

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.32019 of 2017
and WMP.No.35174 of 2017

J.Narayan

...Petitioner

Vs.

1.The Deputy Director
Local Fund Audit
Tamil Nadu Agricultural University
Coimbatore-641 003

2.The Registrar
Tamil Nadu Agricultural University
Coimbatore-641 003

3.The Comptroller
Tamil Nadu Agricultural University
Coimbatore-641 003

...Respondents

Prayer :- Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the issuance of letter dated 11.08.2017 L.Dis.No.0487/A1/2017 issued by the 1st respondent and the consequent letter issued No.P38Lp6/Family Pension and FSF(L) M.S.3/2016 dated 26.09.2017 and quash the same and direct the respondents to grant family pension to Mr.J.Swaminathan considering the disability certificate and the guardianship certificate issued under the National Trust Act together with arrears.

For Petitioner : Mr.S.Kamalesh Kannan Subramnian

For Respondents : Mr.Abdul Saleem, Standing counsel

O R D E R

This Writ Petition is directed against the impugned orders dated 11.08.2017 passed by the 1st respondent; 26.09.2017 passed by the 3rd respondent, wherein, the request of the Petitioner for grant of Family Pension in respect of Thiru.J.Swaminathan, was returned, stating that the disability

certificate and guardianship certificate enclosed with the Family Pension Proposal are contrary to the Government Orders and Tamil Nadu Pension Rules, 1978, Rule No.49(IV) and (V) and also by stating that the disability certificate should be obtained from concerned authority. The order of 1st respondent dated 11.08.2017 also says that the disability certificate should be obtained from concerned authority, once in three years, if the percentage of disability is below 100%.

2. The learned counsel for the petitioner submits that the petitioner herein is J.Narayan and his father viz., Dr.M.S.Jayaraman, after serving as Professor in Madras Veterinary College, Madras, retired from service on 31.12.1982 and from 01.01.1983 all his pensionary benefits were granted to Dr.M.S.Jayaraman. The father of petitioner herein expired on 27.04.2016 leaving behind the petitioner and his younger brother viz., Mr.J.Swaminathan, as his legal heirs and the mother Sundari Jayaraman predeceased his father on 27.11.2012. The petitioner's younger brother Mr.J.Swaminathan is suffering from mental retardation. The petitioner's father with a view to provide some financial protection after his death, requested the Tamil Nadu Agricultural University to sanction the family pension in the name of Mr.J.Swaminathan and accepting the said request, necessary approval was granted by the 1st respondent for sanctioning the family pension in favour of Mr.J.Swaminathan and pursuant to the same, necessary entry in this regard was also made in the pension book of Mr.M.S.Jayaraman.

3. It is further averred that the petitioner herein viz., Mr.J.Narayan was nominated by petitioner's father, as guardian to Mr.J.Swaminathan, to sign all documents required to draw family pension. After the demise of father of the petitioner on 27.04.2016, all his pensionary benefits have been withheld by the respondents till date. When a request to the 3rd respondent was made on 28.05.2016, seeking to sanction family pension to and in favour of Mr.J.Swaminathan, along with necessary documents viz., death certificate of petitioner's father, mother, legal heirship certificate and the guardianship certificate issued under the National Trust Act, 1999, the 3rd respondent, by letter dated 05.10.2016, directed the petitioner to produce guardianship certificate obtained from the Local Committee headed by the District Collector under Section 14 of the National Trust Act, 1999. In response, by letter dated 09.03.2017, the Guardianship Certificate dated 11.05.2010, issued under the National Trust Act, 1999, in which, the petitioner was appointed as Guardian to Mr.J.Swaminathan, was submitted to the 3rd respondent for consideration. Further, on 17.04.2017, the 3rd respondent had submitted the proposal to the 1st respondent for necessary approval and sanctioning family pension. The 1st respondent had returned the proposal stating

the disability certificate enclosed with the family pension proposal is contrary to the order issued by the Government Letter dated 22.09.2015 and the Tamil Nadu Pension Rules, 1978.

