BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 11.09.2018

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.9919 of 2016
and
W.M.P(MD)No.7825 of 2016

S.Rukmani .. Petitioner

Vs

1. The Accountant General,
   No.361, Anna Salai,
   Chennai.

2. The Deputy Director,
   District Family Welfare Department,
   Pudukkottai,
   Pudukkottai District. .. Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order passed by the first respondent in Pen 33/2/Pt7689, 7843/FA303093, dated 5.11.2012 and to quash the same as illegal and consequently to direct the first respondent to issue family pension granting order to the Petitioner.

For Petitioner : Mr.Pandi Maharaja
For Respondent-1 : Mr.P.Gunasekaran
For Respondent-2 : Mr.R.Sethuraman
Special Govt.Pleader

ORDER

The Petitioner has come forward with this Writ Petition seeking to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned order passed by the first respondent in Pen 33/2/Pt7689, 7843/FA303093, dated 5.11.2012 and to quash the same as illegal and consequently to direct the first respondent to issue family pension granting order to the Petitioner.

2.The sum and substance of the issue is that the Petitioner's son while working in the office of the second respondent died and the Petitioner's husband was drawing the family pension. The husband of the Petitioner died and thereafter, when the application was made by the Petitioner for getting the family pension, a rejection order was passed quoting G.O.Ms.No.327, Finance(Pension) Department, dated 30.8.2001, on the ground that the Petitioner is already getting family pension on account of the death of the Petitioner's husband. The learned counsel drew the attention of this Court to ***G.O.Ms.No.327, dated 30.8.2001*** and para 4 of the said Government Order is extracted below:

''4.These orders shall take effect from the date of issue. Past cases already settled need not be reopened. The existing family pensioners shall be permitted to draw family pension irrespective of the income criteria. As and when the turn of next eligible person comes up for payment of family pension, the income limit as prescribed in this G.O. Shall be applied.''

3.The first contention is that merely because a person was already extended the benefit of family pension, it cannot be withdrawn and there is no hard and fast rules that the Petitioner is not entitled to two family pension. The Government Order referred to supra, is prospective and before issuance of the Government Order, son of the Petitioner passed away. In view of the fact that the Petitioner's son passed away before the date of issuance of the Government Order, the family pension was extended to the Petitioner's husband and husband of the Petitioner was drawing two family pension till the date of his demise. The Petitioner also drew the attention to the order of this Court made in ***W.P.No.14158 of 2009, dated 14.12.2017,*** wherein, it has been held that G.O.Ms.No.327 dated 30.8.2001 cannot be retrospective and that the respondent in that case cannot deprive the family pension to the Petitioners therein. The relevant paragraph is extracted below:

''7.On the other hand, the learned counsel for the Petitioner would vehemently contend that such G.O cannot be pressed into service in regard to the claim of the Petitioner herein, since the son of the Petitioner had died on 10.04.2001, much before coming into force of the said G.O in August 2001. He would further submit that the claim of family pension arisen immediately after the death of the Petitioner's son on 10.4.2001.Therefore, the said G.O which came into force only from 30.08.2001, cannot have retrospective application as far as the Petitioner's claim is concerned. Even otherwise, according to the learned counsel, the mother of the deceased son had immediately applied for family pension on the death of her son, much before coming into force of the said G.O., in August 2001. Therefore, in all fours, he would impress upon this Court for grant of relief as prayed for in the present Writ Petition.

8.This Court has considered the rival submissions of the learned counsel for the Petitioner and perused the materials and pleadings placed on record, only point *for consideration is whether the G.O.Ms.No.327, dated 30.08.2001, can have retrospective application for the purpose of denying the family pension to the Petitioner. After appreciating the arguments advanced by the learned counsel for the parties, this Court is of the considered view that under no circumstances, the said G.O can be put into effect retrospectively for denying the family pension, as rightly claimed by the Petitioner. It is an admitted fact that the Petitioner's son died on 10.4.2001 and the claim was made much before coming into force of the said G.O. Even assuming that no claim was made before coming into force of the said G.O., nevertheless, the fact remains that the cause of action for claiming the benefit has arisen immediately after the death of the Petitioner's son on 10.4.2001. Therefore, under no circumstances, it is open to the respondents to deny the benefit of family pension of the Petitioner by citing the aforesaid G.O.''*

4.In reply, Mr.P.Gunasekaran, learned counsel appearing for the first respondent submitted that G.O.Ms.No.327 is not applicable to the facts of this case. Even assuming that it is applicable, a reading of Clause-IV of the Government Order makes it clear that the existing family pensioners is entitled to draw the family pension and when the next turn of eligible person comes for payment of family pension,the income limit as prescribed in this Government Order will be applicable. He also drew the attention of this Court to Rule 49 (13-B) of the Tamil Nadu Pension Rules and the said Rule and the proviso was inserted by G.O.Ms.No.323, dated 6.1.1996., which reads as follows:

''((13-B) Family pension admissible under this rule shall not be granted to a person who is already in receipt of family pension or is eligible therefor under any other pension rules:

Provided that a person, who is otherwise eligible for family pension under this rule, may opt to receive family pension under this rule, if he forgoes family pension admissible from any other rules)''

5.According to him, since the Petitioner is eligible to avail the pensionary benefits under wage head, it is open to him to opt for receiving the family pension provided he forgoes the family pension admissible from any other rules.

6.Heard the submissions made on either side.

7.That is not in dispute that Ramesh, son of of the Petitioner died and husband of the Petitioner was getting family pension. Apart from that, the husband was also getting pension for his service rendered. It is also not in dispute that the Petitioner's husband was getting two pensions, family pension due to him and family pension on account of his son's death. There is no dispute with regard to the order passed by this Court in the case of ***P.Dhakshinamoorthy .vs. The State of Tamil Nadu, represented by its Secretary, Finance Department, Fort St.George, Chennai - 600 009 in W.P.No.14158 of 2009, dated 14.12.2017*** that the Government order cannot be retrospective. Rule 49(13-B) has not been brought to his attention there. The issue considered upon in the decision quoted by the Writ Petitioner is whether the Government Order was retrospective or prospective as held by the learned Single Judge and held that G.O is prospective and family pension has got to be extended to other persons. A reading of Clause-IV of the Government Order and also Rule 49(13-B) would make it clear that the person is entitled to get only one family pension and not two family pension. As the Petitioner is getting family pension on account of demise of her husband, even going by Clause-IV of G.O.Ms.No.327, the Petitioner will not be entitled to get the other pension which her husband was drawing. The Government Order is very clear that if a person, who has already been receiving pension under any other pension rules, is not entitled to family pension. Hence I find much force in the contention of the first respondent. Accordingly, the relief sought for by the Petitioner cannot be granted. This will not preclude the Petitioner to get the benefit of family pension that of her husband, if the payment under the scheme is more than what is available under the family pension applicable to her son. She can forego the family pension that she is now getting and get the family pension from that of her son.

8.With the above observations, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Accountant General,
   No.361, Anna Salai, Chennai.

2. The Deputy Director,
   District Family Welfare Department,
   Pudukkottai, Pudukkottai District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 84299
+ 1 CC TO Mr.P.GUNASEKARAN, ADVOCATE IN SR No. 83860

VSN
TE/SV/SAR-2 : 28/11/2018 : 4P/5C

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W.M.P(MD)No.7825 of 2016
11.09.2018