

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.16966 of 2011
and
M.P No.1 of 2011

P. Janaki ... Petitioner

Vs.

1. The Captain / Record Officer
Artillery Records
Nasik Road Camp
Pin - 422 102.

2. The Accountant General
Anna Salai
Chennai - 600 018.

3. The Defence Pension
Disbursing Officer
Vellore - 632 006.

4. The Commanding Officer/
1 (TN) Battallion NCC
Egmore, Chennai - 8.

5. The Assistant Treasury Officer
Sub Treasury, Arakkonam
Vellore - 632 009.

सत्यमेव जयते...

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 2nd respondent to consider the representation of the petitioner dated 08.10.2010 and to grant family pension to the petitioner upon the death of her husband M. Panchaksharam, who served in the civil post as Store Attendant in 1 (Tamil Nadu) Battallion, National Cadet Crops with effect from 03.03.2009 and pass further orders.

For Petitioner : Mr.R. Munuswamy
For Respondents : Mr. V.T. Balaji

O R D E R

This Writ Petition has been filed seeking for a direction to the 2nd respondent to consider her representation dated 08.10.2010 and to grant family pension to the petitioner upon the death of her husband M. Panchaksharam, who served in the civil post as Store Attendant in 1 (Tamil Nadu) Battallion, National Cadet Crops with effect from 03.03.2009.

2. Learned counsel for the petitioner submitted that the husband of the petitioner was originally recruited to Indian Army as Sepoy (soldier) in the year 1965 and served in various regiments. After 19 years, the petitioner's husband was discharged from service, with effect from 01.01.1984 and was drawing pension for military service from the 1st respondent, through the 3rd respondent. Subsequent to his retirement, he joined as a Store Attendant in First (1) (TN) Battallion, National Cadet Crops and retired on 08.12.2000 as Selection Grade Store Attendant. Thereafter, he was drawing pension from the 2nd respondent, through the 5th respondent, for the services rendered in State. On 02.03.2009, the petitioner's husband died. It is submitted by the learned counsel for the petitioner that since the petitioner was informed that she is entitled to draw family pension, either from Military Service or State Civil service, the petitioner opted to draw family pension from military service. Based on the option letter and the non payment certificate of the 3rd respondent, the family pension for State civil services, was cancelled. Later, the petitioner came to know that she is entitled to get family pension for both the services, since her husband has served in the civil post after completion of his service in the military service. Therefore, the petitioner submitted a representation dated 08.10.2010 to the 2nd respondent seeking for grant of family pension, for the services rendered by her husband in civil post as Store Attendant. Since no action has been taken on her representation, the petitioner has come up with this writ petition, for the aforesaid prayer.

3. Learned counsel appearing for the respondents would submit that the petitioner has to approach the concerned Tribunal to work out her remedy and therefore the writ petition filed before this Court is not maintainable. However, considering the limited scope of prayer sought for by the petitioner, in the present writ petition, the same shall be considered by the respondents, if the said representation is pending before the 2nd respondent on merits, in accordance with law, within the period stipulated by this Court.

4. Heard learned counsel for the petitioner and the learned Senior Panel Counsel for the respondents.

5. As far as maintainability of the matter is concerned, both the parties have agreed that the petitioner should have approached only the concerned Tribunal, for the relief prayed in this writ petition. However, considering the fact that the present writ petition has been filed in the year 2011 and is pending for more than 5 years before this Court, with the consent of both the parties, the writ petition is taken up for disposal. Therefore, the 2nd respondent is directed to consider the representation of the petitioner dated 08.10.2010, on merits and in accordance with law, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is also directed to furnish a copy of the said representation, along with a copy of this order to the 2nd respondent.

6. The Writ Petition is disposed of, on the above terms. Consequently, the connected M.P is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

avr
To

1. The Captain / Record Officer
Artillery Records
Nasik Road Camp
Pin - 422 102.
2. The Accountant General
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3. The Defence Pension Disbursing Officer
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4. The Commanding Officer/
1 (TN) Battallion NCC
Egmore, Chennai - 8.

5. The Assistant Treasury Officer
Sub Treasury, Arakkonam
Vellore - 632 009.

+1cc to Mr.R.Munuswamy, Advocate Sr.12450
+1cc to Mr.V.T.Balaji, Advocate Sr.12508

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srg 18/04/2017



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