IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.12.2017
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.14158 of 2009 and
W.M.P.No.1033 of 2017

P.Dhakshnamoorthy ... Petitioner

Vs

1.The State of Tamil Nadu rep. by its
Secretary, Finance Department,
Fort St.George, Chennai 600 009.

2.The Director General of Police,
Chennai 600 004.

3.The Accountant General,
Accountant General Office,
No.261, Anna Salai,
Chennai 600 018.

4.The Treasury Officer,
District Treasury Office,
Thanjavur. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent Accountant General dated 25.07.2006 Pen.4/4/G-79-978/PL-85/FP/01-02/260 and quash the same and thereby directing the Accountant General to sanction family pension to the petitioner on the death of his son Gnanasambandan and with arrears of pension with interest.

For Petitioner : Mr.A.R.Nixon
For Respondents : Mr.S.Gunasekaran,
Addl. Govt. Pleader
for R1, R2, R4
: Mrs.T.S.Selvarani for R3

O R D E R

Heard Mr.A.R.Nixon, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader for first, second and fourth respondents. Mrs.T.S.Selvarani, learned counsel for third respondent.

2. The petitioner has approached this Court seeking the following relief,

> "To issue a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 3rd respondent Accountant General dated 25.07.2006 Pen.4/4/G-79-978/PL-85/FP/01-02/260 and quash the same and thereby directing the Accountant General to sanction family pension to the petitioner on the death of his son Gnanasambandan and with arrears of pension with interest."

3. The case of the petitioner is as follows:-

The petitioner is the father of the deceased son who was employed in Tamil Nadu Police Subordinate Service, X Battalion as Police Constable. While the petitioner's son was in service, after rendering about one year 10 months and 16 days service, unfortunately, he died in view of Cancer. At the time of his Death, he was not married. The date of death of the petitioner's son was 10.04.2001. On his death, he left behind the petitioner, the father and his wife, the mother, as only legal heirs. Immediately after the death of the petitioner's son, his mother had submitted an application on 16.05.2001, along with all the required documents for payment of family pension as admissible. However, the application for pension could not be processed for certain clarification.

4. Ultimately, the third respondent had sanctioned a sum of Rs.26,814/- towards the death-cum-retirement gratuity and also sanctioned family pension of Rs.1275/- per month on and from 11.04.2001. The amount of pension was also directed to be paid through Orathanadu Treasury Office. The petitioner was informed to await further communication from the office of the third respondent. While so, the first respondent vide proceedings dated 22.12.2004, rejected the claim of the petitioner on the ground that the petitioner being employed in Central Government Service, was in receipt of monthly income of more than Rs.2550/-.

5. Thereafter, a further communication was sent by the third respondent holding that the petitioner was not eligible to receive family pension, in view of G.O.Ms.No.327 dated 30.08.2001 of Finance (Pension) Department. According to the Government Order, one of the conditions for claiming family pension was that the dependants should not have income of more than Rs.2550/- per month. As per the G.O., the same came into effect only from the date of the order i.e., 30.08.2001.

6. The learned counsel appearing for the respondents 1 to 3 would submit that in view of the conditions laid down in G.O.Ms.No.327 dated 30.08.2001, the petitioner became ineligible to receive family pension, since he was employed in Central Government and was in receipt of more than Rs.2550/- per month. According to the learned counsel, the said G.O. squarely applies to the claim of the petitioner. Therefore, the claim for family pension has been rightly negatived.

7. On the other hand, the learned counsel for the petitioner would vehemently contend that such G.O. cannot be pressed into service in regard to the claim of the petitioner herein, since the son of the petitioner had died on 10.04.2001, much before coming into force of the said G.O. in August 2001. He would further submit that the claim of family pension arisen immediately after the death of the petitioner's son on 10.04.2001. Therefore, the said G.O., which came into force only from 30.08.2001, cannot have retrospective application as far as the petitioner's claim is concerned. Even otherwise, according to the learned counsel, the mother of the deceased son had immediately applied for family pension on the death of her son, much before coming into force of the said G.O. in August 2001. Therefore, in all fours, he would impress upon this Court for grant of relief as prayed for in the present writ petition.

8. This Court has considered the rival submissions of the learned counsel for the petitioner and perused the materials and pleadings placed on record, only point for consideration is whether the G.O.Ms.No.327 dated 30.08.2001, can have retrospective application for the purpose of denying the family pension to the petitioner. After appreciating the arguments advanced by the learned counsel for the parties, this Court is of the considered view that under no circumstances, the said G.O. can be put into effect retrospectively for denying the family pension, as rightly claimed by the petitioner. It is an admitted fact that the petitioner's son died on 10.04.2001 and the claim was made much before coming into force of the said G.O. Even assuming that no claim was made before coming into force of the said G.O., nevertheless, the fact remains that the cause of action for claiming the benefit has arisen immediately after the death of the petitioner's son on 10.04.2001. Therefore, under no circumstances, it is open to the respondents to deny the benefit of family pension of the petitioner by citing the aforesaid G.O.

9. Moreover, the fact is that the pension is not bounty to be conferred on the pensioner or the family pensioner, but, it is earned by the employee concerned during the period of service. Therefore, no restriction found in the said G.O. for denying the family pension to the petitioner. In these

circumstances, this Court has no hesitation in allowing the writ petition. The impugned order dated 25.07.2006, Pen.4/4/G-79-978/PL-85/FP/01-02/260 is hereby set aside. The respondents are directed to disburse the family pension payable to the petitioner with arrears of pension as applicable and continue to pay the family pension. The consequential direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
The State of Tamil Nadu,
Finance Department,
Fort St.George, Chennai 600 009.

2.The Director General of Police,
Chennai 600 004.

3.The Accountant General,
Accountant General Office,
No.261, Anna Salai,
Chennai 600 018.

4.The Treasury Officer,
District Treasury Office,
Thanjavur.

+1 cc to the Govt Pleader sr 89422
+1 cc to Mr.A.R.Nixon Advocate sr 89547

W.P.No.14158 of 2009

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