

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.02.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.35771 of 2019
and WMP No.36672 of 2019

Mrs.Savithri

... Petitioner

Vs.

1. The Principal Accountant General, (A&E)
Tamilnadu, Chennai 600 018.
2. The State of Tamil Nadu,
Rep by its Principal Secretary,
Finance Department,
Fort St. George, Chennai 600 009.
3. The Director,
Treasuries and Accounts,
Panagal Maligai, Saidapet,
Chennai 600 015.
4. The Joint Director,
District Treasury, Kancheepuram District.
5. The Treasury Officer,
District Treasury, Kancheepuram District.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records letter No.Na.Ka.7964/2017A2 dated 17.05.2017 and 03.08.2017 sent by the fourth respondent to the first respondent quash the same and consequently direct the first respondent forthwith to revise P03/3/10319506/PPO No.D0319506 dated 27.10.2017 and sanction family pension to the petitioner from 09.05.1993 i.e. the date following the date of death of her husband on 08.05.1993 and to draw arrears accordingly.

For Petitioner : Mr.K.R.Gunashekar

For Respondents : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

O R D E R

This Writ petition has been filed challenging the impugned letters of the fourth respondent dated 17.05.2017 and 03.08.2017 and consequently to direct the first respondent to sanction family pension to the petitioner from 09.05.1993 till 31.08.2016.

2. The case of the petitioner is that her husband was an EX-Service Man. He thereafter was reemployed by the Government of Tamil Nadu in the Treasury Office at Kancheepuram. He retired from service in the year 1983 and while he was alive he was receiving dual pension both from the Army as well as from the State Government. He died on 08.05.1993 leaving behind the petitioner who is his wife.

3. The petitioner made a request for family pension from the State Government and it was rejected. Aggrieved by the same, the petitioner filed WP No.27834 of 2014 before this Court. This Court by an order dated 07.11.2016 disposed of the Writ Petition by directing the respondents to sanction family pension as per the entitlement of the petitioner. The relevant portions in the order is extracted hereunder:

"4. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that in identical circumstances, in W.P.No.7299 of 2013, dated 10.01.2014, this Court allowed the Writ Petition by observing as follows:

"7. When the matter is taken up for consideration, the learned counsel for the petitioner by relying upon the judgment reported in 2010 (2) CWC 555 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam Vs. Govt. of Tamil Nadu), submitted that in an identical set of facts, this Court has given direction to the authorities concerned to sanction family pension to the petitioners therein. The relevant portion in the said judgment runs as follows:-

"25. In this case, the pensioners, while living, were granted Transport Corporation

pension without counting their military service. The said position is not in dispute. The widows or other persons are getting family pension from the Central Government for the military service rendered by the pensioners. For the services rendered to the Transport Corporations, their widows and eligible wards are entitled to get family pension from the Transport Corporation also.

26. Bearing the above said principles and payment of family pension to the widows of the pensioners being not a charity, and the pensioners were paid both military pension and service pension during their lifetime, the respondents are bound to pay family pension to the petitioners herein, even though they are receiving military family pension after the demise of the pensioners. However, the family pensioners are eligible to get Dearness Allowance only for one pension (either for Military Family Pension or for Transport Corporation Pension) in terms of the Supreme Court judgments reported in 1995 (2) SCC 32 (Union of India Vs. G.Vasudevan Pillay) and in 2000 (2) SCC 227 (Haryana S.E.B., Vs. Azad Kaur).

27. In fine, the impugned orders are set aside and these writ petitions are allowed. The respondents are directed to sanction and pay family pension to the widows of the retired employees of the Transport Corporations as well as to the eligible persons. The concerned respondent is directed to release the family pension payable to the eligible family pensioners with arrears, within a period of eight weeks from the date of receipt of a copy of this order and continue to pay family pension so long as they are eligible to get family pension. No costs. Consequently, connected miscellaneous petitions are closed."

8. The dictum laid down in the above said judgment is squarely applicable to the present facts of the case also. In view of the above said judgment, I am of the opinion that receiving pension from Military is not a bar for the petitioner to receive pension from the

Fire & Rescue Services Department. However, as observed in the above said judgment, the petitioner is eligible to get Dearness Allowance only for one pension (either for Military Family Pension or for Family Pension from Fire & Rescue Services Department).

9. In fine, applying the above said dictum, the present writ petition is allowed. The respondents are directed to sanction family pension to the petitioner. The respondents are further directed to release the family pension payable to the petitioner with arrears, within a period of eight weeks from the date of receipt of a copy of this order, and to continue to pay the family pension so long as the petitioner is eligible to get family pension. No costs."

