



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2019

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P(MD)No.15384 of 2016

and W.M.P(MD)No.11329 of 2016

WEB COPY

J.Sulochana

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Transport Department,
St. George Fort,
Chennai - 600 009.

2. The Transport Commissioner,
Department of Transport,
Chepauk,
Chennai - 600 005.

3. The Regional Transport Officer,
Thanjavur.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the respondents to take immediate necessary action to make payment of lifetime arrears of pension and DCRG (Death Cum Retirement Gratuity) payable to the petitioner's husband and to the petitioner as his legally wedded wife apart from paying the family pension from 26.09.2015.

For Petitioner : Mr.P.Thiagarajan

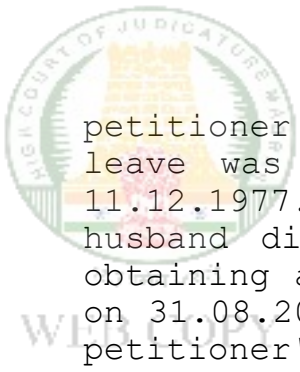
For Respondents : Mr.S.Angappan,
Government Advocate.

ORDER

This writ petition has been filed by the petitioner seeking issuance of a writ of Mandamus, to direct the respondents to take immediate necessary action to make payment of lifetime arrears of pension and DCRG (Death Cum Retirement Gratuity) payable to the petitioner's husband and to the petitioner as his legally wedded wife apart from paying the family pension from 26.09.2015.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

3. The learned counsel appearing for the petitioner submitted that the petitioner's husband was appointed as Jeep Driver in the office of the third respondent on 21.10.1965 and he continued to work as Jeep Driver inclusive on 06.12.1977. Thereafter, the



petitioner took Earned Leave from 07.12.1977 to 05.01.1978 and the leave was sanctioned by the third respondent, vide order, dated 11.12.1977. On expiry of leave on 05.01.1978, the petitioner's husband did not join the duty, but abstained from duty, without obtaining any permission until he reached the age of superannuation on 31.08.2000 ie., about 23 years owing to his serious illness. The petitioner's husband died on 25.09.2015 without recovering from his ailment.

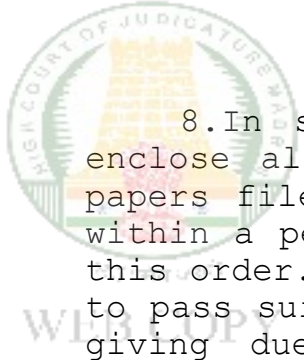
4.The learned counsel appearing for the petitioner further submitted that the act of the petitioner's husband absenting himself from duty for about 23 years continuously without permission though attracts initiation of disciplinary proceedings against him under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and as per amended Fundamental Rules 19(3) vide G.O.Ms.No.154, Personnel and Administrative Reforms (FR.III) Department, no such action was neither contemplated nor initiated by the third respondent. Since the petitioner's husband was alive beyond 31.08.2000 and died on 25.09.2015, pension and DCRG was not paid to him during his life time despite representation was given to the second and third respondents. As such, non-payment or long delay in payment of monetary benefits would amount to denial of entitlement violating Articles 14 and 16 of the Constitution of India. In this regard, the petitioner has made a representation to the respondents on 22.01.2016. Since the same has not been considered by the respondents so far, the petitioner has filed the present Writ Petition.

5.The learned counsel appearing for the petitioner further submitted that despite the directions given by the second respondent, the third respondent has not taken any action, even right from 20.05.2016, which cannot be countenanced.

6.Though the petitioner claims that all the required documents had already been submitted to the authorities for consideration, the third respondent disputed the same by filing counter-affidavit, the relevant portion of which reads thus:-

"7.I humbly submit that particularly the petitioner's husband does not submit any pension papers, and sanction forms duly filed along with relevant particulars as required in the form and also not duly signed in the name of the nominee. Hence, the question of sending pension papers to Accountant General, Chennai, does not arise, since he was absent for duty from 06.12.1978 without any permission. Hence there is no abnormal delay in the said process as alleged by the petitioner. Even on this ground, the writ petition has to be dismissed."

7.The above statement of the counter-affidavit is stoutly refuted by the petitioner.



8. In such view of the matter, the petitioner is directed to enclose all the documents, which are enclosed in the typedset of papers filed along with the writ petition, to the third respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the third respondent is directed to pass suitable orders on merits and in accordance with law, after giving due opportunity of hearing to the petitioner. Such an exercise shall be completed within a period of four weeks thereafter.

9. With the above direction, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Transport Department,
St. George Fort,
Chennai - 600 009.
2. The Transport Commissioner,
Department of Transport,
Chepauk,
Chennai - 600 005.
3. The Regional Transport Officer,
Thanjavur.

+1 CC to Mr. P. THIAGARAJAN, Advocate (SR-47575[F] dated 15/02/2019)

W.P (MD) No. 15384 of 2016
14.02.2019

ps

MK (25.03.2019) 3P 5C