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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.14880 of 2018

and

W.M.P.(MD) Nos.13422 & 13423 of 2018

Paramaguru

... Petitioner

vs.

1.The District Collector
Virudhunagar District
Virudhunagar

2.The Revenue Divisional Officer
Sivakasi
Virudhunagar District

3.The Tahsildar
Social Security Scheme
Srivilliputhur
Virudhunagar District

... Respondents

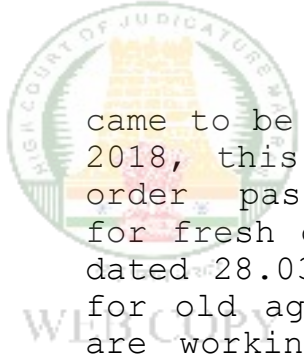
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned order of O.Mu.A4/12194/2017, dated 28.3.2018 passed by the third respondent and quash the same and consequently directing the third respondent to pay monthly old age pension to the petitioner.

For Petitioner : Mr.R.Murugappan

For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader

O R D E R

The petitioner, who is aged about 81 years, was a recipient of old age pension extended by the third respondent, through his letter dated 25.09.2010, granting a sum of Rs.1,000/- (Rupees one thousand only) per month. Subsequently, his old age pension came to be stopped by the third respondent from 13.11.2017 based on the report of the Village Administrative Officer stating that the petitioner has six sons and one daughter and among them, three sons were working in Private Companies in Chennai and the daughter was working in the Judicial Department. When the stoppage of old age pension



came to be challenged by the petitioner herein in W.P.(MD) No.408 of 2018, this Court by an order, dated 23.01.2018, had set aside the order passed by the third respondent and remanded back the matter for fresh consideration. Consequently, the present impugned order, dated 28.03.2018 came to be passed rejecting the petitioner's claim for old age pension on the ground that the petitioner's five sons are working in Private Companies in Chennai and his daughter is employed in the Judicial Department. The impugned order further states that the petitioner is being maintained by his daughter, who gives him food and incidental help and based on the petitioner's statement, his request for old age pension came to be rejected. Challenging the same, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that the petitioner, being 81 years of age, is also affected by leprosy, owing to which, his children, including the daughter, had abandoned and neglected him. He is unable to take three meals a day and is also suffering from various age-old diseases. According to the learned counsel for the petitioner, the petitioner does not have any independent income and it is false to say that the petitioner's daughter is taking care of him. As such, the learned counsel for the petitioner submitted that the petitioner is entitled to the entire arrears as well as the continuation of old age pension.

3. The learned Additional Government Pleader for the respondents, by relying upon the Social Security Pension Scheme submitted that as per the Scheme, a person would be entitled for old age pension, if he has no income, fixed assets valuing less than Rs.50,000/- and no relative above the age of 20 years.

4. The learned Additional Government Pleader further submitted that since the petitioner has given a statement during the course of enquiry that his sons are employed in Private Companies in Chennai and that he is now being taken care of by his daughter, he would not be qualified under the Scheme and therefore, a decision has been taken to discontinue the old age pension already granted to him. By reiterating the justification made in the impugned order, the learned Additional Government Pleader submitted that there is no infirmity in the impugned order and sought for dismissal of the writ petition.

5. I have given careful consideration to the submissions made by the respective learned counsels.

6. In identical circumstances, I had an occasion to deal with the scope of a person to qualify himself for old age pension in the order dated 09.04.2018 passed in W.P.(MD) No.20281 of 2017. The relevant portion of the said order reads as under:

"5.Before the dealing with the case of the petitioner, it would be appropriate to refer to the social security pension scheme, dated 22.04.2015, whereby the old-age pension was



extended to destitute person and the definition of destitute person was given a wider meaning. As submitted by the learned Additional Government Pleader, a destitute person is one who has,

(a) Without any income or source of income;

(b) Without any income or source of income and owning fixed assets valuing less than Rs.50,000/, who have no relative of 20 years of age and under the categories of son, son's son, husband/wife and other related persons, who normally live together. The proviso to the said definition of the destitute person states that a person will be deemed to be a destitute, if all the relatives falling within the categories specified above are themselves below the poverty line. Such a fact being proved to the satisfaction of the sanctioning authority or is continuously missing, and the sanctioning authority has satisfied himself by such enquiry as he deems necessary that the relatives are so missing.

6. On a plain reading of the eligibility condition prescribed for grant of old-age pension, it is seen that the person would be deemed to be destitute if he is unable to maintain himself in normal circumstances and he is not being supported by his close blood relatives.

