

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.34754 of 2013

ORDER:

This writ petition is filed challenging the proceedings dated 05.11.2013 issued by the 3rd respondent stopping the family pension being paid to the petitioner on account of the death of the petitioner's wife, who is also a freedom fighter, and also recovering the amount of Rs.11,42,440/- paid prior to September 2013 from the date of death of the petitioner's wife basing on the circular D.No.45/13/2010-ff(p) dated 13.05.2011.

2. Learned counsel for the petitioner submits that petitioner is not aware that he is not entitled to family pension on account of death of his wife, who is also freedom fighter, as such made an application. Basing on the said application, the District Collector vide proceedings No.C7/3929/2006 dated 24.04.2006 granted family pension to the petitioner and basing on the said proceedings, the petitioner is paid family pension and there is no fault on the part of the petitioner in receiving the family pension and at this juncture, the respondents cannot recover the amount paid to the petitioner.

3. The counter affidavit filed by the 1st respondent states that as per the policy issued by the Government of India vide letter No.55/21/94-FF(P) dated 15.06.1994, clarified that where both the husband and wife are drawing freedom fighter's pension individually under the Swatantrata Sainik Samman Pension Scheme, the same cannot be transferred in the name of the spouse consequent to the death of either of them. The subsequent policy guidelines issued on 13.10.2000 also make it clear that the

dependent of family pension should fulfill twin conditions i.e., (i) falling into the eligible category of relationship and (ii) should be dependent on the pensioner without any independent means of livelihood. It also states that the petitioner being a freedom fighter having means of livelihood is not entitled to the family pension on the death of his wife and sought for dismissal of the writ petition.

4. The counter affidavit filed by the 3rd respondent-Bank speaks that during the course of audit of the pension accounts it was noticed by the Officials that the petitioner is not entitled to the payment of the pension payable to his wife after her demise, as he himself is a pensioner under the Scheme and has been receiving the pension regularly from the Bank and it was also noticed that said family pension was being paid to the petitioner was under a bonafide mistake of the officers of the bank without noticing the provisions contained under the circular dated 13.05.2011, which was a reiteration of the earlier circular dated 15.06.1994 and in the light of said bonafide mistake, the 3rd respondent Bank issued proceedings dated 05.11.2013 requiring the petitioner to refund the excess amount of Rs.11,42,440/- and sought for dismissal of the writ petition.

5. Heard learned counsel for the petitioner and Sri N. Rajeswara Rao, learned Assistant Solicitor General for respondent Nos.1 & 2 and also the learned Standing Counsel for the 3rd respondent-Bank.

6. Though the counter affidavit of the 1st respondent show that the petitioner is not entitled for family pension on account of the death of the petitioner's wife as he himself is receiving freedom fighter's pension, but the fact remains that the District Collector

sanctioned family pension vide proceedings dated 24.04.2006 on the application of the petitioner and the petitioner was receiving the same till the impugned order is passed and the 3rd respondent-Bank also states that by mistake family pension was paid to the petitioner.

7. It is to be seen that when District Collector himself is not aware of the circular issued by the Central Government in the year 1994, the petitioner cannot be blamed for receiving family pension. However, the issue is clarified by circular dated 13.05.2011 and that is the basis for issuing the impugned proceedings for recovering the amount and stopping family pension. This Court has granted stay of recovery of the pension and it is stated that family pension was stopped to the petitioner from the year 2013 and it is also stated by the learned counsel for the petitioner that the petitioner is aged about 91 years and the amount calculated for recovery is Rs.11,42,440/- is not correct and if the amount sought to be recovered from the pension of the petitioner, the petitioner will be put to great hardship at this stage.

8. As there is no fault on the part of the petitioner in receiving the family pension and keeping in view the age factor of the petitioner, this Court is of the opinion that though the petitioner is not entitled for family pension, however the amounts paid to the petitioner shall not be recovered.

9. With the above directions, this Writ Petition is disposed of. Miscellaneous petitions, if any, shall stand closed. No costs.

A. RAJASHEKER REDDY, J

Date: 14.11.2019
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