5. The dictum laid down in the above said judgment is squarely applicable to the facts of the present case also. In view of the above said judgment, I am of the opinion that receiving pension from Military is not a bar for the petitioner to receive pension from the services rendered in the State Government. However, as observed in the above said judgment, the petitioner is eligible to get Dearness Allowance only for one pension, either for Military Family Pension or for Family Pension from the State Government.

6. Accordingly, applying the above said dictum, the present Writ Petition is allowed. The respondents are directed to sanction Family Pension to the petitioner. The respondents are further directed to release the Family Pension payable to the petitioner with arrears, within a period of eight weeks from the date of receipt of a copy of this order, and to continue to pay the Family Pension so long as the petitioner is eligible to get the Family Pension. No costs."

4. The petitioner thereafter made a representation by letter dated 17.05.2017, the petitioner was informed that necessary orders will be passed sanctioning family pension to the petitioner. Subsequently by the impugned letter dated 03.08.2017, the petitioner was informed that she is entitled for family pension with effect from 02.09.2016. Aggrieved by the

same, the present Writ Petition has been filed before this Court seeking for a direction to the respondents to sanction family pension for the period from 1993 to August 2016.

5. The learned counsel appearing for the petitioner submitted that the issue in hand is squarely covered by the judgment of the Division Bench of this Court in Secretary to Government, Government of Tamil Nadu, Education Department, St. George Fort, Chennai 9 vs. M. Alamelu, reported in 2018 (1) CWC 285. The relevant portions of the judgment are extracted hereunder:

"3. After hearing both sides, the learned Single Judge, relying upon a decision of this Court reported in 2010(2) CWC 555 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam, rep. by its president and another Vs. Government of Tamil Nadu, rep. by its Secretary, Transport Department, Chennai -9 and two others), has directed the third appellant to continue to pay the family pension to the respondent from the date of death of her husband. Aggrieved by the same, the present appeal has been filed by the State.

4. The learned Special Government Pleader appearing for the appellants, by relying upon Rule 49 (13-B) of the Tamil Nadu Pension Rules, 1978, (hereinafter referred to as "the Rules") submitted that Sub Rule (13-B) was inserted by G.O. Ms. No. 23, dated 6th January, 1996, vide SRO B-59/1996 and as per the said Sub Rule, the family pension cannot be granted to a person, who is already in receipt of family pension. Since the respondent has been receiving pension from the Army, based on the past military service rendered by her husband, as per the said Rule, she is not entitled to get the family pension from the State based on the past service rendered by her husband in the Education Department. But, the learned Single Judge, without considering the same, has erroneously allowed the writ petition. Thus, he prayed for setting aside the order of the learned Single Judge.

5. Per contra, the learned counsel appearing for the respondent, by relying upon Rule 49(14)(b) of the Rules, submitted that Rule 49 (13-B) of the Rules is not applicable to the military pensioners, who are retired from military services on or after 1st April 1964 or retire from service after commencement of these rules and therefore, the respondent is entitled for both the pensions. More

over, the respondent's husband had opted Rule 16(1) (a) of the Rules and retired from the State Government Service on 31.05.2004 and therefore, after his retirement, he had been receiving pension both from the State as well as from the Army, and he was not refused to avail such pensions. In support of his contention, he relied upon the decision of this Court in 2010(2) CWC 555 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam, rep. by its president and another Vs. Government of Tamil Nadu, rep. by its Secretary, Transport Department, Chennai -9 and two others). Thus, he prayed for dismissal of this appeal.

6. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record. It is the main submission of the learned counsel for the appellants that in view of the insertion of Sub Rule (13-B) in Rule 49 of the Rules, the respondent is not entitled to get pension from the State as she has been receiving pension from the Army. According to the respondent, as per Rule 49(14) (b), the Sub Rule (13-B) to Rule 49 is not applicable to the case of the respondent. When the matter came up for hearing before the First Bench of this Court on 21.01.2016, the First Bench of this Court has held as follows;

"1. The learned Special Government Pleader appearing for the appellants contends that both kinds of family pension are not admissible in view of Sub- Rule 13-B of Rule 49 of the Tamil Nadu Pension Rules.

2. We may note that Rule 49 itself deals with only family pension. Further, Sub Rule 13-B of Rule 48 was inserted by G.O.Ms.No.23, dated 06.01.1996. There appears, prima facie, some confusion arising over insertion of Sub-Rule 13-B, when Sub-Rule (14) continues to be in force.