7. But in order to ascertain as to whether a person is not supported by his close blood relatives or does not own her property more than Rs.50,000/- or that he does not have a independent income, an enquiry is contemplated under the proviso to the aforesaid eligibility conditions. Even otherwise the only method by which the eligibility condition of candidate can be ascertained is by a proper enquiry. It is needless to point out that during the course of such enquiry, the claimant / beneficiary should be given a fair chance to put forth his case for establishing that he is a destitute person and a mere photograph of the house, in which the proposed beneficiary is residing or looking at his life style or by relying upon certain records like the ration card, voter list, etc., and stating that he is living with his close blood relatives will not be a proper method to ascertain as to whether he is a destitute person or not.

8. In the instant case, it is not in dispute that the petitioner was receiving the Social Security Pension from 2013 onwards. The third



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respondent herein had filed a counter affidavit dated December 2017. As per the averments made in the counter affidavit, there is no reference to any prior enquiry made before discontinuing the pension which has been granted to the petitioner from the year 2013 onwards. It is the specific case of the petitioner that the pension came to be abruptly stopped without any enquiry or prior notice.

9. As observed in the earlier paragraphs, even for the purpose of granting a fresh pension, the respondents are duty bound to conduct proper enquiry and afford due opportunity to the claimant to establish that he is a destitute person who is entitled for old-age pension. In the petitioner's case, he was earlier granted pension which came to be discontinued and in such a case, it makes it absolutely necessary for the third respondent to give due opportunity to the petitioner calling upon him to show cause as to why his pension should be discontinued and even on receipt of such reply to show cause, an enquiry should have been conducted for the purpose of ascertaining as to whether he is a destitute person or not. In view of the fact that no enquiry was conducted for the purpose of discontinuing the petitioner's old-age pension and also taking into account the circumstances under which the petitioner is now living, which has not been countered in the third respondent's counter affidavit, I am of the view that the petitioner should be granted the benefit of old-age pension from the day when his pension came to be discontinued."

7. In the light of the above observations, the respondents ought not to have discontinued the old age pension granted to the petitioner herein.

8. Yet another aspect that requires consideration for extension of old age pension is that the Scheme does not envisage that the relatives, with whom the claimant is residing, should establish that they are taking care of him. There could be instances where the claimant could be residing with his own relatives but may not be taken care of or financially assisted. There could also be instances where the claimant may have children, who are aged about 20 years and above and who have neglected him. The Scheme is silent with regard to these instances. When there is no specific condition that the Scheme cannot be extended to the persons, who are being taken care of by the relatives, the respondents cannot quote the Scheme by simply referring to the relatives of the claimant of having been employed and thereby reject the claim.



9. It is further seen that in the statement of the petitioner before the respondents herein, he had stated that the food and other helps alone are being extended to him by his daughter. The object of the old age pension Scheme is much beyond this. Even though a senior citizen might be taken care of by his children, he might require further financial help for other reasons, including medical and incidental expenses. It is not the case of the respondents in the impugned order that the petitioner's daughter is extending financial help to the petitioner herein. In the absence of any specific condition to this effect in the Scheme, the respondents are not justified in discontinuing the old age pension from 13.11.2017 onwards.

10. It would not be out of place to mention here that the concerned Authority to disburse the arrears would be the District Collector, which aspect has been decided by the Division Bench of this Court in a Judgment dated 03.07.2018, passed in W.A.(MD) No.888 of 2018. The relevant portion of the said order reads as under:

"6.The next contention with regard to the competency of the District Collector to pay the arrears is concerned, we could neither conceive nor comprehend ourselves with the submission of the learned Special Government Pleader that it is for the Government to pay such arrears and therefore, the District Collector cannot be issued with such direction. The District Collector being the Office of the Government, cannot escape or wash of his hands by shifting the ball to the Government. Therefore, if a direction is issued to the District Collector, it is for him to work out with the Government and get the amount released for paying the same to the respondent herein."

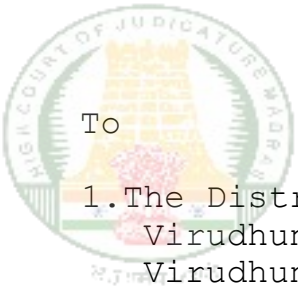
11. In the light of the above discussions, the impugned order dated 28.3.2018 passed by the third respondent is quashed. Consequently, the first respondent herein is directed to forthwith pay the arrears of the old age pension from 13.11.2017 onwards and continue to pay the old age pension till the lifetime of the petitioner. Such an exercise shall be done within a period of two weeks from the date of receipt of a copy of this order.

12. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/



To

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Revenue Divisional Officer,
Sivakasi, Virudhunagar District.

3.The Tahsildar,
Social Security Scheme,
Srivilliputhur,
Virudhunagar District

+1cc to Mr.R.Murugappan, Advocate, SR.No.73782.

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