

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2018

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.4592 of 2011

Parvathi

... Petitioner

Vs.

1. Deputy Director of Health Services,
Dharapuram.

2. The Accountant General (A & G),
Tamil Nadu, Chennai - 18.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 2nd respondent to pay family pension to the petitioner herein.

For Petitioner : Mr.P.Wesley Isaac

For Respondents : Mr.B.Anand, G.A., for R1
Mrs.Hema Muralikrishnan, for R2

O R D E R

The prayer in the Writ Petition is for issuance of a Writ of Mandamus, directing the 2nd respondent to pay family pension to the petitioner herein.

2. According to the petitioner, her husband late Ramarksihnan was working as a Pharmacist in the Primary Health Centre, Modakurichi and after serving 18 years in various places, he died after retirement without any pension. The petitioner would further claim that despite the first respondent sending a proposal to the second respondent for issuance of family pension, it was not considered. Hence, the present Writ Petition.

3. In the counter affidavit filed by the first respondent it has been stated that after expiry of leave the petitioner's husband did not report for duty in spite of repeated reminders. Hence, he was considered as deemed to have tendered resignation

and ceased to be in Government Service with effect from 05.03.1964. It is further stated that after expiry of the petitioner's husband, she applied for family pension. The proposal was returned back on the ground that as per G.O.Ms.No.748, dated 26.05.1979, the family of the deceased will be eligible for Family Pension provided, the Government servant retired from service or died while in service. In the instant case, as the above proposal did not satisfy any one of the conditions of the said G.O., the family pension is not admissible.

4. The second respondent has also filed a counter affidavit reiterating the counter filed by the first respondent and it is further stated that in W.P.No.29270 of 2010, this Court in a similar case, rejected the request for issuance of family pension.

5. Heard both sides and perused the materials available on records.

6. In the instant case though the petitioner has not given service details of her husband, in the counter affidavit filed by the respondents, it is stated that the deceased petitioner's husband was working as pharmacist from 26.06.1960 to 06.11.1963 and thereafter, he had not returned for duty and the date of superannuation is on 30.06.1969. When a similar issue came up for consideration before this Court in W.P.No.29210 of 2010, this Court following the decision of the Supreme Court in the case of C.Jacob vs. Director of Geology and Mining Indus. Est. and other reported in AIR 2009 SC 264 has held that the petitioner therein was not entitled for family pension. The relevant portion of the said order is extracted hereunder:

"10. In view of the settled legal position and the issue having been crystallized through the decision in Jacob's case, firstly, this Court is inclined to conclude that Rule-43(2) of the T.N. Pension Rules does not give any room at all to infer that the qualifying service to get pension is reduced to 10 years, or, in other words, that the petitioner has become eligible to family pension. Secondly, the petitioner is guilty of laches for making the claim with a huge delay of 35 years. Thirdly, even if the petitioner's case is taken on merits, in view of the fact that her husband himself had not put in 20 years of qualifying service so as to claim pension, no good right flow to the petitioner to seek for family pension. Fourthly, exactly, on the very issue, a learned Judge of this Court, while disposing of W.P. MD NO.284 of 2011 vide order dated 25.04.2012, categorically held thus:

" The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated qualifying service of not less than 10 years. He contended that as Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules refers to not less than 10 years- service- any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said Rule does not relate to entitlement of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring government servant is entitled to pension under Chapter V of the Pension Rules. The said Rule regulates the amount of pension not only in case of retiring pension, but in case of all classes of pension. Under Chapter V, in certain situations, a government servant may be eligible for pension even where the service is less than ten years. Rules 32, 36 and 38 of the TNP Rules [Rules 35, 38 and 39 of the CCSP Rules] do not prescribe any minimum service for being entitled to pension, where the cessation of service is on account of superannuation, or on account of bodily or mental infirmity or on account of abolition of his post. When Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules] refers to payment of pension to a person who has a qualifying service of not less than 10 years, it does not mean that the minimum period of service prescribed for retirement pension is reduced to 10 years or that government servants who are dismissed/removed/compulsorily retired by way of punishment, or those who voluntarily retire before reaching the age of superannuation with less than 20 years of qualifying service, become entitled to pension. Rule 43(2) of the TNP Rules [Rule 49(2)(b) of the CCSP Rules], as noticed earlier, comes into play only when the government servant is entitled to any of the classes of pension enumerated under Chapter V of the Pension Rules. Therefore, when Rule 43(2) of the TNP Rules [or Rule 49(2)(b) of the CCSP Rules] dealing with the quantum of pension refers to a government servant

retiring in accordance with the said Rules after completing qualifying service of not less than 10 years, it does not mean that pension is payable to persons who have not completed the required minimum number of years (20 years) of service or to persons who have forfeited their service on dismissal/removal from service. Therefore, the petitioner is not entitled to pension."

In the light of above discussion, this Court hardly finds any good reason to entertain the prayer of the writ petitioner.

11. Consequently, writ petition fails and it is dismissed as devoid of any merit. No costs."

7. In my considered opinion, the decision referred supra would squarely apply to the case on hand. Hence, the Writ Petition is dismissed on the same lines. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pvs

To

1. Deputy Director of Health Services,
Dharapuram.

2. The Accountant General (A & G),
Tamil Nadu, Chennai - 18.

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.75954

+1cc to the Government Pleader, S.R.No.75900

W.P.No.4592 of 2011

SS(co)
CS/07/12/2018