

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2019

Coram

The Honourable Mr.Justice D.Krishnakumar

W.P.No. 39736 of 2016

and

W.M.P.No.33997 of 2016

Murugammal

...Petitioner

Vs.

1. The District Collector,
Krishnagiri District.
2. The Director of Pension,
DMS Compound,
Chennai.
3. Thasildar,
Thenkanikottai Taluk,
Krishnagiri District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records of the order passed by the third respondent, in Na.Ka.No.10790/2012 (A2) dated 21.03.2016, and to quash the same as illegal and consequently, to direct the third respondent to disburse the petitioner's husband terminal payments, late Thiru K.Vardharajan relating to differential gratuity, commutation, leave encashment, surrender leave salary and pension arrears for the period specified, differential pension by calculating D.A. Eligible as per newly implemented, DCRG, Commutation amount with interest at 12% p.a. with effect from 30.09.2012, (being the date of the petitioner's husband superannuation) and also for the payment of the family pension to the petitioner within the stipulated time.

For Petitioner : Mr.J. Pradeep

For Respondents: Mr.G.B.Rajesh, Government Advocate

O R D E R

The challenge in this Writ Petition is to the order passed by the third respondent, dated 21.03.2016, and to quash the same as illegal and consequently, to direct the third respondent to disburse the terminal payments and family pension of the petitioner's deceased husband to the petitioner within the stipulated time.

2. The case of the petitioner is that her husband, by name Mr.K.Vardharajan, joined in the service of the respondent/Department as Village Administrative Officer, and his service was regularized on 26.04.1984. Thereafter, on 30.09.2012, he attained the age of superannuation. During his tenure, he was faced with some minor charges. However, he was paid with terminal benefits, like gratuity, partial pension, leave surrender (earned leave and medical leave) provident fund amount on 19.04.2013. Subsequently, after his death, i.e. on 05.08.2014, petitioner, as being wife of the deceased, received partial pension only for a short while. Hence, the petitioner made a representation, dated 30.09.2015, to the first respondent seeking for disbursal of terminal benefits and pension amount of her husband and also approached him in person on various dates. Since the petitioner has not been favoured with any response, she invoked RTI Act, and she came to understand that the first respondent vide proceedings dated 01.12.2015, has forwarded her representation to the third respondent for taking action. However, the third respondent, vide impugned order, dated 21.03.2016, rejected the claim of the petitioner. Aggrieved by the non-payment of the terminal benefits, the petitioner has filed this Writ Petition.

3. The learned counsel appearing for the petitioner has submitted that the impugned order passed by the third respondent is liable to be set aside for the reason that the same has been passed merely on a presumption that there was no marital relationship existing between the petitioner and her husband deceased, and therefore, the petitioner is not entitled for the claim, and in arriving at such decision, the third respondent relied upon the Maintenance Case filed by the petitioner on the file of the District Munsif Cum Judicial Magistrate, Uthankarai, in M.C.No.19 of 2008. The learned counsel submitted that it is true that prior to the death of the petitioner's husband, there was some dispute between the petitioner and her deceased husband, which resulted in the petitioner filing Maintenance Case, but, that by itself, would not dis-entitle the petitioner from receiving the family pension of her deceased husband and third respondent ought to have gone into the aspect whether the

marriage between the petitioner and her deceased husband was dissolved/declared to be null and void and whether any decree was been passed to that effect and without analysing those aspects, the third respondent simply rejected the claim of the petitioner holding that there was no existence of marital relationship between the petitioner and her deceased husband and hence, she is not entitled to the claim. Further, the learned counsel submitted that the third respondent passed the impugned order without giving an opportunity of hearing to the petitioner, and had the third respondent given opportunity to the petitioner, obviously, the petitioner would have been able to substantiate her claim by producing relevant documents. Therefore, the learned counsel submitted that the impugned order suffers from violation of principles of natural justice and the same is liable to be set aside.

4. The learned Special Government Pleader for the respondents submitted that the reasons assigned by the third respondent for rejecting the claim of the petitioner is valid and the same requires no interference.

5. Heard the learned counsel for both sides and perused the materials on record.

6. As rightly pointed out by the learned counsel for the petitioner, on perusal of the impugned order, it is seen that the third respondent has not even given an opportunity of hearing to the petitioner to produce documents substantiating her claim. Further, he has not given a definite finding that the marriage between the petitioner and her deceased husband got dissolved. He has just referred to the maintenance case filed by the petitioner against her husband and citing the same, came to the conclusion on a presumption that the marital relationship between the petitioner and her husband does not exist and hence, the petitioner is not entitled to the claim. Even assuming that the marriage between the petitioner and her husband was declared to be null and void, and the petitioner is not entitled to receive the pensionary benefits of the deceased husband, it should devolve upon the legal heir of the deceased and the petitioner also produced legal heir certificate before this Court though not impleaded them in the Writ Petition. Therefore, this Court is of the view that the impugned order suffers from infirmity as the same has been passed in violation of principles of natural justice.

7. In the result, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the third respondent for fresh consideration, who shall pass

appropriate orders as expeditiously as possible, preferably, within a period of twelve weeks from the date of copy of this order, after affording an opportunity of hearing to petitioner and other aggrieved persons, if any, especially, the legal heir of the deceased. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sd
To

1.The District Collector,
Krishnagiri District.

2.The Director of Pension,
DMS Compound,
Chennai.

3.Thasildar,
Thenkanikottai Taluk,
Krishnagiri District.

+1cc to Mr.J.Pradeep, Advocate SR.94310
+1cc to the Government Pleader SR.94129

W.P.No.39736 of 2016

PA(CO)
CB(31/01/2020)



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