BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.(MD)No.811 of 2017
and
WMP(MD)Nos.661 and 662 of 2017

V.Shantha ... Petitioner

Vs.

1.The Accounts Officer,
Accountant General (A&E),
No: 361, Anna Salai, Teynampet,
Chennai - 600 018.

2.The Treasury Officer, District Treasury Office,
Madurai Collector Office,
Madurai - 625 020.

3.The Joint Director, College Education,
Shenai Nagar, Madurai.

4.The Principal, American College,
Madurai-625 002.

5.S.Shanthi

6.S.Jeya Keerthi Samuvel

7.S.Sathya ...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records and quash the family pension order in PPO No. D.3403706/Madurai Treasury on 14.02.2014 order passed by 1st respondent and consequentially directing the respondents 1 and 3 to pass on order entitle to get the half of the family pension in favour of the petitioner.

For Petitioner :Mr. K.Suresh
For R1 :Mr. P.Gunasekaran
For R2 and R3 :Mr. A.K.Baskara Pandian
(Special Government Pleader)

O R D E R

The petitioner has come forward with this writ petition challenging the order of the first respondent, dated 14.02.2014 and to direct the respondents 1 and 3 and to pass orders to the effect that the petitioner is entitled to get the half of the family pension.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3.The case of the petitioner is that the petitioner married one Sathanantham and living with him for more than 2 decades before his demise i.e. on 03.02.2007. It is represented by the learned counsel for the petitioner that without disclosing the name of the petitioner and his son, the children of the first wife of Sathanantham have obtained a legal heir certificates.

4.It is fairly submitted by the learned counsel for the petitioner that the first wife of Sathanantham is no more. He would further submit that the petitioner has filed W.P.(MD)No.8291 of 2016 to get the legal heir certificate and pursuant to the direction of this Court, dated 11.07.2016, a fresh legal heir certificate has been issued incorporating the name of the three children born through the first wife and the names of the petitioner and her son have also been included.

5.The learned counsel for the petitioner also submitted that in terms of Rule 49 of the Tamil Nadu Pension Rules, 1978, the petitioner alone would be entitled to the pensionary benefits and the respondents are paying pensionary benefits to the children of the first wife alone.

6.For the sake of convenience, Rule 49 is extracted hereunder:-

> "49. Family Pension-(1) The Provision of this rule shall apply to a Government Servant entering service in a pensionable establishment whether temporary or permanent on or after the 1st April 1964, or who was in service on the 31st March 1964 and came to be governed by the Tamil Nadu Government Servants' Family Pension Rules, 1964, except the following, namely:-
>
> (i) Government Servants who retired before the 1st April 1964, but are re-employed on that date or thereafter.
>
> (ii) Government servants who are employed in Government Industrial Undertakings to whom the Factories Act, 1948 (Central Act LXIII of 1948) or the Employees' Provident Funds Act, 1952 (Central Act XIX of 1952) are applicable excluding those who are governed by statutory service rules and belong to pensionable service.
>
> (iii) Government servants who belong to non-pensionable service, namely persons paid from contingencies. Work charged staff, casual labour contract officers.
>
> (2) Without prejudice to the provisions contained in sub-

rule (3) where a Government servant dies-

a) after completion of not less than one year continuous service; or
b) after retirement from service and was in receipt of pension on the date of death, the family of the deceased shall be entitled to a family pension (hereinafter in this rule referred to as family pension), the amount of which shall be determined as follows:-

1	Below Rs.200	30 per cent of pay	Minimum of Rs.50
2	Rs.200 and above but below Rs.800	15 per cent of pay	Minimum of Rs.60
3	Rs.800 and above	12 per cent of pay	Maximum of Rs.300 and Minimum of Rs.150

[Provided that family pension shall be payable to the family of a Government Servant who dies before the completion of one year continuous service, if he was declared fit for Government service by the appropriate medical authority prescribed under the relevant rules immediately prior to his appointment]

NOTES: (i) The rules do not prohibit the grant of family pension to the family of a Government servant who commits suicide.

(ii) No family pension under these rules shall be payable to the family of a Government servant who dies after retirement unless at the time of his death he was in receipt of or eligible to be paid any of the following classes of pension, namely:- Compensation, Invalid, Retiring or Superannuation Pensions.

(iii) The Government servant who have been compulsorily retired on or after 1st April 1964 and who are in receipt of pension are entitled to Family Pension under these rules.

(iv) Notwithstanding the pendency of any disciplinary proceedings against the deceased Government servant concerned, family pension shall subject to the provisions in sub-rule (4), be payable to the family of the deceased Government servant.

