

IN THE HIGH COURT OF JUDICATURE AT MADRAS

28.08.2019

CORAM

THE HONOURABLE Mrs. JUSTICE V.PARTHIBAN

W.P. No.17222 of 2019

Rukumani Balasingh

.. Petitioner

Vs.

1. The State of Tamilnadu,
rep. by its Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Senior Accounts Officer/PEN-8,
O/o.The Principal Accountant General,
No.361, Anna Salai,
Teynampet,
Chennai-600 018

.. Respondents

PRAYER : Writ Petitions filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 31.12.2018 in PEN8/1/PT.9806/2018-19/83240 of the second respondent to quash the same as arbitrary illegal and violative of Article 14 and 19 of the Constitution of India and consequently direct the second respondent to immediately sanction Family Pension to the petitioner from the date of her husband's death on 25.06.1981 with all consequential benefits.

For Petitioner : Mr.A.P.Surya Prakasam

For RR1 : Mr.J.Pothiraj, Spl G.P.

O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 31.12.2018 in PEN8/1/PT.9806/2018-19/83240 of the second respondent to quash the same as arbitrary illegal and violative of Articles 14 and 19 of the Constitution of India and consequently direct the second respondent to immediately sanction Family Pension to the petitioner from the date of her husband's death on 25.06.1981 with all consequential benefits.

2. The case of the petitioner is that the petitioner is a widow of late Dr.R.Balasingh, who was employed as a Medical officer in the Government Primary Health Centre at Valparai. He expired on 25.06.1981 due to illness while he was in Government service. As a widow of late Government servant, the petitioner applied for family pension, but the same was rejected by the second respondent by stating that her deceased husband had rendered Government service only for a period of 8 months and as such, she was not entitled to family pension under the Rules. According to the respondents, the Rules mandate maximum one year towards consideration for payment of family pension to Government servant. The said rejection order is the subject matter of challenge in the present Writ Petition.

3. The learned counsel for the petitioner would submit that decision of the authority on the stated ground cannot stand test of scrutiny since under Rules, it is permissible for payment before rendering continuity of service for one year. In support of his contention, the learned counsel would draw the attention of this Court to the decision rendered by the learned Single Judge in WP.No.12437 of 2007 dated 03.12.2014 in the case of Radha Bai and other Vs. The State of Tamil Nadu, rep. by its Secretary, Health & Family Welfare Department, Chennai-9 and another, wherein, it has been held in Paragraph nos.6 to 10 which are extracted hereunder:

"6.However, in the reply affidavit, there is no whisper about the family pension payable to the widow of the Government servant, if the Government servant dies within a period of one year.

7.At this juncture, the learned counsel for the second respondent has brought to my notice the proviso to rule 49(2) of the Tamil Nadu Pension Rules, 1978, relating to family pension payable on the death of the Government servant. The said proviso makes it clear that even if the Government servant rendered less than one year of service, the widow is entitled to family pension.

8.It is useful to extract rule 49(2) of the Tamil Nadu Pension Rules, 1978 and the proviso thereto, as follows:

"49.(2)without prejudice to the provisions contained in sub-rule (3) where a Government servant dies, -

[(a)after completion of not less than one year continuous service or at any time during his service;] (b)after retirement from

service and was in receipt of pension on the date of death, the family of the deceased shall be entitled to a family pension (hereinafter in this rule referred to as family pension), the amount of which shall be determined as follows:

1	Below Rs.200	30 per cent of pay	Minimum of Rs.50
2	Rs.2000 and above but below Rs.800	15 per cent of pay	Minimum of Rs.60
3	Rs.800 and above	12 per cent of pay	Maximum of Rs.300, and Minimum of Rs.150

Provided that family pension shall be payable to the family of a Government servant who dies before the completion of one year continuous service, if he was declared fit for Government service by the appropriate medical authority prescribed under the relevant rules immediately prior to his appointment."

9. Since the rule provides for family pension even if the Government servant died before completion of one year service, the first respondent is directed to send necessary proposal for family pension as well as for DCRG to the second respondent, within a period of four weeks from the date of receipt of a copy of this order, since the Government servant died long back in 1988. The first respondent is also directed to pay interest on the belated settlement of pension at the rate of 10% as held by a Division Bench of this Court in GOVERNMENT OF TAMIL NADU, REPRESENTED BY THE SECRETARY TO GOVERNMENT VS. M.DEIVASIGAMANI [2009 (3) MLJ 1], following the judgment of the Honourable Supreme Court in S.K.DUA VS. STATE OF HARYANA [2008 (3) SCC 44]. If the DCRG is not paid so far, the same shall also be paid with interest as per the Tamil Nadu Pension Rules. On receipt of such proposal from the first respondent, the second respondent is directed to authorise the same, so that there cannot be any further delay in payment of family pension to the petitioner, who is a widow agitating for family pension for the death of her husband in 1988.

