964, from-

(i) Civil Service on retiring pension, or superannuation pension, or

(ii) Military service on retiring pension, service pension or invalid pension and who on the date of re-employment had attained the age of superannuation applicable to the post in which he is re-employed.

(b) a military pensioner who has retired from military service on or after the 1st April 1964 or retires from such service after the commencement of these rules on retiring pension, service pension or invalid pension and is re-employes in a civil service or post before attaining the age of superannuation.

(c) a Government servant who, on absorption in a service or post in or under a corporation or company wholly or substantially owned or controlled by the Government or any other body, incorporated or not, is sanctioned pension under Rule 34.

49-A. Benefits to the family of a disappearing Government servant. - When a Government servant disappears leaving his family, the family of such Government servant shall be entitled immediately for the payment of dues of salary leave encashment. General Provident Fund and Special Family Pension-cum-Gratuity and after lapse of a period of two years of such disappearance, for the payment of dues of Death-cum-Retirement Gratuity and Family Pension in accordance with the nomination made such Government Servant, subject to the following conditions, namely.-

(i) a complaint must have been lodged with the police station concerned and a report obtained that the Government servant has not been traced despite all efforts made by the police; and

(ii) An indemnity bond must have been executed by the nominee or dependents of the such Government servant to the effect that all payments shall be adjusted against the payment due to the such Government servant in case he appears later and makes any claim.

49-B. Family pension in certain cases not to be governed by the Family Pension Rules,1964 - (1) Where a Government servant who is not governed by the Tamil Nadu Government Servants' Family Pension Rules, 1964 dies:

(a) after completion of not less than one year continuous service; or

(b) after retirement from service, the family of the deceased Government servant shall be entitled to a family pension at a flat rate of Rs. 100 per mensem.

(2) Any member of the family of the deceased Government servant, who is in receipt of a family pension under any rules in force prior to the 1st April 1964, may exercise

his option to receive family pension under the said rules or under sub-rule (1).

(3) Every member of the family of the deceased Government Servant, who opts to continue to be governed by the old rules, shall be paid a family pension determined by taking together the family pension and dearness allowance thereon paid to him immediately before the 1st April 1979.

(4) The conditions of eligibility for family pension specified in Rules 49 shall apply *mutatis mutandis* in respect of the family pension under sub-rule(1).''

17. On the issue as to whether there was any desertion on the part of R.Kalimuthu/mother of the 1st respondent, after remarriage, with one S.Deiveerapandian, it could be seen that she has sought for payment of family pension to her minor son through her, claiming that she is the guardian. This representation is stated to have been made on 27.09.2003, after remarriage. Whereas, Mr.K.C.Subramaniam, grandfather and next friend, stated to have made a representation dated 06.01.2005, stating that pension should be paid to the 1st respondent.

18. Perusal of the photocopies of the records from A.V.Higher Secondary School, Parakamudi, shows that the address of the 1st respondent, is mentioned as 12/338, T12, Kamarajar Nagar, Paramakudi. The 1st respondent has joined the school on 05.06.2002, in Standard VI. He has completed X Standard in 2007. R.Kalimuthu, mother of the 1st respondent, has applied for transfer certificate and accordingly, he has furnished the details. Column Nos.16 and 17 of the Transfer Certificate are extracted hereunder:-

16) பெற்றோர் அல்லது காப்பாளர் மாணவர் / மாணவி மாற்றுச்சான்றிதழ் கோரி விண்ணப்பித்த தேதி
Date on which application for transfer certificate was made on behalf of the pupil by the parent or guardian : 31 MAY 2007

17) மாற்றுச்சான்றிதழின் தேதி Date of the transfer certificate : 31 MAY 2007

19.In the portion relating to 'Declaration by the parent or Guardian', R.Kalimuthu/mother of the 1st respondent, has signed the declaration, declaring that the contents of Column Nos. 2 to 7 were correct, to her knowledge. Declaration given by her is extracted hereunder:-

பெற்றோர் அல்லது காப்பாளர் அளிக்கும் உறுதிமொழி

DECLARATION BY THE PARENT OR GUARDIAN

மேலே 2 முதல் 7 வரையிலான இனங்களுக்கெதிரே பதிவு செய்யப்பட்டுள்ள விவரங்கள் சரியானவை என்றும் எதிர் அவற்றில் மாற்றம் எதுவும் கேட்கமாட்டேன் என்றும் நான் உறுதியளிக்கின்றேன்.

I hereby declare that the particulars recorded against items 2 to 7 are correct and that no change will be dema me in future.