[(2-A) The family pension payable to a family of a Government servant or a retired Government servant who died on or after the 1st April 1979, shall be regulated as under, provided he has completed continuous qualifying service for a period of not less than one year:-

(i) The amount of monthly family pension shall be calculated at the uniform rate of 30 per cent of pay drawn, subject to a minimum of [Rs.100] [Rs.125] [Rs.235] [Rs.245] [Rs.375] [Rs.1275] [Rs.3050] per mensem and maximum of [Rs.500] [Rs.800] [Rs.1000] [Rs.1250] [Rs.6570] [Rs.23100] per mensem;

(ii) In the case of death after retirement, the quantum of family pension as calculated above shall not exceed the uncommuted value of superannuation pension. A flat rate of family pension of [Rs.100 per mensem with effect from 1st April 1979 or the date following the date of death whichever is later] [Rs.125] [Rs.235] [Rs.245] [Rs.375] [Rs.1275] [Rs.3050] per mensem shall be sanctioned to the eligible member of the family of the Government servant who died while in service or after retirement and who were hitherto not eligible for family pension]

[(3)(a) In the event of death of a government servant while in service after having rendered not less than seven years continuous service, the rate of family pension payable shall be equal to 50 per cent of the pay last drawn or [Rs.500] [Rs.800] [Rs.1000] [Rs.1250] [Rs.6570] [Rs.23100], whichever is less and the amount so admissible shall be payable from the date following the date of death of government servant for a period of seven years or for a period up to the date on which the deceased government servant would have attained the age of 65 years had he survived, whichever is less.]

Notes.-1. In the case of widows or widowers governed by the extraordinary pension Rules, Madras, the child allowance, if any, shall be paid in addition.

2. The expression, ' the date on which government servant would have reached the age of superannuation' shall be the case of an officer who is required to retire or who himself chooses to retire under rule 48 of the rules or who after being served with the notice or tendering the notice as the case may be dies while in service or during leave preparatory to retirement before retiring pension mean the date of superannuation in the normal course and not the intended date of retirement on a retiring pension.

3. Omitted.

4. In the case of a government servant deputed to the Corporation of Madras or Tamil Nadu Housing Board and who retired or dies while under that institution, the pay including special pay drawn by him at the time of retirement or death, as the case may be, shall be taken into account in calculating the family pension.

(3)(b) After the expiry of the period referred to in clause (a) the family in receipt of family pension under that clause, shall be entitled to family pension at the rate admissible under sub-rule (2).

[(3)(c) In the event of death of a government servant after retirement, the family pension as determined under clause (a) shall be payable for a period of seven years or for a period up to the date on which the retired deceased government servant would have attained the age of 65 years had be survived, whichever earlier]

[(3-A) The amount of family pension finally determined under this rule shall be expressed in whole rupees and where the family pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

Provided that in no case a family pension in excess of the maximum family pension prescribed under this rule shall be allowed.]

[(4) Where an award under the Extraordinary Pension Rules is admissible, no family pension under this rule shall be authorised.]

(5) Omitted.

(6) The period of which family pension is payable shall be as follows:-

(i) in the case of widow or widower, upto the date of death or remarriage, whichever is earlier;

(ii) in the case of a son, until he attains the age of [twenty one years] [twenty - five years]; and

(iii) in the case of an unmarried daughter, until she attains the age of [twenty-four years] [thirty years] [twenty five years] or until she gets married whichever is earlier:

[Provided that if the son or daughter of a government servant including the son or daughter, born after retirement from the marriage solemnized before or after retirement of a government servant, is suffering from any disorder or disability of mind [including mentally retarded] or is physically crippled or disabled, whether such handicap manifests before or after retirement or death while in service of a government servant, so as to render him or her unable to earn a living] even after attaining the age of [18 years] [21 years] [25 years] in the case of the son and [24 years] [30 years] [25 years] in the case of the daughter, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:-

(i) if such son or daughter is one among two or more children of the government servant, the family pension shall be initially payable to the minor children in the order set out in clause (iii) of sub-rule (8) until the last minor child attains [the age of 21 or [24] [30], as the case may be,] [the age of 25] and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind [including mentally retarded] or who is physically crippled or disabled and shall be payable to him/her for life.

[(ii) if there are more than one such son or daughter suffering from disorder or disability of mind [including mentally retarded] or who are physically crippled or disabled, the family pension shall be paid in the following order, namely:-

(a) firstly to the son, and if there are more than one son, the younger of them will get the family pension only after the lifetime of the elder;

(b) Secondly, to the daughter and if there are more than one daughter, the younger of them will get the family pension only after the lifetime of the elder; (till 17th March 1991)

[(ii) if there are more than one such son or daughter suffering from disorder or disability of mind [including mentally retarded] or who are physically crippled or disabled, the family pension shall be paid

(a) in the order of their birth, irrespective of the sex of the child not the immediate younger of him or her will be eligible for family pension only after the elder above him or her becomes ineligible for family pension;

(b) in cases of twin children to such twin children in equal shares. In the event of any of such children ceasing to be eligible for family pension his or her share of family pension will become payable to the other such child and when both such children become ineligible for family pension, the family pension will become payable to the next eligible child or twin children, as the case may be;]

[(iii) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor]; (till 2nd August 1989)

[(iii) in the case of minor, the family pension shall be paid to such son or daughter through the guardian];

(iv) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child.

