

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.12.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19502 of 2013

and

M.P.No.2 of 2013

S.Kasthuri

..Petitioner

vs

1.Director General of Police,
Chennai - 4.

2.Superintendent of Police,
Coimbatore.

3.Kaliammal
Wife of Nagaraj
No.9, Kaman Koil Street,
Dharapuram Town,
Dharapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records made in the impugned order Na.Ka.No.H1/Pension/19A/2006 dated 27.1.2012 passed by the 2nd respondent, and quash the same and further direct the 2nd respondent to pay the entire family pension to the petitioner of deceased Sathishkumar, constable No.1356, by also providing suitable post to the petitioner on compassionate grounds.

For Petitioner : M/s.V.V.Sathya

For Respondents : Mr.V.Jayaprakashnarayanan
Special Government Pleader
Assisted by Mr.A.Rajaperumal
Additional Government Pleader
for R1 & R2
Mr.M.Guruprasad for R3

O R D E R

The order of rejection passed by the 2nd respondent in

proceedings dated 27.12.2012 is under challenge in this writ petition and further direction is sought for to direct the 2nd respondent to pay the family pension to the petitioner on account of death of her husband Late Sathishkumar constable No.1356.

2.The learned counsel appearing for the petitioner made a submission that her husband Late Sathishkumar was employed as Grade II Constable No.1356 and was working in the office of the Superintendent of Police, Coimbatore and passed away on 24.02.2006. On account of the sudden death of the husband, the writ petitioner made an application seeking compassionate appointment as well as to settle the terminal and pensionary benefits due to her. However, the mother of the deceased employee also made a claim for terminal and pensionary benefits. In this regard, the mother of the deceased employee who is the 3rd respondent in this writ petition filed O.S.No.143 of 2006 before the Munsiff Court, Tharapuram in O.S.No.1443 of 2006. The suit was decreed in favour of the 3rd respondent and as per the decree, the suit was allowed partly and an injunction was granted.

3.This Court is of the opinion that such an injunction granted in respect of the monthly pension payable to the widow of the deceased Government employee is directly in contravention with the provisions of the Tamil Nadu Pension Rules 1978. As per the above said Rules, a Government employee cannot nominate any other person other than his spouse for the purpose of grant of family pension. Thus, the mother of the deceased employee is not entitled for family pension under the Tamil Nadu Pension Rules 1978. No doubt, in respect of other benefits, there can be a nomination. However, in respect of family pension, no nomination can be made in favour of any other person other than the spouse, who was a legally married with the deceased Government employee.

4.In the case on hand, the learned counsel for the 3rd respondent contended that the 3rd respondent mother is also suffering on account of penurious circumstances. However, the right of the mother of the deceased employee is to be restricted only in respect of the property, if any possessed by the Government employee. The right under the Succession Act is entirely different and the right under the Tamil Nadu Pension Rules are altogether on the basis of the services rendered by the deceased person with the Government. The right of the 3rd respondent under the Succession Act is independent and it is left open to the 3rd respondent to claim the property right or otherwise in accordance with law if the deceased Government employee was in possession of any such properties. However, in the matter of monthly pension, the Tamil Nadu Pension Rules

alone are applicable and the general law cannot be applied.

5.The legal principles in this regard is that whenever the issues are covered under the special law or rules, then the same alone to be implemented. The payment of family pension is governed under the provisions of the Tamil Nadu Pension Rules, 1978 and the same will prevail over the general law, namely, the Succession Act. In the case on hand, the deceased employee was working as Grade II Constable and nominated his wife in his service records. As per the Pension Rules, his spouse is alone is entitled for family pension. The mother or father may have the right of maintenance and the same will not preclude the wife from getting her family pension under the Tamil Nadu Pension Rules 1978. Thus, the right of the writ petitioner cannot be linked with the rights of the 3rd respondent to claim the properties owned by her son. However, the decree passed by the Civil Suit in O.S.No.143 of 2006 is in violation of the Tamil Nadu Pension Rules 1978. The rights of the parties cannot be taken away which were already granted by virtue of the Tamil Nadu Pension Rules 1978 issued by the Government.

6.Thus, this Court is of the opinion that the decree granted by the Civil Court in O.S.No.143 of 2006 is a decree, which cannot be executed in respect of family pension and the authorities have to abide by the Tamil Nadu Pension Rules 1978 in respect of the settlement of family pension to the writ petitioner, who is the legally wedded wife of the deceased employee Late Sathishkumar, Grade II Police Constable.

7.The learned Additional Government Pleader appearing on behalf of the respondents 1 & 2 brought to the notice of the Court that pursuant to the Civil Court decree, Government also issued G.O.Ms.No.179, Home Department, dated 19.03.2013, granting relaxation, so as to provide family pension to the 3rd respondent.