10.The writ petition is disposed of in the above terms. No costs."

4. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for the first respondent. Today when the matter is taken up for hearing, the learned Special Government Pleader would submit that a direction may be issued to the first respondent to consider the claim of the petitioner, in the light of the order passed by the learned Judge of this Court as afore stated and the same may be considered by the respondents.

5. In view of the above submissions made by the learned counsel appearing on either side, this Court is of the opinion that the issue for grant of family pension was already considered in similar circumstances by the learned single Judge of this Court and a positive direction was issued for grant of family pension to the petitioner therein.

6. In that view of the matter, this Court in fitness of things, directs the first respondent to consider the claim of the petitioner for grant of family pension in the light of the dictum of this Court as afore extracted in the said Writ Petition and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. It is made clear that in case, the petitioner's claim is squarely covered within the parameters of the learned Judge's directions, the first respondent shall consider the claim sympathetically and recommend for grant of family pension. On such recommendation of the first respondent, the second respondent is directed to grant appropriate family pension as payable to the petitioner herein by taking into consideration the age of the petitioner and pass appropriate orders within the time as stipulated by this Court.

7. The Writ Petition is disposed of, accordingly. No costs.

sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamilnadu,
rep. by its Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.

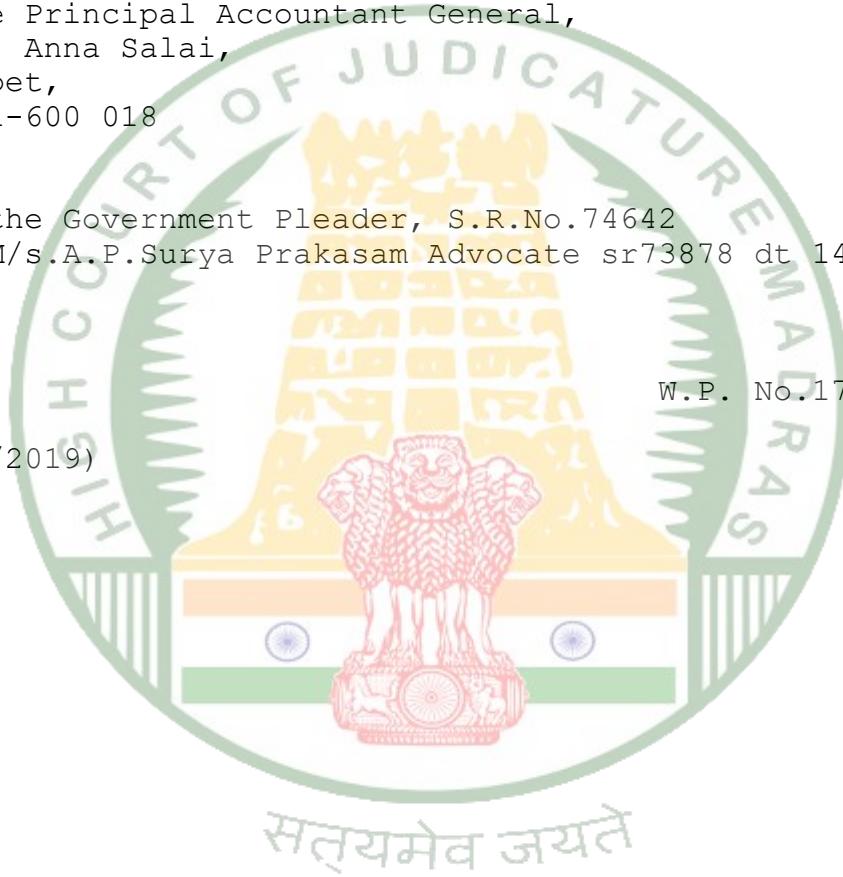
2. The Senior Accounts Officer/PEN-8,
O/o.The Principal Accountant General,
No.361, Anna Salai,
Teynampet,
Chennai-600 018

+1 cc to the Government Pleader, S.R.No.74642

+1 cc to M/s.A.P.Surya Prakasam Advocate sr73878 dt 14/10/2019

PP (CO)
SSM(30/09/2019)

W.P. No.17222 of 2019



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