[(v) the person receiving the family pension as guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeons to the effect that he or she continues to suffer from disorder or disability of mind [including mentally retarded] or continues to be physically crippled or disabled.

(vi) such daughter shall not be eligible for family pension from the date on which she gets married.

(vii) the family pension payable to such son or daughter shall be stopped if he or she starts earning his (or) her livelihood.
(viii) it shall be the duty of the guardian of such son or daughter to furnish every month to the Treasury or Bank, as the case may be, a certificate to the effect that he or she has not started earning his or her livelihood; and in the case of such daughter that she has not yet married.]
[(ix) in the case of mentally retarded son or daughter, the family pension shall be payable to a person nominated by the government servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Office by such government servant or pensioner during his life time, to the person nominated by the spouse of such government servant or family pensioner, as the case may be, later on.]

(7)(a)(i) Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares.

(ii) On the death of widow, her share of the family pension shall become payable to her eligible child;

[Provided that if the widow is not survived by any child, her share of the family pension shall cease to be payable] (till 14th October 1991)

[Provided that if the widow is not survived by any child, her share of family pension shall be payable to the other widows in equal shares, or if there is only one such widow, in full to her.]

(b) Where the deceased government or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the government servant or pensioner.

[Provided that on the share or shares of family pension payable to child or children or to a widow or widows ceasing to be payable, such share or shares shall be payable to the other widow or widows and or to the other child or children otherwise eligible, in equal shares, or if there is only one widow, or child, in full, to such widow or child.]

(c) Whether the deceased government servant or pensioner is survived by a widow but has left behind eligible child or children from a divorced wife or wives, the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the government servant or pensioner had she not been so divorced.

[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable such share or shares shall be payable to the other widow or widows and or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.]

Explanation- For the purpose of this rule, the second wife shall be eligible for the benefits of family pension only if the second marriage-

(I) solemnized as per the customary law prevailed among the community before the date of commencement of the Hindu Marriage Act, 1955 (Central Act 25 of 1955); or

(ii) solemnized under the Mohammadan Law in which bigamy is permissible.]”

7. A cursory glance at the proviso to Rule 49 (7)(ii) of the Tamil Nadu Pension Rules, 1978, is very clear that in case, the first wife survive or her children, the other wives, if any, are not entitled to any pensionary benefits.

8.The learned counsel for the first respondent/Accountant General would submit that in terms of Rule 49 (5) and (6) of the Tamil Nadu Pension Rules, 1978, it is very clear that the daughters, who are unmarried or mentally retarded would be entitled to the pensionary benefits after the demise. Even though all the children are above 40 years, the amount of pension payable to the 7th respondent, who is mentally retarded/ is being received by the other legal heirs, born through the first wife of late Sathanantham and the said amount is utilised. He would further submit that in terms of explanation given to Rule 49 (7) (a) (I) of the Tamil Nadu Pension Rules, 1978, unless the personal law permits, pensionary benefits would not be extended to the other wife and in this case, the said explanation has got to be read along with Section 49 of the Tamil Nadu Pension Rules, 1978, which cannot be read in isolation.

9.I find much force in the arguments of the learned counsel appearing for the first respondent/Accountant General. The purpose of the Rule is to extend the pensionary benefits only to the first wife and to her children, in order to follow the custom of having one wife in consonance with the Hindu Marriages Act, 1955.

10.It is also pointed out by the learned counsel for the respondents that the marriage between the petitioner and Sathanantham is said to have taken place, when the first marriage was in existence and that the second marriage has no legal sanctity, in the eye of law.

11.Considering the above aspects, more particularly, taking note of the Rule mentioned supra, I find no merits in this writ petition. Accordingly, this writ petition is dismissed and the respondents are justified in extending the pension benefits to the mentally retarded daughter. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar.

To

1.The Treasury Officer, District Treasury Office,
Madurai Collector Office, Madurai - 625 020.

2.The Joint Director, College Education,
Shenai Nagar, Madurai.

+1CC to M/S.P.Gunasekaran, Advocate, SR.No. 3625
+1CC to M/S.K.Suresh, Advocate, SR.No. 3195
+1CC to the Special Government Pleader, SR.No. 3381

W.P.(MD)No.811 of 2017
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