

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2019

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE Ms.JUSTICE P.T.ASHA

Review Application No.210 of 2019
& CMP.No.23951 of 2019

R.Shanmugam

.. Petitioner

vs.

The Assistant Treasury Officer,
Sub Treasury,
Vellore-4.

.. Respondent

Prayer: Review Application filed under Order 47, Rule 1 C.P.C. to review the order dated 02.07.2019 made in W.A.No.1670 of 2019

For Petitioner : Mr.G.Jeremiah

For Respondent : Mr.M.Elumalai,
Government Advocate

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The writ petitioner is the review petitioner herein and he made a challenge to the order of the respondent dated 22.09.2005, in and by which, payment of family pension was stopped in respect of Tmt.N.R.Saraswathi,

who died on 22.11.1979. The learned Single Judge, vide order dated 18.08.2017, has allowed the writ petition and thereby set aside the order of the respondent dated 22.09.2005, with a consequential direction to pay Family Pension of Late Tmt.N.R.Saraswathi from 01.03.1985 and also to pay arrears of family pension of Late Tmt.N.R.Saraswathi to the petitioner from 01.03.2005, within the outer time limit of eight weeks from the date of receipt of a copy of the order.

2. The official respondent in the writ petition, aggrieved by the same, filed a Writ Appeal in W.A.No.1670 of 2019 and pendency of the same, the respondent/writ petitioner filed an affidavit dated 03.06.2019 and it is relevant to extract Paragraph No.9 of the said affidavit:

“9. I respectfully submit that present controversy arose as a result of the nomination made by the late A.N.Kannammal who had nominated me to receive her family pension. I submit that Kannammal expired to 27.07.2015 and thereafter, no family pension has been paid to me as her nominee. I respectfully submit that I am entitled to receive family pension of N.R.Saraswathy who is my legally wedded wife. I undertake not to claim family pension in respect of A.N.Kannammal.”

3. The Division Bench of this Court, in the judgment dated 02.07.2019,

has taken note of the fact that the respondent/writ petitioner has deliberately suppressed the factum of his second marriage with Tmt.Kannammal and that the respondent/writ petitioner was aged about 81 years and disposed of the writ appeal subject to observations made in paragraph No.10 and it is relevant to extract the same:

“10. Considering the fact that the respondent is now aged over 81 years and that he is just receiving the pension of Rs.3,850/-, the order passed by the learned Single Judge is modified as follows:

“The order in Na.Ka.1502/2005 A1, dated 22.09.2005, is set aside. The appellant shall not deduct any further amounts from the petitioner due to the respondent. The respondent shall not claim the arrears due towards the family pension of N.R.Saraswathi. His undertaking that he will not claim the retiral benefits due to his second wife Kannammal, is also recorded.”

To review the above order passed in the writ appeal, the present review application is filed.

4.Mr.G.Jeremiah, learned counsel appearing for the review petitioner has invited the attention of this Court to the affidavit of the writ petitioner dated 03.06.2019 filed during the pendency of the writ appeal and would submit that the petitioner had undertaken not to claim family pension of his

deceased 2nd wife Tmt.Kannammal and in the absence of any bar in the Tamil Nadu Pension Rules, the review petitioner is entitled to get family pension of his legal wedded wife Tmt.N.R.Saraswathi and hence prays for appropriate orders.

5. *Per contra*, Mr.M.Elumalai, learned Government Advocate appearing for the respondent would submit that admittedly, the review petitioner/writ petitioner has suppressed the factum of his second marriage with Tmt.Kannammal and taking into consideration the cumulative facts and circumstances, this Court has rightly observed that he is not entitled to get family pension of his deceased legally wedded wife Tmt.N.R.Saraswathi and would further add that in the absence of any error apparent on the face of the record, prays for dismissal of this review application.

6. This Court has considered the rival submissions and also perused the entire materials placed before it.

7. During the course of arguments, this Court has put a specific query

to the learned Government Advocate appearing for the respondent as to whether any specific bar on the part of the petitioner, who is also in receipt of family pension and receiving the family pension of the deceased legally wedded wife Tmt.N.R.Saraswathi and the learned Government Advocate is unable to point out any specific provision and that apart, a perusal of the memorandum of grounds of appeal in W.A.No.1670 of 2019 would also disclose that no specific ground has been raised as to the said position.

8. In the absence of any specific bar in the Tamil Nadu Pension Rules as to the receipt of family pension by the petitioner in respect of the deceased legally wedded wife Tmt.N.R.Saraswathi, this Court is of the considered view that the review petitioner is entitled to receive the same and to that extent, the judgment dated 02.07.2019 made in W.A.No.1670 of 2019 requires modification.

9. In the result, this Review Application is partly allowed and the respondent is directed to pay the petitioner the arrears of family pension of his deceased legally wedded wife, namely Tmt.N.R.Saraswathi, within a

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and

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period of eight weeks from the date of receipt of a copy of this order, failing which the review petitioner is entitled to receive interest @ 6% p.a. for the delay in payment of the said arrears and the respondent shall also continue to pay the petitioner, the family pension in respect of his deceased legally wedded wife Tmt.N.R.Saraswathi. In all other respects, the judgment dated 02.07.2019 made in W.A.No.1670 of 2019 shall stand confirmed. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.N., J.] [P.T.A., J.]
03.12.2019

Index : Yes / No
Internet : Yes / No
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To
The Assistant Treasury Officer,
Sub Treasury,
Vellore-4.

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Rev.Appln.No.210 of 2019