

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.NO.7715 OF 2013

AND

M.P.NO.1 OF 2013

Purnakala
W/o Lankunath

.. Petitioner

vs.

1. The Chennai Port Trust,
rep. By its Chairman
Rajaji Salai, Chennai 600 001.

2. The Financial Advisor and Chief Accounts Officer,
(Pension) Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

3. The Accounts Officer (Pension)
Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

.. Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the first and second respondents to consider and grant the family pension to the petitioners on the basis that she is the wife of Lankunath, with all attendant benefits from the date of death of her husband.

For Petitioner : Mr.C.K.Chandrasekhar

For Respondents : Mrs.Madhuri Donty Reddy

O R D E R

The writ petition has been filed by the petitioner to direct the first and second respondents to consider and grant family pension to the petitioners on the basis that she is the wife of Lankunath, with all attendant benefits from the date of death of her husband.

2. The case of the petitioner is that she and her husband belongs to Nepal and her husband, viz., L.Lankunath (deceased) was employed in the Chennai Port Trust and retired from service after attaining the age of superannuation on 30.06.1991, and thereafter he got pension from September 1991 onwards, and settled in Nepal. It is the further case of the petitioner that due to the illiteracy of her husband, who was employed as Peon, he did not enter the petitioner's name as wife in the pension book and he did not notice the discrepancy while he was alive. The grievance of the petitioner is that since her husband's death, she was not paid the family pension by the respondent Port Trust. In spite of her repeated requests to the respondents, there was no reply. Hence she filed application under the RTI Act on 30.08.2011, pursuant to which the 2nd respondent issued a reply dated 28.10.2011 stating that her husband had only furnished the names of his three children and not her name. Therefore, she approached the Tamil Nadu Legal Services Authority for legal redressal and pursuant to the intervention by the Legal Services Authority, it was informed by the Port Trust Officials that entry was made in the service book as if the petitioner had predeceased her husband and only her husband had four surviving children. Since she has not been paid the pension, the petitioner has filed the present writ petition.

3. Learned counsel appearing for the petitioner while reiterated the grounds raised in the affidavit filed in support of the petition, further submitted that the illiteracy of the petitioner's husband in not showing the name of the petitioner in the service book should not be put against the petitioner by denying her the family pension. In spite of the petitioner producing proof of her relationship with her husband, the respondents have not paid the family pension to her and it is therefore submitted that once the relationship between the petitioner and the deceased employee stood proved, the respondents cannot deny the pension to the wife on the mere ground that the name of the petitioner is not found nominated in the service book of the petitioner. The petitioner having produced proof of her relationship with the deceased employee by producing the relationship certificate issued by the Nepal Authorities, which is equivalent to the succession certificate in India, not accepting the same and denying pension to the petitioner is per se unsustainable. It is the further submission of the learned counsel for the petitioner that the illiteracy of the petitioner's husband stood proved by the fact that he has not signed in the service book and, therefore, non-communication of the nominee should not be put against the petitioner to claim family pension. Learned counsel, however, fairly submits that It would suffice if this Court directs the

respondents to peruse all the relevant certificates produced by the petitioner for proving her relationship with the deceased employee and based on the said proof, the respondents may be directed to pay the family pension to the petitioner in accordance with law within a prescribed time frame.

4. On the above contention, this Court heard the learned standing counsel appearing for the Port Trust, reiterating the stand taken by the respondents in the counter submitted that L.Lanjunath, had worked as Sr. Attender and retired from service with effect from 30.06.1991, and he was paid pension till his death. It is the further submission of the learned counsel for the respondents that Form 3 submitted by the employee at the time of retirement does not reflect the name of petitioner in the column "details of the family". It is the further submission of the learned counsel for the respondents that the late employee had given stated that his wife had died on 12.07.1981 and, therefore the petitioner was not paid family pension. Learned counsel further submitted that the petitioner has not produced relevant documents in support of the proof of marriage with Late L.Lunikanath and the marriage photo has not been given by the petitioner's husband, but he has given only his photograph. In such a backdrop, as the name of the petitioner was not shown as wife of the deceased employee, she was not paid family pension on the death of the employee. However, the petitioner was advised to get orders from the competent court relating to payment of family pension and also produce all the relevant certificates/documents for consideration of the claim of the petitioner for family pension.

5. This Court heard the submissions made by the learned counsel on either side and also perused the materials available on record.

