

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2020

Coram

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.26150 of 2016

and

WMP Nos.15911 of 2018

R. Mirunalini

...Petitioner

-vs-

1.State of Tamil Nadu
Rep. By its Secretary,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2. The Director
Medical and Rural Health Services,
Chennai - 600 009 *
* Previous R2 deleted and suo motu
impleading R2 vide order dated 15.10.2020
in WP No.26150 of 2016.

3. The Accountant General,
Accountant General Office,
No.360, Anna Salai,
Teynampet,
Chennai - 18.

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India to issue writ of Mandamus directing the 1st respondent to sanction the pension and family pension to the petitioner being the legal heir of late Dr.P.Ramasubramanian as per the letter of 1st respondent No.12321/B1/2014-1, dated 15.04.2014 within a date fixed by this Hon'ble Court with 18% interest.

For Petitioner : Mr.A.R. Nixon
For Respondents : Mr.A.N.Thambidurai,
Spl. Govt. Pleader

ORDER

This writ petition has been filed for a direction to 1st respondent to sanction pension and family pension to the petitioner being the legal heir of late Dr.P.Ramasubramanian as per the letter of 1st respondent No.12321/B1/2014-1, dated 15.04.2014 with 18% interest.

2. The case of the petitioner is that her husband joined as Civil Assistant Surgeon in Tamil Nadu Medical Service on 24.10.1968. While he was in service, he applied for Medical Leave from 17.08.1975 to 15.09.1975. When he was on medical leave, he was transferred to another station and therefore, the husband of the petitioner reported for duty on 3.9.1975 in the transferred place and later applied for Earned Leave from 8.10.1975 for a period of six months. It is averred that the petitioner's husband retired from service on 31.10.2002 and after five years of retirement, he expired on 25.03.2007 leaving behind the petitioner as his surviving legal heir.

3. It is the further case of the petitioner that after her husband's demise, she approached the Accountant General Office requesting for disbursement of family pension and in response to that, they sent the letter dated 17.5.2014 wherein, it was stated that they did not receive the family pension proposal as well the particulars of Service Register pertaining to her husband. Hence, she approached various authorities including submission of an application under Right to Information Act, which fetched no remedy for her grievance. As the officials attached to the respondents-Department have stated that the Service Register of her husband was not available and consequently, the proposal for disbursement of family pension could not be sent, the petitioner has filed this writ petition for an appropriate direction to the respondents within a time frame.

4. Learned counsel for the petitioner would submit that the petitioner's husband joined service on 24.10.1968 and after availing long leave, he retired from service on 31.10.2002. It is his case that due to slackness on the part of the respondents in respect of maintenance of service register pertaining to petitioner's husband, petitioner would not be made to suffer. He has drawn the attention of this Court to the averment made in the affidavit that concerned Medical Officer was directed by his higher officials to open a new service register with available records, but it has also not evoked any response. In any event, the petitioner was made to suffer to get her legitimate due at this age of 74 years for getting her family pension. Hence it would suffice if this Court issues

appropriate direction to the respondents to consider the claim of the petitioner, within a prescribed time.

5. Learned Special Government Pleader appearing for the respondents fairly submitted that the petitioner's husband joined duty and served as Assistant Surgeon at Government Primary Health Service Centre, Megnanapuram from 24.10.1968 to 30.08.1975, later he was transferred to Government Leprosy Control Unit Seerudaiyarpuram, Tirunelveli District where he worked from 30.08.1975 to 25.09.1975 and thereafter he applied for leave. He vehemently opposed the contention made by the learned counsel for the petitioner with regard to retirement of the petitioner's husband. He also submit that after availing long leave, the petitioner's husband has submitted his resignation letter. Moreover, the petitioner's husband has not rendered the minimum period of service to qualify pension, hence the petitioner is not entitled for getting pensionable benefit. Further, he would submit that inspite of sincere efforts taken by the respondents, the Service Register of petitioner's husband could not be traced, as it dates back to more than 40 years. More so, if the petitioner's husband discharged his service properly and assuming the estimated date of retirement as 30.10.2002, he might have approached the authorities for getting his pension before his date of death i.e. on 25.03.2007. As there is laches on the part of the petitioner in asserting her claim at the earliest point of time, the learned Special Government Pleader prays for dismissal of the writ petition.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

7. It is not in dispute that the petitioner's husband joined service as Assistant Surgeon on 24.10.1968. Admittedly, he availed leave of whatsoever in nature, either leave on medical grounds or earned leave. That being so, neither any leave application nor any other evidence is available with the petitioner in support of her claim. Moreover, on perusal of the counter affidavit, it is clear that the Service Register of the petitioner's husband is not available with the respondents. In such circumstances, merely stating in the counter that the petitioner's husband resigned from his service and the petitioner failed to establish the same and she is simply quoting that her husband retired from service is not acceptable to this Court. Moreso, in the absence of any records on either side, this Court is not inclined to any direction to the respondents to consider the grievance of the petitioner. Further, it is undoubted that there are certain lapses on the part of the respondents with regard to maintenance of service

register, however, it is to be noted that the petitioner has approached this Court after a period of nine years from the year of death of her husband i.e. in the year 2007. Though there were lapses on the side of the respondents, due to non-maintenance of record which dates back to four decades, the petitioner is also knocking the doors of this Court belatedly for issuance of a direction without any relevant records.

8. For the reasons aforesaid, this Court is of the view that delay and laches on the part of the petitioner disentitles her to get the relief sought for in this writ petition. Accordingly, the relief sought for in this writ petition for a direction to the respondents to sanction pension and family pension cannot be granted.

9. In the result, there is no merit in this Writ Petition and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2. The Director
Medical and Rural Health Services,
Chennai - 600 009

3. The Accountant General,
Accountant General Office,
No.360, Anna Salai,
Teynampet,
Chennai - 18.

+1 CC to Mr.A.R. Nixon, Advocate sr 37608.
+1 CC to The Government Pleader sr 37758.

W.P. No.26150 of 2016

MJB(CO)
CAA(19/12/2020)