

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

W.P.No.23624 of 2017

V.Rani

.. Petitioner

Vs.

1. The Subordinate Judge,
Hosur, Krishnagiri District.

2. The Accountant General,
No.361, Anna Salai,
Chennai-600 015.

... Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution, seeking a writ of Mandamus, directing the respondents to pay the terminal benefits, arrears of pension, family pension and all other monetary benefits under law with interest within the stipulated period, on account of the deemed death of the petitioner's husband.

* * *

For Petitioner : Mr.M.P.Saravanan

For Respondents: Mr.M.Baskar for R1

Ms.Hema Muralikrishnan for R2

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. In the instant writ petition, the following substantive direction is sought :

"..... to issue a order in the nature of Writ of Mandamus or any other Writ, order of direction, directing the respondents to pay the terminal benefits, arrears of pension, family pension and all other monetary benefits under law with interest within the stipulated period, on account of the deemed death of the petitioner's husband,"

2. In order to adjudicate upon the writ petition, we need to note the following broad facts :

2.1. The writ petitioner's husband, one, Mr.Venkatesan, who was employed as Junior Bailiff at the Hosur Sub Court, retired from service on 30.11.2012.

2.2. It appears that the writ petitioner's husband went missing; when, a complaint, in that behalf, was lodged with the police on 23.03.2016. The writ petitioner obtained a certificate of registration of missing complaint from the police, on 29.03.2016.

2.3. Immediately, thereupon, the writ petitioner dispatched a representation dated 22.11.2016, to the second respondent, i.e., Accountant General, claiming thereby, her husband's terminal benefits, arrears of pension, family pension and other benefits, that had accrued to him, in law, along with interest.

2.4. This representation was pivoted on the analogy that a person missing had to be equated with a person, who is dead. Section 108 of the Evidence Act, 1872 enables such a presumption being made where a person is not heard of for a period of seven (7) years or more.

2.5. Admittedly, the writ petitioner has received all benefits, which accrue to her husband, upon superannuation, except family pension.

3. Notice in the writ petition was issued on 01.09.2017. Notice was made returnable on 09.10.2017. On that date, Mr.Baskar, entered appearance on behalf of respondent No.1, when, he was given a week's time to file a counter affidavit in the matter. Furthermore, a direction was issued to place on record photocopies of G.O.Ms.No.478, dated 04.06.1987, and G.O.Ms.No.43, dated 22.01.1991.

4. Though, no counter affidavit has been filed, Mr.Baskar says that the relief claimed in the writ petition would turn on the interpretation to be given by the Court, to provisions of the Government Orders issued on the subject and the contents of letter bearing No.21396A/Pension/91-2, dated 09.04.1991, issued by the Government of Tamil Nadu, Finance (Pension) Department.

4.1. In other words, Mr.Baskar says that the facts set out above are not in dispute and therefore can be argued by him based on the record.

5. We have perused the G.O.Ms.No.478, dated 04.06.1987, and G.O.Ms.No.43, dated 22.01.1991 (collectively referred to as GOs).

5.1. These GOs have been issued based on such like order

issued by the Government of India (GOI). The GOI issued such an order looking at the difficulty faced by family members, when, their relatives, who were employed as Government servants, went missing. The GOI, via its order had reduced, in a sense, the statutory period of presumption of death of its employee from seven (7) years to two (2) years.

6. In so far as the payment of family pension is concerned, in G.O.Ms.No.478 dated 04.06.1987, it is indicated that given the difficulties faced by families of employees, who have disappeared, the family pension could be released, after lapse of a period of one (1) year. The claimant, i.e., the family, would, however, have to comply with other conditions contained in the said G.O., which would include, lodgement of a report about the fact that the employee has gone missing and furnishing an indemnity bond that all payments would be adjusted against payments due to the employee, in case, the employee emerges on the scene, or makes a claim.

6.1. G.O.Ms.No.478, dated 04.06.1987, was followed by G.O.Ms.No.43, dated 22.01.1991. The Government of Tamil Nadu in modification of the earlier G.O., enhanced the period, from one (1) year to two (2) years, in so far as the death-cum-gratuity and family pension were concerned. In sum, a partial modification was brought about vis-a-vis G.O.Ms.No.478, dated 04.06.1987.

6.2. This G.O.Ms.No.43, dated 22.01.1991, would ordinarily have applied to all entities, which included employees of local bodies and aided educational institutions. However, in order to lend a greater clarity to the matter, Government of Tamil Nadu issued a clarification letter dated 09.04.1991, to which we have made a reference above, wherein, it is specifically stated that the period of two (2) years for grant of family pension and gratuity would apply to employees/pensioners of Government aided educational institutions and local bodies.

7. As indicated above, the First Information Report, in this case, was filed by the petitioner vis-a-vis her husband on 22.03.2016. Therefore, if, G.O.Ms.No.478, dated 04.06.1987, and G.O.Ms.No.43, dated 22.01.1991, were to apply, then, the writ petitioner will have to wait till the expiry of two (2) years from the date of lodgement of the FIR. It is not disputed before us by the learned counsel for the respondents that the period of two (2) years will expire only on 21.03.2018.

8. In these circumstances, the writ petition is disposed of, with a direction to the respondents to pay family pension to the writ petitioner, with effect from 22.03.2018, on fulfilment of the conditions contained in G.O.Ms.No.478, dated 04.06.1987, and G.O.Ms.No.43, dated 22.01.1991, provided the writ petitioner's husband does not emerge on the scene, or does not make a claim for pension.

9. The writ petitioner will execute, inter alia, an indemnity bond, as adverted to above, in order to claim family pension.

10. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Hosur, Krishnagiri District.

2. The Accountant General,
No.361, Anna Salai,
Chennai-600 015.

+1 cc to Ms.Hema Muralikrishnan Advocate sr 75969

+1 cc to Mr.M.P.Saravanan Advocate sr 75752

W.P.No.23624 of 2017

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