



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2017

CORAM :

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD)No.7462 of 2017

R.Vellaiyammal

... Petitioner

Vs.

1. The Secretary to Government,
Government of Tamil Nadu,
Public Health Department,
St. George Fort, Chennai - 600 009.

2. The Deputy Director of Health Services,
Theni.

3. The Accountant General(A&E),
261, Anna Salai,
Thenampet, Chennai - 18.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 and 3 herein to pay the family pension to the petitioner for the service rendered by her husband V.Raju with the second respondent from the date of death of her husband.

For Petitioner : Mr.Lakshmi Gopinathan,
for M/s.Polax Legal Solutions.

For R-1 & R-2 : Mr.J.Gunaseelan Muthaiah,
Government Advocate.

For R-3 : Mr.P.Gunasekaran,
Standing Counsel.

ORDER

This Writ petition is filed for issuing a Writ of Mandamus, directing the respondents 2 and 3 to pay the family pension to the petitioner for the service rendered by her husband, V.Raju, with the second respondent, from the date of her husband's death.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 and 2 and the learned Standing Counsel appearing for the third respondent.



3. The petitioner's husband was an ex-serviceman and after he retired from military service, he joined as Driver in the office of the second respondent. The petitioner's husband also retired from service, on 31.08.2004 upon reaching superannuation.

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4. It is an admitted fact that the petitioner's husband was receiving pension from Military, after he retired from the job. The petitioner's husband though retired on 31.08.2004, on superannuation, he died only on 18.01.2013. The petitioner's husband was getting pension from the Central Government for his military service and also he was receiving pension for the service he rendered in the State Government.

5. The grievance of the petitioner is that the pension to the petitioner was stopped after the death of her husband. The learned counsel for the petitioner relied upon a Judgment of Hon'ble Division Bench of this Court in the case of **the Secretary to Government Vs. M.Alamelu, in W.A. (MD) No. 679 of 2014, dated 17.02.2017** and paragraph No.7 of the above Judgment is relevant and extracted as below:-

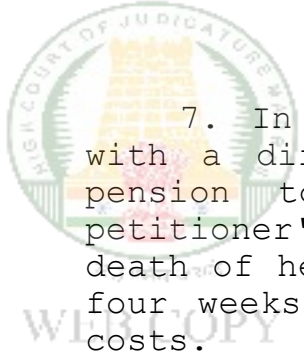
"7. For better appreciation, Sub Rule (13-B) and (14) (b) to Rule 49 of the Rules are reproduced hereunder.

'(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 commencement of these rules on retiring pension, service pension or invalid pension and is re-employees in a civil service or post before attaining the age of superannuation.'"

6. Having regard to the admitted position herein in this case also that the petitioner's husband was given family pension both from the Central Government as well as from the State Government, the respondents 2 and 3 cannot stop the payment of family pension to the petitioner who is the wife particularly, when the death of the petitioner's husband does not alter the entitlement of the petitioner to get family pension.



7. In that view of the matter, the Writ petition is allowed with a direction to the respondents 2 and 3 to pay the family pension to the petitioner for the service rendered by the petitioner's husband with the second respondent from the date of the death of her husband and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Public Health Department,
St. George Fort, Chennai - 600 009.
 2. The Deputy Director of Health Services,
Theni.
 3. The Accountant General (A&E),
261, Anna Salai,
Thenampet, Chennai - 18.
- + 1 CC TO M/s.POLAX LEGAL SOLUTIONS, IN SR No. 61762
+ 1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No. 61730
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 61957

PMU
TE/JC/SAR-III : 27/07/2017 : 3P/7C

ORDER MADE IN
W.P. (MD) No.7462 of 2017
22.06.2017