R.Soundhararaman
மாணவர் / மாணவியின் கையொப்பம் (Signature of the pupil)

R. Kalimuthu
பெற்றோர் அல்லது காப்பாளரின் கைய
Signature of the Parent / Guar

மாற்றுச்சான்றிதழ், இடைநிலைத்தேர்வு மதிப்பெண் பட்டியல் பெற்றுக் கொண்டேன்.

12.4.16.
Headmaster
A.V.Hr. Sec.School,
Paramakudi - 623 707

20. The contention of the 1st respondent that after remarriage in 2003, mother had deserted him, cannot be accepted, for the reason that entries in the Transfer Certificate makes it abundantly clear that as parent/mother R.Kalimuthu, has signed the declaration. Request for issuance of transfer certificate has been made on 31.05.2007 and thus it is evident that even after her remarriage in 2003, she has been taking care of her son.

21. Remedy under Article 226 of the Constitution of India is equitable in nature. Statements contrary to records made before the Writ Court, seemed to have weighed the mind of the Writ Court in issuing directions. However, it could be seen that, the Writ Court has interpreted Rule 20(2)(b) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, 1998, on the lines of Rule 49 of the Tamil Nadu Pension Rules, 1978. Rule 12 of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, 1998, states that pensionary benefits and provision of other benefits to a member of the family under the Scheme shall be as indicated in Rules 13 to 20. Any interpretation of the rules pertaining to pensionary benefits and also eligibility for pension shall be as per the interpretation given by the Government.

22. When the pensionary benefits and members of the family are governed by the provisions of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, 1998, the question before us is, whether it would be appropriate to extend the pensionary benefits to the son, when the spouse is remarried and alive. The Tamil Nadu Pension Rules 1978, extends family pension to the widow or widower upto the age of death or remarriage, and family pension is continued to be paid to the other eligible members of the family. Whereas, under the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, when it comes to children, Rule 20(2)(b) states that they are entitled family pension only in the case of death of the widow or widower, as the case may be. In the instant case, mother is remarried and alive.

23. Clause 20(1) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules states that the widow/widower is entitled to pension till the life time of the spouse or her marriage, whichever is earlier. But in so far as family pension to other members of the family, is concerned, in clause 20(2)(b), the word, 'remarriage' is omitted. Going through the Tamil Nadu State Transport Corporation Employees Fund Rules, 1998, we are not able to decide any reason as to why family pension is denied to the child, after remarriage of the widow, whereas, death of the widow alone is taken into consideration, for payment of family pension to the child.

24. Though Rule 20(2)(b) has not been challenged, still, violation of Article 14 of the Constitution of India, looms writ large, on the face of record that when compared to Government servants, governed by the Tamil Nadu Pension Rules, 1978, their

children being granted family pension, after remarriage or death of the widow, whichever is earlier. While the heading of Rule 20 of the Tamil Nadu State Transport Corporation Employee Pension Fund Rules, 1998, states benefits to the family, we are also unable to understand, as to how it can be restricted to wife, only till her death or remarriage and not, extended to children after remarriage, unlike in Tamil Nadu Pension Rules, 1978. While setting aside the order dated 20.01.2015 of the third respondent/Administrator, Tamil Nadu State Transport Corporation Employees' Pension Fund Trust, Chennai, the writ court has observed that the provisions of the Tamil Nadu Pension Rules have been framed so as to give reprieve to the members of the family of the deceased employee. Therefore, the Tamil Nadu Transport Corporation Employees Pension Fund Rules, have to be interpreted in such a manner that it sub-serves the purpose for which the rules were enacted and any other interpretation would have the effect of defeating the very purpose of rule and that the same would be violative of Articles 14 and 21 of the Constitution of India. While testing the decision of the third respondent in rejecting the request of the 1st respondent, for family pension and the reasoning of the writ Court, we are not inclined to sustain the rejection.

For the reasons stated supra, the writ appeal is dismissed. No costs. Consequently, C.M.P(MD)No.2542 of 2016 is closed.

Sd/-
Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar

NBI

To

1)The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam - Division III),
Karaikudi.

2)The General Manager,
Tamil Nadu State Transport Corporation,
Karaikudi Division,
Karaikudi.

3)The Administrator,
Tamil Nadu Sate Transport Corporation
Employees' Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,Chennai-2.

+1cc to Mr.K.Sathiya Singh,Advocate Sr.No. 25553

+1cc to Spl.Government Pleader Sr.No. 25770

+1cc to Mr.S.M.Mohan Gandhi,Advocate Sr.No. 25465

JAM/09.11.16/SS 2/21p-7c

W.A(MD)No.384 of 2016

29.04.2016