8.Rule 49(13)(b) enumerates that 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 juducually 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;

9.Rule 49 of the Tamil Nadu Pension Rules provides family Pension. On a perusal of the entire rules, it is made clear that the family members of the Government servants include only widow or widower. However, the mother or father of a deceased employee will be entitled only if the son is a bachelor. In all other cases, the widow or widower or son or daughter alone is

entitled for family pension. When there is a spouse living, then the family pension cannot be settled in favour of the mother or father of the deceased employee. However, by virtue of the Civil Suit, the Government has also issued G.O.Ms.No.179, Home Department, dated 19.03.2013, relaxing the rules in favour of the 3rd respondent for the purpose of granting the family pension. The rule of relaxation exercised by the Government is certainly not in accordance with the Tamil Nadu Pension Rules 1978. The power of relaxing the rules are to be exercised sparingly and judiciously. The power of relaxation cannot be exercised in contravention with the provisions of law so as to deprive the widow from getting her right of family pension. The power regarding the rule of relaxation is to be exercised cautiously and if any injustice is caused to the person or class of persons.

10.The power of relaxation extended to the Government shall be exercised only on exceptional circumstances in order to redress the grievances, where there is an injustice caused to the candidates. Rule of relaxation cannot be exercised in a routine manner so as to provide a share in the family pension in favour of the mother, who is otherwise not entitled in accordance with the Tamil Nadu Pension Rules 1978.

11.The very object and purpose of providing family pension to the spouse of the Government employee is to maintain the family on account of the demise of the Government employee or a retired Government employee. When the family pension has been granted for a particular purpose to save the family, the mother or father of the deceased Government employee cannot be granted a share in the family pension by relaxing the Tamil Nadu Pension Rules 1978.

12.Undoubtedly, the Rule 82 of the Tamil Nadu Pension Rules, 1978 provides Power to Relax. The Rule provided that "Where any Department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

Provided that no such order shall be made except with the concurrence of the Finance Department."

13.On a perusal of the rule, it is made clear that the power to relax can be exercised in order to grant certain benefits to the pensioners. However, such a relaxation cannot be granted so as to deprive the family pensioner from getting his/her full family pension in accordance with the Tamil Nadu Pension Rules

1978. The general interpretation in respect of relaxation is that such power is granted to the competent authorities in order to mitigate the injustice, if any caused to the employees, so also the power of relaxation can be exercised to grant certain benefits to the employees or their legal heirs under the Pension Rules. In respect of granting pension, the right conferred by exercising the power of relaxation under Rule 82, then it is to be construed that such an exercise is in contravention with the very spirit and object of the Tamil Nadu Pension Rules 1978 itself.

14. Thus, this Court has to clarify that wherever the rule of relaxation is required to be exercised, the same is to be exercised only for the purpose of granting certain benefits to the employees and the rights conferred under any provision of law or rules cannot be taken away by exercising the power of relaxation under the Rules.

15. The object of the power of relaxing the rules is obviously to neutralise the injustice as a result of operation of any rule. It has been described to be the reserve power to deal with the unforeseen situations or circumstances and it is to be exercised in the public interest with a view to maintain integrity and efficiency in service. It is conferred upon the Government to meet the emergent situations where injustice might have been caused to any individual candidate or class or group of candidates or where the working of the rule might have become impossible. Where the power of relaxation is conferred upon the Government (or the Governor), the Court cannot usurp the power directly or indirectly to effect a relaxation.

16. In interpreting provisions for relaxation, it has been pointed out that the power of relaxation even if generally included in the Service Rules could either be for the purpose of mitigating hardship or to meet a special and deserving situation. Any arbitrary exercise of such power must be guarded against and that the rule of relaxation must get pragmatic construction, so as to achieve effective implementation of good policy.

17. The Hon'ble Supreme Court of India, in the case of Suraj Prakash Gupta and Others Vs. State of J&K and Others [(2000) 7 SCC 561], reiterated the principles, in paragraph-32, as under:-

"32. On facts, the reasons given in the Cabinet note for granting relaxation are hopelessly insufficient. In fact, the letter of the Commission dated 25-11-1997, shows that the Commission was prepared to give its opinion in regard to regularisation of each

promotee but the Government backed out when the Commission called for the records relevant for considering suitability for regular promotion. In our view, there can be no hardship for a person seeking appointment or promotion to go by the procedure prescribed therefor. The relevant Recruitment Rule for promotion cannot itself be treated as one producing hardship. Narender Chadha case [(1986) 2 SCC 157 : 1986 SCC (L&S) 226] must be treated as an exception and not as a rule. In fact, if such relaxation is permitted in favour of the promotees then the same yardstick may have to be applied for direct recruits. In fact the J&K Government has already started to do so and this has not been accepted by this Court in Narinder Mohan case [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56] and Dr Surinder Singh Jamwal case [(1996) 9 SCC 619 : 1996 SCC (L&S) 1296] referred to above. If it is to be held that direct recruitment can also be permitted without consulting the Service Commission (in case it is required to be consulted there will, in our opinion, be total chaos in the recruitment process and it will lead to backdoor recruitment at the whims and fancies of the Government). Such a blanket power of relaxation of Recruitment Rules cannot be implied in favour of the Government."