3. The learned Special Government Pleader appearing for the appellants seeks time to place the notification by which Sub-Rule (13-B) was inserted and also to obtain instructions as to what is the mischief which it was supposed to cure.

4. List the matter on 28.01.2016." Though the appellants sought time to place the notification by which Sub-Rule (13-B) to Rule 49 was inserted, he has not produced any such notification.

7. For better appreciation, Sub Rule (13-B) and (14)(b) to Rule 49 of the Rules are reproduced hereunder.

"(13-B) Family Pension admissible under this rule shall not be granted to a person who is already in receipt of family pension or is eligible therefore under any other pension rules:

Provided that a person, who is otherwise eligible for family pension under this rule, may opt to receive family pension under this rule, if he forgoes family pension admissible from any other rules."

"(14) Nothing contained in this rule shall apply to - (a)...

(b) a military pensioner who has retired from military service on or after the 1st April, 1964 or retires from such service after the commencement of these rules on retiring pension, service pension or invalid pension and is re-employed in a civil service or post before attaining the age of superannuation."

8. When Sub Rule (13-B) contemplates that a person, who is already in receipt of family pension under any other pension rules, shall not be granted pension under this Rules, provided if he opted to forgo the pension granted under the other pension rules, contrary to the same, Sub Rule (14) contemplates that the Tamil Nadu Pension Rules are not applicable to the military pensioner, who has retired from military service on or after 01.04.1964 or retires from such service after the commencement of these rules on retiring pension, service pension or invalid pension and is re-employed in a civil service or post before attaining the age of superannuation. Sub Rule (13-B) of the Rules was inserted by G.O.Ms.No.23 only on 06.01.1996. Though Sub Rule (13-B) specifically states that the receipt of family pension "under any other Rules" would disentitle the person from getting pension under this Rule, Sub Rule (14) gives exclusion to Sub Rule (13-B) in respect of military pensioner, who has retired from military service on or after 1st April 1964 or after the commencement of these rules. Thus, it is clear that Sub Rule (13-B) will not apply to a military personnel, who have retired from service on or after 1st April, 1964 or after the commencement of these rules. Further, Section 16(1)(b) of the Rules provides an option to ex-serviceman to

continue to draw military pension, in which case his former military service shall not count as qualifying service in the reemployment.

9. Admittedly, in this case, the husband of the petitioner retired from State service on attaining the age of superannuation on 31.05.2004 and he had been receiving both the pensions by giving option as per Rule 16(1)(b) of the Rules. Therefore, now the petitioner, being the widow of the pensioner, cannot be denied pension by the State on the ground that she has been receiving pension from the Army. In other words, she is entitled to receive the pension both from the Army and also State as received by her husband. The learned Single Judge has also rightly allowed the writ petition and directed the third appellant to continue to pay the family pension to the respondent from the date of death of her husband. There is no merit in the contention of the learned counsel for the appellants. Thus, this writ appeal is liable to be set aside."

6. The learned counsel appearing for the petitioner submitted that the petitioner is entitled for family pension from the State Government after the death of her husband and the same cannot be denied.

7. The fifth respondent has filed a counter affidavit in this case. The relevant portions in the counter affidavit are extracted hereunder:

"6. With regard to the averment made by the petitioner in paragraphs 12 to 15 of the affidavit it is submitted that the petitioner in her contempt petition has prayed for family pension in an earlier date, without placing the above said rules and orders issued by Government of India and Government of Tamil Nadu.

The petitioner has also submitted a petition to the respondents to issue family pension w.e.f. 8.5.1993 which could not be done due to the rules and orders in force and she is not entitled for Family pension w.e.f. 8.5.1993 since her claim will not fall under as per the rule 49 (3) (a) of Tamil Nadu Pension Rules 1978 and she can be only sanctioned State Government Family Pension as per G.O.Ms.No.290 Public (Ex.service Men) Department dated 05.04.2017 and Government of India pension rules requesting the pensioner to opt for single pension foregoing another pension as per the ruling given below.

"A military pensioner who was reemployed in Civil Service on his superannuation may opt either for Family Pension rules under Military Pension or Family Pension under State Government (Rule 49 (13A)) Persons who is already in receipt of Family Pension shall not be permitted to draw Family Pension under Rule 49, unless he forgoes Family Pension under other rules (Rule 49 (13B))"

It is further submitted that the request of the petitioner are not legally valid, imaginary and could not be accepted, as the pension rules of both Central Government and State Government are totally clear against sanctioning second Family Pension from the date of death of the pensioner.

