

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.31604 of 2014

R.Mahadevan

..Petitioner

Vs

1. The Principal Account General,
(Accounts and Entitlements)
Office of the Principal Accountant General,
(Accounts and Entitlements),
Tamil Nadu,
381, Anna Salai, Chennai-600 016.

2. The Accounts Officer,
Office of the Principal Accountant General,
(Accounts and Entitlements),
Tamil Nadu,
381, Anna Salai, Chennai-600 016.

.. Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the proceedings bearing No.Pen 33/2/Pt 10519/90815 dated 29.09.2014 on the file of the second respondent and to quash the same as illegal, and without jurisdiction, and to consequently direct the respondents to pay family pension to the petitioner.

For Petitioner : Ms.S.R.Vissalini for
M/s.V.Raghavachari

For Respondents: Mr.T.S.Selvarani,
Standing Counsel

ORDER

This writ petition has been filed by the petitioner challenging the order of the second respondent dated 29.09.2014, rejecting the application of the petitioner to grant him family pension on the date of death of his adoptive mother, who appears to be a widow of the Government servant namely

Sri.Ramalingam, died in harness to be illegal, arbitrary and to quash the same and with a prayer to direct the respondents to sanction family pension in favour of the petitioner in accordance with law i.e., till the date of his attaining the age of 25 years.

2. It appears that one Mr.Ramalingam, who was working in the Education Department of the Government of Tamilnadu had entered into the service on 18.12.1981 as a Secondary Grade Teacher. Thereafter, he was promoted as Headmaster and while under the employment as such, he died on 10.03.2007. His wife namely Smt.R.Kattimuthal, had applied for family pension and family pension order was issued to her by the first respondent on 27.01.2009, indicating therein her entitlement towards family pension. It was mentioned therein that the present petitioner happens to be her son. In receipt of the family pension, the wife of the deceased employee having died on 14.05.2013, The petitioner herein as such made a claim for family pension, wherein, he was asked to furnish his proof regarding his relationship with the pensioner and accordingly, he submitted the legal heir certificate to the first respondent, which indicates that he happens to be the foster son of the deceased employee. Thereafter, the prayer made by the petitioner for family pension was refused. According to the respondents, it is only the legally adopted son is entitled to family pension in respect of a deceased Government servant and a "foster son" being not finding a place in the list of eligible family members for receiving the family pension in respect of a deceased Government servant, the petitioner is not entitled to get the family pension. The petitioner is therefore, before this Court by challenging the same in this writ petition to be illegal, arbitrary and contrary to the provisions of law.

3. According to the petitioner, since he is the legally adopted son of the Government servant and the Tahsildar though mentioned him to be the foster son of the employee died in harness in the legal heir certificate, the petitioner should not suffer more particularly, when in the family pension order of his mother, he has already been shown as a son as such, the petitioner is entitled to the family pension till he attains the age of 25 years.

4. The same has been controverted by the respondents with an averment in the counter affidavit that the petitioner being not an adopted son, but foster son, he is not entitled to the family pension according to the Pension Rules and as such, this writ petition challenging the award to grant him family pension, is devoid of merit.

5. During the course of hearing Ms.S.R.Vissalini, the learned counsel for the petitioner submits that such approach of

the respondent no.1 is not permissible in the eye of law inasmuch as in the family pension payment order of the petitioner's mother, they have already accepted the petitioner to be her son, they could not have asked him for fresh proof on such relationship, and then taking note of an error that crept in one of the documents, refused to grant the family pension. The petitioner being the legally adopted son of the employee died in harness, and has not attained the age of 25 years when his mother in receipt of family pension died, he is entitled to the family pension. Hence, she submits the impugned order is liable to be quashed and a writ of mandamus be issued directing the respondents to pay the family pension to the petitioner to which he is entitled to, till he attains the age of 25 years.

6. Per contra, the learned counsel for the respondents submits that though it is not disputed, that son even if illegitimate or adopted of a deceased employee is entitled to family pension if he satisfies the criteria prescribed, but a foster son being not a family member of a deceased Government employee and the petitioner having furnished no proof that he is an adopted son as such a family member rather having himself furnished a proof that he is a foster son, he is legally not entitled to family pension. Hence, the first respondent refused to grant him the family pension. Therefore, the order impugned suffers no illegality, warranting an interference of this Court in exercise of this writ jurisdiction.

7. In this case, the deceased pension holder in her application for family pension, on the death of her husband, who died in harness, indicated that the petitioner to be her son and the same is also reflected in family pension payment order. Hence, on her death, the petitioner could not have been asked to furnish proof afresh, with the deceased pensioner by re-opening the same, her disbursement of family pension to him, submits the counsel for the petitioner. However, the petitioner having furnished a proof, which indicates him to be the foster son by in-inadvertence, the same could not have been used to frustrate the claim for family pension as he is the adopted son and no legal heir certificate is issued to a foster son, submits the counsel for the petitioner. But it is not in dispute that on the death of the pension holder in receipt of family pension if any other family member is entitled to family pension he has to make an application afresh to the authority for granting of such pension. Accordingly, the petitioner was asked to file a fresh application along with the proof. The proof furnished by the petitioner himself i.e., the legal heir certificate, indicates that he is not a family member of the deceased employee and also her widow in receipt of family pension, entitling him to get pension, inasmuch as the foster son is not a family member eligible for family pension, hence, the impugned order refusing

the prayer made to release family pension to the petitioner by the respondents cannot be found fault with. However, it also cannot be a lost sight that since the name of the petitioner finds place as son of the widow of the deceased employee in the family pension payment order and it is the claim by him that he is the adopted son, so also no legal heir certificate is issued to a foster son, his claim that the aforesaid legal heir certificate, indicating that he is the foster son instead of adopted son was issued by inadvertence, appears to have force. Hence, this Court, though not inclined to allow his writ petition, in the existing facts and situation however, dispose of this writ petition, with an observation that the petitioner is at liberty to move the Tahsildar/authority, who has issued the legal heir certificate, with a proof that he is the adopted son of the deceased employee, and as such the legal heir ship certificate granted be corrected, accordingly. If such prayer is made, the Tahsildar/authority concerned, shall do the needful within two months there of, to correct the legal heir certificate on being satisfaction of the said fact. So also the petitioner is at liberty to move the appropriate Court to establish the fact that he is the adopted son of the deceased employee and established the same. Thereafter, if he approaches the respondents to grant him family pension, with any of such proof notwithstanding with the rejection of his prayer vide impugned order, the respondents shall give a re-look to the same, taking note of such materials/proof furnished by the petitioner and release the family pension, if satisfied on the proof furnished. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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(Accounts and Entitlements)
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Tamil Nadu,
381, Anna Salai, Chennai-600 016.

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.20237

W.P.No.31604 of 2014

KS (CO)
CS/11/04/18



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