



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A.(MD) No.1101 of 2017
and
C.M.P(MD)No.7576 of 2017

1. The District Collector,
Office of the District Collector,
Madurai.
2. The Tahsildar,
Office of the District Collector,
Madurai South, Madurai District.
3. The Village Administrative Officer,
Office of the Village Administrative Officer,
Keelamathur, Madurai. ... Appellants/Petitioners
in Rev.Applc.(MD).No.51/14

-vs-

N.Mayamathu Beevi ... Respondent/Respondent
in Rev.Applc.(MD).No.51/14

PRAYER: Petition filed under Clause 15 of Letter Patent, to set aside the order dated 24.03.2017 passed in Rev.APP.(MD) No.51 of 2014.

Prayer in REV.APL W(MD).No.51/2014:

To review the order dated 17.07.2014 made in W.P(MD).No.11607 of 2014 on the file of this Honourable Court praying this Court to issue a writ of Mandamus directing the respondents continue to pay National Senior Citizen Assistane Fund to the petitioner by considering the petitioner's representation dated 14.07.2014.

For Appellants : Mr.V.R.Shanmuganathan
Spl. Govt. Pleader

For Respondent : Mr.S.Malaikani

O R D E R

[Order of the Court was made by M.M.SUNDRESH, J.]

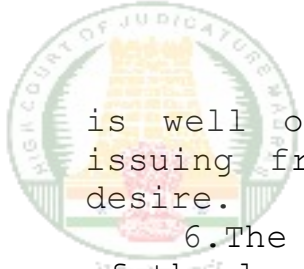
This is a second round of litigation emerging in pursuant to the order passed in the Review application filed by the appellant after liberty was given to raise two issues. The first issue is with respect to the sons of the respondent being employed. The second issue is with respect to the availability of means including house and land. In sum and substance, the respondent/writ petitioner is not entitled to the benefit under the scheme.

2.The learned Special Government Pleader would submit that as per the scheme, the respondent is not entitled for the benefit, which has been given wrongly.

3.The learned counsel for the respondent would submit that the learned Single Judge in the Review took note of the order passed by the Division Bench with respect to the working son in a different case and therefore, the said contention is liable to be rejected. Secondly, he submitted that the scheme permits the payment of pension notwithstanding the means.

4.When an order is set aside for want of notice, it will not take away the power of authority to initiate fresh action. It appears that the appellants sought this Court to set aside the impugned order since the learned Single Judge allowed the writ petition on the ground of want of notice. It is the case of respondent that pension being denied abruptly without any enquiry. In the Review petition the learned Single Judge took note of the Division Bench order merely because if the son is otherwise employed old age pension cannot be rejected. The said finding rendered does not come into the other issue with respect to means. The learned Single Judge in the review petition was pleased to state that the such issue is not raised before the Writ Court at the first instance. We are of the view that the said reasoning cannot be accepted.

5.The fact which has not been raised earlier cannot be raised on a subsequent stage. Secondly, the power of review as provided cannot be used to examine like the Civil Court, which has been adopted by the writ Court. But the principles governed therein cannot be merited as such. The jurisdiction of the writ Court in exercising the power of Review is not much wider. Admittedly, the said issue has not been gone into. Further, once the writ petition is allowed for want of notice, it will not take away the power of authority concerned to issue another notice by including the particulars and thereafter pass an order after hearing the person concerned. Such view of the matter, we are of the view that insofar as the issue with respect to the entitlement of respondent with specific reference to the means and source is concerned, it



is well open to the appellants to go into the said issue by issuing fresh notice calling her for explanation, if so, they desire.

6.The learned Government Pleader would submit that the order of the learned Single Judge passed in the review petition has been implemented. To substantiate the same, the proceedings dated 29.07.2017, has been furnished to us. The learned counsel appearing for the respondent would submit that no amount has been paid.

7.Considering the above, the appellants are directed to make requisite payment, which is inclusive of payment otherwise due to the respondent from the date of stoppage. However as pointed out above, liberty is given to the appellants to take appropriate steps in the manner known to law. The arrears till August 2017 will have to be paid within a period of eight weeks from the date of receipt of a copy of this order.

8.With the above directions, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To:

1. The District Collector,
Office of the District Collector,
Madurai.
2. The Tahsildar,
Office of the District Collector,
Madurai South, Madurai District.
3. The Village Administrative Officer,
Office of the Village Administrative Officer,
Keelamathur, Madurai.

+1 cc to Mr.S.Malaikani , Advocate in SR.No. 77411

am/cp

AE/SKN RSK/SAR2/18.09.2017/3P/5C