6. It transpires from the records placed before the Court that the petitioner's husband has not mentioned the name of his wife in details given about the family in Form-3, while submitting his papers for pension at the time of retirement. Further, the name of his three children has been shown in the records. The petitioner has produced the certificate of relationship issued by the Nepal Government certifying the relationship of the petitioner with the deceased employee. It is not the case of the respondents that there arises a doubt in the said certificate due to which the payment of family pension has not been paid to the petitioner. It is to be pointed out that since the bifurcation of the countries, viz., India and Nepal since independence, different legal systems have been put

in place by both the countries. In such a backdrop, the Nepalese authorities having issued the relationship certificate certifying the relationship of the petitioner with the deceased employee, mere non-mentioning of the name of the petitioner in the service book cannot be put against the petitioner. Though it is stated that in the service book it is shown that the petitioner's wife had predeceased him, however, there is nothing on the record that reveals the basis on which such an entry has been made. No letter or communication from the petitioner's husband is placed on record to show that the petitioner's husband had informed about the death of his wife. Further, no material whatsoever has been placed to show that the petitioner's husband was literate enough to communicate the above to the respondents. In such a backdrop, when materials have been placed by the petitioner to show her relationship with the deceased employee, it is not open to the respondents to simply brush aside the said certificates, which have been issued by a competent Government authority without taking into consideration and analysing it and giving a reasoned decision. The respondents cannot relegate the petitioner to go before the Court and get order certifying her relationship without properly appreciating the materials placed before them. Only when doubt arises as to the genuineness and authenticity of the certificate issued by the Nepalese authorities, the petitioner can be relegated to obtain orders from the court and not otherwise. It is not the case of the respondents that the certificate produced by the petitioner is not genuine or authentic. Such being the case, this Court is at a loss to understand the basis on which the petitioner has been asked to go before the competent court and obtain order. In such view of the matter, this Court finds that the non-consideration of the representation of the petitioner by the respondents without proper appreciation of the materials definitely necessitates this Court to direct the respondents to consider the representation of the petitioner together with the relevant materials placed by the petitioner to prove her relationship with the deceased employee in accordance with law.

7. Accordingly, for the reasons aforesaid, this Court directs the petitioner to submit all necessary records to the 1st respondent within a period of 4 weeks from the date of receipt of copy of this order, and on receipt of the said documents, produced by the petitioner, the 1st respondent is directed to consider the same and pass orders thereon in accordance with law within a period of six weeks thereafter.

8. With the above direction, the Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected

miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

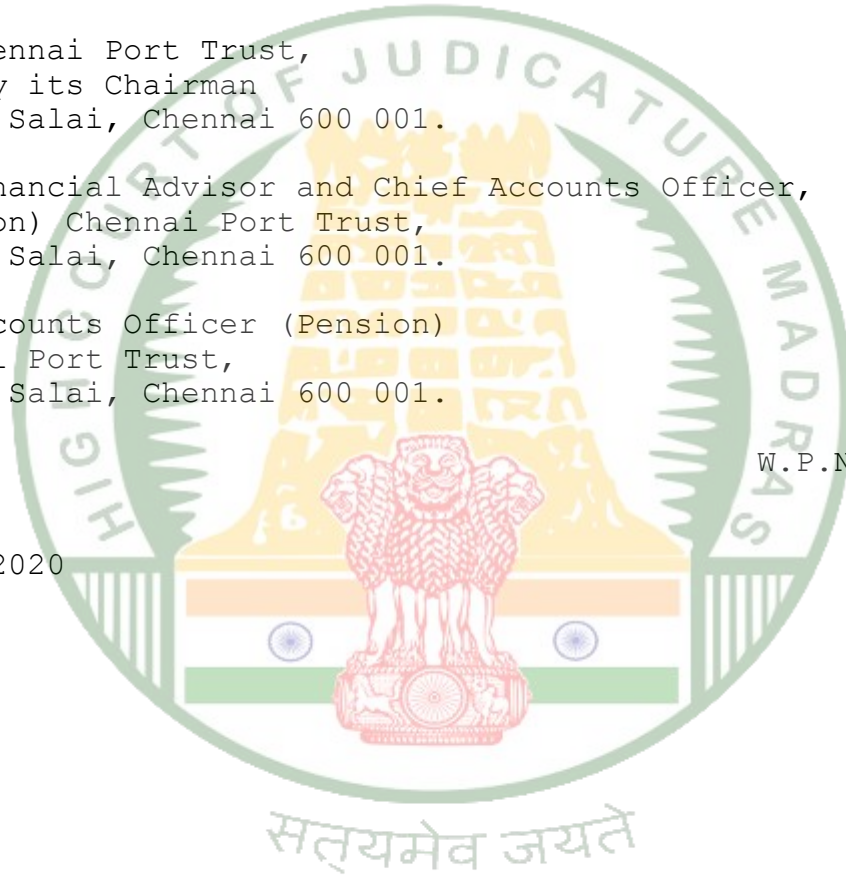
jrs

To

1. The Chennai Port Trust,
rep. By its Chairman
Rajaji Salai, Chennai 600 001.
2. The Financial Advisor and Chief Accounts Officer,
(Pension) Chennai Port Trust,
Rajaji Salai, Chennai 600 001.
3. The Accounts Officer (Pension)
Chennai Port Trust,
Rajaji Salai, Chennai 600 001.

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CS/09/11/2020



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