

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4613 of 2020

N.Chellamma Amma

... Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Higher Education Department,
St. Fort. George,
Chennai.
 2. The Principal Accountant General (A & E),
Office of the Principal Accountant General (A & E),
No.82, Anna Salai, Chennai,
Tamil Nadu.
 3. The Director,
Director of College Education,
No.9, EVK Sampath Building,
College Road, Chennai 600 006.
 4. The Regional Joint Director of
Collegiate Education,
572, Anna Salai, Saidapet,
Chennai 600 015.
 5. Uma, U.S.
- सत्यमेव जयते ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, seeking a direction to the Respondents to consider the representations dated 15.10.2019 and 26.11.2019 submitted before the 2nd Respondent and 3rd Respondents in relation to grant of full pension of Petitioner's son Unnikrishnan Pillai (Late), who died on 14.06.2015 to the Petitioner (mother, 82 years old), who is one among the two legal heirs (since the another legal heir daughter, 5th Respondent not getting the pension after marriage).

For Petitioner : Ms.P.Uma
For Respondents 1, 3 & 4 : Mr.S.Karthikaibalan,
Government Advocate
For 2nd Respondent : Mr.Vijayashankar
For 5th Respondent : No appearance

O R D E R

Petitioner has come up with this Writ Petition seeking a direction to the Respondents to consider the representations dated 15.10.2019 and 26.11.2019 submitted before the 2nd Respondent and 3rd Respondents, in relation to grant of full pension of her son Late Unnikrishnan Pillai, who died on 14.06.2015 to her, as she is one among the two legal heirs of her deceased son.

2. According to the Petitioner, she is a widow aged 82 years, having no independent income. Her son viz. Unnikrishnan Pillai, who had served for 33 years as Associate Professor in Ramakrishna Vivekananda College, Mylapore, Chennai, passed away on 14.06.2015, before collecting the retirement benefits including pension. It is further stated that, the deceased Unnikrishnan Pillai left behind him, his only daughter viz. U.S.Uma, the 5th Respondent herein and his mother, the Petitioner herein, as his legal heirs.

3. In respect of grant of retirement benefits due to the deceased Unnikrishnan Pillai, the Petitioner had already approached this Court in W.P.No.18855 of 2016 and this Court, by an order dated 01.08.2016, has held as under:

"In view of the submissions made, first of all, the Petitioner and the 5th Respondent, who claims to be the legal heirs of the deceased Unnikrishnan, have to go to College and fill up necessary forms and sign in the necessary Application, for availing the retirement benefits, and when that is done, it is for the College to forward the same to the Government to pass appropriate orders. Hence, the Petitioner and the 5th Respondent are directed to submit all the necessary forms and papers, duly signed to the 4th Respondent-College for availing the retirement benefits. On receipt of the same, the 4th Respondent is directed to forward it to the Government, which shall pass appropriate orders, as expeditiously as possible."

4. Pursuant to the said order of this Court, both the Petitioner and the 5th Respondent herein received the retirement benefits of the deceased Unnikrishnan Pillai. Thereafter, the Petitioner filed a Writ Petition in W.P.No.25674 of 2017 seeking issuance of a writ of mandamus, to direct the 1st Respondent to consider her representation dated 14.08.2017 in relation to issuance of relaxation order (Tamil Nadu Pension Rules) in her favour, as per the requirement of the Accountant General (A & E), the 2nd Respondent herein, for granting 50% pension of her son Late Unnikrishnan Pillai, who died on 14.06.2015, to her. As a counter claim, the 5th Respondent herein filed W.P.No.3129 of 2018 to disburse full pension to her.

5. This Court, allowed W.P.No.25674 of 2017 filed by the Petitioner/mother and dismissed W.P.No.3129 of 2018 filed by the 5th Respondent/daughter of the deceased, by directing the Respondents to process the pension papers and apportion the pensionary benefits of Late Unnikrishnan Pillai into two equal parts, of which, one share of 50% of pension shall be paid to the Petitioner/mother till her life time and the other 50% share to the 5th Respondent/daughter of the deceased. This Court also observed that, after the life time of the Petitioner, it is for the 5th Respondent to claim the entire pensionary benefits of her deceased father, if she is eligible continuously. Subsequently, the 1st Respondent issued G.O.No.207/2018, dated 25.06.2018, granting relief to the Petitioner and the 5th Respondent herein.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. In terms of Rule 49 of the Tamil Nadu Pension Rules, 1978, in the case of a married man, mother will not be entitled to pension, so also his daughter, if she is married. Since, the deceased Unnikrishnan Pillai got divorced from his wife, this Court granted relief not only to his daughter, but also to his mother.

8. In the present Writ Petition, it is stated that, the 5th Respondent, who is the daughter of the deceased Unnikrishnan Pillai is married. Hence, she is not entitled to pension and that, the Petitioner, who is the mother of the deceased is entitled to 100% pensionary benefits. However, this aspect is disputed by the official Respondents on the ground that, the mother will not be entitled to any benefit, once the son is married. This Court is of the view that, as the son is a divorcee, he should be treated as an unmarried person for Service Records, unless otherwise, he has children, who are eligible for pension in terms of Rule 49 of the Pension Rules, which may include dependents, as contemplated under the Rules.

9. A bachelor/divorcee/widower shall be treated on par, for the purpose of enabling the other dependents including the mother to get pension, unless there are any other legal heirs or dependents available in terms of the family, as mentioned in the Pension Rules.

10. For the sake of convenience, Rule 49(13)(b)(iii) of the Pension Rules, is extracted below:

"(13)(b)(iii) [legally adopted son and daughter, father], failing which the mother, in the case of unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant.]

11. In the case on hand, this Court has already accepted the contention of the Petitioner that, she is dependent on the pensionary benefits of her deceased son and 50% of the pensionary benefits due to the deceased have already been extended to her. That being the case, depriving 100% pensionary benefits to the Petitioner/mother, when the daughter of the deceased is already married, amounts to injustice to the mother.

12. At this juncture, learned Government Advocate appearing for the official Respondents, drew the attention of this Court to paragraph 4 of the counter Affidavit and submitted that, 50% pension received by the 5th Respondent has been stopped.

13. The Petitioner is 82 years old. Since this Court has accepted the contention of the Petitioner, the Government is expected to issue a fresh order enabling the Petitioner to get 100% pensionary benefits. The Government is expected to take a decision within a period of sixty days from the date of receipt of a copy of this order and communicate the decision within three weeks by Registered Post/Speed Post to avoid initiation of contempt proceedings.

With the above direction, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary,
Government of Tamil Nadu,
Higher Education Department,
St. Fort. George, Chennai.
2. The Principal Accountant General (A & E),
Office of the Principal Accountant General (A & E),
No.82, Anna Salai, Chennai,
Tamil Nadu.
3. The Director,
Director of College Education,
No.9, EVK Sampath Building,
College Road, Chennai 600 006.
4. The Regional Joint Director of Collegiate Education,
572, Anna Salai, Saidapet,
Chennai 600 015.

+lcc to Mrs.P.Uma, Advocate Sr.20335

+lcc to the Government pleader SR.21015

W.P.No.4613 of 2020

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