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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 18.01.2017

DELIVERED ON: 17.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) No. 679 of 2014
and
M.P. (MD) No. 2 of 2014

1. The Secretary to Government,
Government of Tamil Nadu,
Education Department,
St. George Fort,
Chennai - 600 009.
 2. The Director of Elementary Education,
Chennai - 600 006.
 3. The Accountant General (A & E),
Chennai 600 018.
 4. The District Elementary Educational Officer,
Theni District.
 5. The Assistant Elementary Educational Officer,
Periyakulam, Theni District.
- .. Appellants
Respondents

Vs.

M. Alamelu .. Respondent /
Petitioner

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order, of this Court dated 04.02.2013, made in W.P. (MD) No. 2583 of 2012.

Prayer in WP (MD) No. 2583/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF MANDAMUS, directing the Respondents herein to continue to pay the Family Maintenance to the petitioner granted to her Husband by the 3rd Respondent vide proceedings PPO No. C190860/EDP, dated 17-06-2004



with all arrears at the revised rate from the date of death of Petitioner's Husband from 27-11-2009 together with nominal interest within a stipulated time.

For appellants

: Mr.V.R.Shanmuganathan,
Special Government Pleader

For respondent

: Mr.K.Appadurai

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JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH, J.**)

This writ appeal has been filed by the State as against the order passed by the learned Single Judge of this Court in W.P. (MD).No.2583 of 2012, whereby and whereunder the learned Single Judge has directed the third appellant to continue to pay the family pension to the petitioner from the date of death of her husband.

2.The case of the respondent before the learned Single Judge is that her husband was an Ex-serviceman and after discharge from the Military Service, her husband was appointed as Watchman in the office of the 5th respondent on 27.03.1984 and he was allowed to retire on attaining the age of superannuation on 31.05.2004. He had been receiving pension from the State Government and also from the Army for the past services rendered by him. While so, he died on 27.11.2009, leaving behind the petitioner, his two sons and a daughter. The petitioner informed the death of her husband both to the State and Indian Army. Though the Army continued to pay the pension to her after the death of her husband, the State has failed to continue to pay the pension. Hence, she has come up with the writ petition seeking a direction to the appellants herein to continue to pay the family pension to her, as granted to her husband by the third appellant, with nominal interest.

3. After hearing both sides, the learned Single Judge, relying upon a decision of this Court reported in 2010(2) CWC 555 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam, rep. by its president and another Vs. Government of Tamil Nadu, rep. by its Secretary, Transport Department, Chennai -9 and two others), has directed the third appellant to continue to pay the family pension to the respondent from the date of death of her husband. Aggrieved by the same, the present appeal has been filed by the State.

4.The learned Special Government Pleader appearing for the appellants, by relying upon Rule 49 (13-B) of the Tamil Nadu Pension Rules, 1978, (hereinafter referred to as "the Rules") submitted that Sub Rule (13-B) was inserted by G.O.Ms.No.23, dated 19.01.1996, vide SRO B-59/1996 and as per the said Sub Rule, the family pension cannot be granted to a person, who is



already in receipt of family pension. Since the respondent has been receiving pension from the Army, based on the past military service rendered by her husband, as per the said Rule, she is not entitled to get the family pension from the State based on the past service rendered by her husband in the Education Department. But, the learned Single Judge, without considering the same, has erroneously allowed the writ petition. Thus, he prayed for setting aside the order of the learned Single Judge.

5. Per contra, the learned counsel appearing for the respondent, by relying upon Rule 49(14)(b) of the Rules, submitted that Rule 49 (13-B) of the Rules is not applicable to the military pensioners, who are retired from military services on or after 1st April 1964 or retires from service after commencement of these rules and therefore, the respondent is entitled for both the pensions. More over, the respondent's husband had opted Rule 16(1) (a) of the Rules and retired from the State Government Service on 31.05.2004 and therefore, after his retirement, he had been receiving pension both from the State as well as from the Army, and he was not refused to avail such pensions. In support of his contention, he relied upon the decision of this Court in 2010(2) CWC 555 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam, rep. by its president and another Vs. Government of Tamil Nadu, rep. by its Secretary, Transport Department, Chennai -9 and two others). Thus, he prayed for dismissal of this appeal.

6. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record. It is the main submission of the learned counsel for the appellants that in view of the insertion of Sub Rule (13-B) in Rule 49 of the Rules, the respondent is not entitled to get pension from the State as she has been receiving pension from the Army. According to the respondent, as per Rule 49(14)(b), the Sub Rule (13-B) to Rule 49 is not applicable to the case of the respondent. When the matter came up for hearing before the First Bench of this Court on 21.01.2016, the First Bench of this Court has held as follows;

"The learned Special Government Pleader appearing for the appellants contends that both kinds of family pension are not admissible in view of Sub-Rule 13-B of Rule 49 of the Tamil Nadu Pension Rules.

2. We may note that Rule 49 itself deals with only family pension. Further, Sub Rule 13-B of Rule 48 was inserted by G.O.Ms.No.23, dated 06.01.1996. There appears, prima facie, some confusion arising over insertion of Sub-Rule 13-B,

<https://hcservices.ecourts.gov.in/hcservices/> Sub-Rule 14 continues to be in force.

3. The learned Special Government Pleader appearing for the appellants seeks time to place



the notification by which Sub-Rule 13-B was inserted and also to obtain instructions as to what is the mischief which it was supposed to cure.

4. List the matter on 28.01.2016."

Though the appellants sought time to place the notification by which Sub-Rule (13-B) to Rule 49 was inserted, he has not produced any such notification.

7. For better appreciation, Sub Rule (13-B) and (14) (b) to Rule 49 of the Rules are reproduced hereunder.

"(13-B) Family Pension admissible under this rule shall not be granted to a person who is already in receipt of family pension or is eligible therefore under any other pension rules:

Provided that a person, who is otherwise eligible for family pension under this rule, may opt to receive family pension under this rule, if he forgoes family pension admissible from any other rules."

"(14) Nothing contained in this rule shall apply to - (a)... (b) a military pensioner who has retired from military service on or after the 1st April, 1964 or retires from such service after the commencement of these rules on retiring pension, service pension or invalid pension and is re-employed in a civil service or post before attaining the age of superannuation."

8. When Sub Rule (13-B) contemplates that a person, who is already in receipt of family pension under any other pension rules, shall not be granted pension under this Rules, provided if he opted to forgo the pension granted under the other pension rules, contrary to the same, Sub Rule (14) contemplates that the Tamil Nadu Pension Rules are not applicable to the military pensioner, who has retired from military service on or after 01.04.1964 or retires from such service after the commencement of these rules on retiring pension, service pension or invalid pension and is re-employed in a civil service or post before attaining the age of superannuation. Sub Rule (13-B) of the Rules was inserted by G.O.Ms.No.23 only on 06.01.1996. Though Sub Rule (13-B) specifically states that the receipt of family pension "under any other Rules" would disentitle the person from getting pension under this Rule, Sub Rule (14) gives exclusion to Sub Rule (13-B) in respect of military pensioner, who has retired from military service on or after 1st April 1964 or after the commencement of these rules. Thus, it is clear that Sub Rule (13-B) will not apply to a military personnel, who have retired from military service on or after 1st April, 1964 or after the commencement of these rules. Further, Section 16(1)(b) of the Rules provides an option to ex-serviceman to continue to draw military pension, in



which case his former military service shall not count as qualifying service in the reemployment.

9. Admittedly, in this case, the husband of the petitioner retired from State service on attaining the age of superannuation on 31.05.2004 and he had been receiving both the pensions by giving option as per Rule 16(1)(b) of the Rules. Therefore, now the petitioner, being the widow of the pensioner, cannot be denied pension by the State on the ground that she has been receiving pension from the Army. In other words, she is entitled to receive the pension both from the Army and also State as received by her husband. The learned Single Judge has also rightly allowed the writ petition and directed the third appellant to continue to pay the family pension to the respondent from the date of death of her husband. There is no merit in the contention of the learned counsel for the appellants. Thus, this writ appeal is liable to be set aside.

10. In view of the above, this Writ Appeal is dismissed. The appellants are directed to comply with the order of the learned Single Judge within a period of six weeks from the date of receipt of this judgment. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(P&A)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Education Department,
St. George Fort, Chennai - 600 009.
 2. The Director of Elementary Education,
Chennai - 600 006.
 3. The Accountant General (A & E),
Chennai 600 018.
 4. The District Elementary Educational Officer,
Theni District.
 5. The Assistant Elementary Educational Officer,
Periyakulam, Theni District.
- +1 CC to M/S.SPL.GOV.T.PLEADER, SR NO:9204
+1 CC to Mr.K.Appadurai, Advocate, SR NO:9140

**Pre-Delivery Judgment made in
Writ Appeal (MD) No.679 of 2014
17.02.2017**