18. The Hon'ble Supreme Court of India, in the case of Shri Amrik Singh and Others vs. Union of India and Others [(1980) 3 SCC 393], discussed the principles regarding the rule of relaxation, His Lordship Hon'ble Mr. Justice V.R.Krishna Iyer, speaking for the Bench, emphatically ruled the legal principles as under:-

"Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be undue hardship and, further the relaxation must promote the dealing with the case "in a just and equitable manner". These are perfectly

sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

19. Thus, this Court is also of the opinion that the power to grant an exemption, cannot be exercised in a manner to destroy the general provision from which the exemption is granted. For example, where the number of exemptees is far in excess of vacancies and render the chances of qualifiers illusory.

20. This Court is of the firm opinion that if a rule of relaxation is invoked in a routine manner it will amount to neutralizing and degrading the recruitment rules in force. A striking balance in between has to be adopted while exercising the powers of relaxation by the Competent Authorities. The process of recruitment and appointment shall be made only by following the recruitment rules in force. In other words all appointments are to be made strictly by adhering the recruitment rules in force. Thus, the rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused to a particular candidate or case. Thus, the relaxation cannot be claimed as a matter of right by the candidates.

21. Rule of relaxation is a discretion granted to the Government and such a discretionary power has to be exercised judiciously and not in a routine manner. Relaxation being a discretionary power has to be exercised by the competent authorities by applying the facts in a particular case and not in a mechanical way to grant certain service benefits or appointments to the similarly placed persons. Granting relaxation in one case by the Government cannot be cited as a precedent in other cases. In view of the fact that the

relaxation is an exception and cannot be followed as a routine affair. Thus, this Court is of the firm view that all the appointments, regularizations or permanent absorption ought to be made only by following the recruitment rules in force strictly and no relaxation can be granted by citing other cases and the Government also to be cautious while exercising the powers of relaxation under Rule 48 of the Tamil Nadu State and Subordinate Service Rules or under any other Rules.

22. In view of the foregoing reasons stated in the above paragraphs, this Court is of the opinion that the relaxation granted by the Government in G.O.Ms.No.179, Home(Pol.15) Department, dated 19.03.2013 is not in accordance with the Tamil Nadu Pension Rules, 1978 and contrary to the very purpose an object sought to be achieved under the Tamil Nadu Pension Rules 1978. This being the interpretation to be provided pragmatically, this Court is of the opinion that the Government order passed in G.O.Ms.No.179, Home(Pol.15) Department, dated 19.03.2013 is to be set aside, so also the order of the 2nd respondent passed in proceedings dated 27.01.2012 is also in contravention with the Tamil Nadu Pension Rules 1978. By adopting the rule of constructive interpretation and by adopting the pragmatic approach in this matter, the whole object and purpose of the Tamil Nadu Pension Rules 1978, is to provide a family pension to a widow or widower of the deceased Government employee. The very object cannot be diluted or destroyed by granting relaxation or by sharing the pension in violation of the Pension Rules.

23. Thus, it is made clear that the family pension to be paid only to the widow or the widower or to the son and daughter as per Rule 49 of the Tamil Nadu Pension Rules 1978, the family pension is to be settled in accordance with the above said Rules. The cogent reading of all the rules enumerated in the Tamil Nadu Pension Rules 1978, it is clear that the relaxation granted in this regard by the Government is also bad in law.

24. Accordingly, the order impugned in this writ petition passed by the 2nd respondent in proceedings Na.Ka.No.H1/Pension/19A/2006 dated 27.01.2012 and the Government order granting relaxation in G.O.Ms.No.179, Home(Pol.15) Department, dated 19.03.2013 are quashed and the respondents 1 & 2 are directed to sent necessary proposals in favour of the writ petitioner for the purpose of grant of family pension to the writ petitioner in accordance with the Tamil Nadu Pension Rules 1978 and accordingly, disburse the family pension and the arrears of family pension within a period of four months from the date of receipt of a copy of this order.

25. The writ petitioner is directed to submit necessary

documents for the purpose of submitting the proposals for granting of family pension within a period of three weeks from the date of receipt of a copy of this order.

26.The learned counsel for the petitioner as well as the learned counsel for the 3rd respondent informed this Court that neither the petitioner nor the 3rd respondent has received the family pension from the authorities and no such order has been received by them. Thus, this Court is of the opinion that by virtue of this order, the competent authorities have to settle the family pension in favour of the writ petitioner.

27.Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1.Director General of Police,
Chennai - 4.

2.Superintendent of Police,
Coimbatore.

+1cc to Mr.M.V.Venkateshan, Advocate, S.R.No.89543

+1cc to the Government Pleader, S.R.No.90610

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RRK(03/01/2018)

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