4. The learned counsel for the petitioner vehemently contended that the reasons cited by the 1st respondent for returning the proposal of grant of family pension, is not sustainable in law. The clarification letter dated 22.09.2015 issued by the Government is with regard to payment of family pension to the children in cases of persons suffering from Chronic Schizophrenia and divorced or widowed or unmarried daughter and hence the said Clarification Letter dated 22.09.2015, is not applicable to the case of Mr.J.Swaminathan, as he suffers from mental retardation and the person suffering from Mental Retardation is governed by the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and Guardianship Certificate issued under Section 14 of the Act, 1999, has life time validity.

5. This Court heard the submissions made by the learned counsel for the petitioner and the learned Standing counsel for the respondents and perused the records carefully.

6. When the National Identity Certificate of Mr.J.Swaminathan has been issued by the District Disabled Rehabilitation Officer, Chennai, the same cannot be disputed. Further, the Guardianship certificate appointing the petitioner as guardian of his younger brother viz., Mr.J.Swaminathan, was rightly issued by the National Trust, framed under Section 14 of National Trust Act, 1999, and duly signed by the Committee consisting of the Director, The Spastics Society of Taminadu, Chennai, a representative member of a registered organisation, an officer from the District Disabled Rehabilitation Centre, Chennai (Convenor) and the District Collector, Chennai (as Chairman), is in consonance with the ratio laid down by this Court by Judgment dated 16.04.2013 in O.P.No.62 of 2013 [G.Nityanandam Vs. 1)D.Saritha and 2)G.Jeevanandam].

7. The above said decision of this court shows that the Petitioner therein filed the Original Petition, seeking to appoint him as guardian of Miss.G.Prabhavathy, who is a mentally retarded person, under the provisions of Guardians and wards Act, 1890 and the difficulty expressed therein was that the procedure of appointment of guardian is cumbersome and the petitioner was driven from pillar to post, hence, this court, directed the petitioner therein, to approach the District Collector, Chennai, under Section 14 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, in terms of

Rule 16(1) of the National Trust For Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability.

8. The learned Standing counsel appearing for the respondents fairly submitted that the reasoning given under the impugned order for returning the Family Pension Proposal of Mr.J.Swaminathan is not appropriate and that the Disability certificate and the Guardianship certificate enclosed by the petitioner along with the Family Pension proposal are all in order. He further submits that the petitioner may be directed to re-present the family pension proposal before the 3rd respondent and the 3rd respondent may be directed to forward the same to the 1st respondent, who shall consider the same and act accordingly.

9. Taking into consideration the submissions made before this court and the legal principles enunciated by this Court in O.P.No.62 of 2013 dated 16.04.2013, this court is inclined to pass the following directions:-

(i) The impugned orders dated 11.08.2017 and 26.09.2017 are set aside.

(ii) This Writ Petition is allowed.

(iii) The petitioner is directed to re-present the family pension proposal in respect of Mr.J.Swaminathan, to the 3rd respondent along with National Identity Card (Disability Certificate) and Guardianship Certificate issued under the National Trust Act, 1999, along with a copy of this order.

(iv) The 3rd respondent, on receipt of re-presented family pension proposal, shall forward the same to the 1st respondent, who in turn, shall consider and pass appropriate orders for disbursement of the family pension in respect of Mr.J.Swaminathan, as expeditiously as possible and the said exercise shall be completed preferably within 4 weeks, from the date of receipt of family pension proposal.

No costs. Consequently, connected WMP is closed.

Sd/-

Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

nvsri

To

1.The Deputy Director
Local Fund Audit
Tamil Nadu Agricultural University
Coimbatore-641 003

2.The Registrar
Tamil Nadu Agricultural University
Coimbatore-641 003

3.The Comptroller
Tamil Nadu Agricultural University
Coimbatore-641 003

+lcc to Mr.S.Kamalesh Kannan, Advocate SR.No.88086

+lcc to Mr.Abdul Salem, Advocate SR.No.88270

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GN(25/01/2018)



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