

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06-09-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.20464 of 2014

Smt.Kuppu

.. Petitioner

Vs.

1.Government of Tamil Nadu,
Represented by its Secretary,
Department of Education,
Secretariat,
Chennai-600 009.

2.The Director,
School Education,
Nungambakkam,
Chennai-600 006.

3.Chief Educational Officer,
Krishnagiri District,
Krishnagiri-635 001.

4.The Headmaster,
Government Boys Higher Secondary School,
Krishnagiri District,
Krishnagiri 635 001.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to grant arrears of pension to the petitioner and family pension to her for the services rendered by the petitioner's husband as a Sweeper from 17.8.1988 to 31.7.1998 in the fourth respondent.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr.P.Raja,
Government Advocate.

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to grant arrears of pension to the writ petitioner and family pension to her for the services rendered by the writ petitioner's husband as Sweeper from 17.8.1988 to 31.7.1998 in the fourth respondent-School.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the husband of the writ petitioner, Late Shri V.Kuppusamy, was initially served in the Indian Army Regiment Corps M.E.G., from 17.6.1961 to 31.10.1971 and he was discharged from Army with exemplary character. Thereafter, the husband of the writ petitioner was appointed in the State Service on temporary basis. Subsequently, the writ petitioner's husband's services were brought under the Regular Establishment in the post of Sweeper in the fourth respondent-School by an order dated 10.8.1988.

3. The writ petitioner's husband was served as Sweeper till 31.7.1998 and died on account of illness on 15.8.2001. Even during the life time of the husband of the writ petitioner, he made several representations to grant pension, as he had completed a detailed services of 9 years, 11 months and 15 days. However, the authorities have not considered the case on the ground that the husband of the writ petitioner was on leave for about 4 months and 16 days.

4. The learned counsel for the writ petitioner states that no disciplinary proceedings were initiated in respect of leave availed by the husband of the writ petitioner and the leave period was also condoned by the competent authorities. This being the factum of the case, the benefit of pension, cannot be denied to the husband of the writ petitioner and the family pension to the writ petitioner.

5. The learned Government Advocate, appearing on behalf of the respondents, opposed the said contention of the learned counsel for the writ petitioner, by stating that undoubtedly the husband of the writ petitioner had served 9 years, 11 months and 15 days. Out of which, the husband of the writ petitioner had availed leave for 4 months and 16 days. If the leave period of 4 months and 16 days are deducted, then the husband of the writ petitioner was not eligible for pension. Consequently, the writ petitioner is not eligible for family pension.

6. The learned Government Advocate, appearing for the respondents, is unable to substantiate whether any disciplinary proceedings were initiated, if at all the leave availed by the husband of the writ petitioner was an unauthorised leave. Admittedly, no such proceedings were initiated. Thus, it is to be inferred that the leave availed by the husband of the writ petitioner was condoned even in the absence of any specific order. This apart, on this technical ground, the pension and family pension cannot be denied and the same will amount to a harsh decision and contrary to the principles of equity.

7. This apart, this Court is of an opinion that the husband of the writ petitioner had already served 9 years, 11 months and 15 days. The minimum qualifying service for the purpose of grant of pension is 10 years of service. However, Rule 43, sub-clause (3) of the Tamil Nadu Pension Rules, 1978 enumerates that "in calculating the the length of qualifying service, fraction of a year equal to three months and above shall be treated a completed one half year and reckoned as qualifying service". Thus, if there is deficiency of three months of services, then the same can be rounded off and that is to be treated as one qualifying year and therefore, the husband of the writ petitioner is entitled to avail the benefit of the Tamil Nadu Pension Rules, cited above.

8. The competent authorities have to extend the benefit of the said Rules in favour of the husband of the writ petitioner, so also to the writ petitioner for the purpose of grant of pension and family pension.

9. In view of the fact that the leave period availed by the husband of the writ petitioner for 4 months and 16 days were condoned and the husband of the writ petitioner had served 9 years, 11 months and 15 days and by applying Rule 43(3) of the Tamil Nadu Pension Rules, 1978, it is to be construed that the husband of the writ petitioner had completed 10 years of service, which is the qualifying service for the purpose of grant of pension.

10. In this view of the matter, the writ petition deserves consideration. Accordingly, the respondents are directed to send all necessary proposals to the competent authority for the purpose of grant of pension to the husband of the writ petitioner, considering the date of retirement of the writ petitioner's husband and consequently, grant the family pension from the date of death of husband of the writ petitioner, to the writ petitioner with all consequential monetary benefits and arrears of pension and family pension. The

said exercise is to be done by the respondents, within a period of twelve weeks from the date of receipt of a copy of this order.

11. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

- 1.The Secretary,
Government of Tamil Nadu,
Department of Education,
Secretariat,
Chennai-600 009.
- 2.The Director,
School Education,
Nungambakkam,
Chennai-600 006.
- 3.Chief Educational Officer,
Krishnagiri District,
Krishnagiri-635 001.
- 4.The Headmaster,
Government Boys Higher Secondary School,
Krishnagiri District,
Krishnagiri 635 001.

+1cc to Mr.R.Malaichamy, Advocate Sr.61906
+1cc to the Government Pleader Sr.62126

WP 20464 of 2014

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srg 26/09/2018