7. With regard to the averment made by the petitioner in Grounds (a) to (c) of the affidavit, it is submitted that a military pensioner who was reemployed in Civil Service on his superannuation may opt either for Family Pension rules under Military Pension or Family Pension under State Government (Rule 49(13A)) person who is already in receipt of Family Pension shall not be permitted to draw Family Pension under Rule 49, unless he forgoes Family Pension under other rules (Rule 49 (13B))"

8. With regard to the averment made by the petitioner in Grounds (d) to (e) of the affidavit, it is submitted that The First respondent Accountant General, Chennai has issued Family Pension authorisation, duly in accordance to the Government Order G.O.Ms.No.290 Public (Ex.Service Men) Department dated 05.04.2017, where in it has been clearly mentioned that the Government order shall take effect from 02.09.2016 only. The petitioner has prayed that she has been denied second family pension from Government of Tamil Nadu w.e.f. 08.05.1993 and paid family pension only from 02.09.2016. the action initiated and pension sanctioned by the respondents are in accordance to both the Central Government Pension rules and amendment issued to Rule 49 (13-B) of Tamil Nadu Pension Rules 1978, with reference to the G.O.Ms.No.290 Public (Ex.service Men) Department dated 05.04.2017 wherein it has been clearly mentioned that the Second pension apart from Military pension shall take effect from 02.09.2016 only as per the Government of India pension rule. Hence, the claim of the petitioner is devoid of merits and this writ petition may be dismissed."

8. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents apart from reiterating the contentions raised in the counter affidavit submitted that the Rule position is very clear under the Tamil Nadu Pension Rules. The learned counsel submitted that the Rule as it stood barred any person from receiving dual pension and an option must be given either to receive the family pension or to receive any other pension under other Pension Rules and both cannot be received simultaneously. The learned counsel submitted that this issue was raised in the assembly and after considering the grievance expressed by similarly placed persons, the Hon'ble Chief Minister announced in the Floor of the Assembly on 02.09.2016 that Dual family pension will be sanctioned to the families of the Defence personnel who have also served in the State Government Service and retired. Immediately after this statement was made by the Hon'ble Chief Minister, a Government order was passed in G.O.Ms.No.290, dated 05.04.2017 and relying upon the same, the petitioner was sanctioned family pension with effect from 02.09.2016. The learned counsel submitted that the petitioner is not entitled for any family pension for the period from 1993 to August 2016, since the pension Rule bars such sanction of family pension. The learned counsel therefore submitted that there are absolutely no merits in the present Writ Petition and the same is liable to be dismissed.

9. This Court has carefully considered the submissions made by the learned counsel on either side and also the material available on record.

10. The issue that has been raised in the present Writ Petition is squarely covered by the judgment of the Division Bench that has been referred supra.

11. The Division Bench after considering the relevant Pension Rules has come to a very categorical conclusion that dual pension is permissible and the bar that has been imposed in the pension Rules will not apply to Army men. In that particular case, the Division Bench has held that the husband of the petitioner therein was receiving dual pension and therefore, the petitioner was also entitled to receive pension both from the Army and also from the State as received by her husband.

12. In view of the above judgment of the Division Bench, this Court is bound to follow the same and a different view cannot be taken in the present Writ Petition.

13. In view of the above, the petitioner is held to be entitled for family pension for the period from 09.05.1993 till

31.08.2016. To that extent, the impugned communication from the fourth respondent is hereby interfered. There shall be a direction to the first respondent to immediately rework the family pension that is payable to the petitioner from 09.05.1993 to 31.08.2016 and pass appropriate orders within a period of six weeks from the date of receipt of copy of this order. Consequent upon the same, the petitioner shall be paid the arrears of the family pension within a period of six weeks thereafter.

14. This Writ Petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Accountant General, (A&E)
Tamilnadu, Chennai 600 018.
2. The Principal Secretary
Government of Tamil Nadu,
Finance Department,
Fort St. George, Chennai 600 009.
3. The Director,
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Panagal Maligai, Saidapet,
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4. The Joint Director,
District Treasury, Kancheepuram District.
5. The Treasury Officer,
District Treasury, Kancheepuram District.

+1cc to M/s.K.R.Gunashekar, Advocate Sr.15573
+1cc to the Government Pleader Sr.16246

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