

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2021

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.5213 OF 2012

Tmt.A.Aputhamary

... Petitioner

-Vs-

1. The Principal Chief Conservator of Forests
Panagal Building, Chennai-15.
2. The Conservator of Forests
Erode Circle, Erode.
3. The District Forest Officer
Erode Division, Erode-4.
4. The Accountant General (A&E)
Tamilnadu, Teynampet
Chennai-18.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus to direct the respondents to sanction and settle the family pension due to the death of Thiru.A.Siluvai Muthu including the arrears of family pension with interest at the rate of 12% per annum.

For Petitioner :Mr.S.Kamadevan

For Respondents :Mr.S.Prabhu,

Addl. Government Pleader-
for RR 1 to 3

Ms.T.K.Selvarani,
Standing Counsel-for R4

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The prayer sought for herein is for a Writ of Mandamus to direct the respondents to sanction and settle the family pension due to the death of Thiru.A.Siluvai Muthu including the arrears of family pension with interest at the rate of 12% per annum.

2. That the petitioner's husband one Siluvai Muthu was appointed as Forest Watcher in the year 1964 and had been

continuously working up to October 1975. While so, on 14.10.1975, while he was on duty in a place called Thanda Beat, Erode Division, of the respondent Department, an elephant attacked him and he died due to such attack. Because of the sudden demise of the petitioner's husband, the whole family has been left in lurch and after recovering the said agonising moments, the petitioner seems to have made a request to the respondent to sanction family pension. The respondent Department, by an order dated 10.01.1996, has sanctioned only ex-gratia pension of Rs.150/- per month. The order reads thus,

"ORDER:

Thiru.Siluvaimuthu, Forest Watcher, worked in this Division from 1964 to 1975. He expired on 14.10.1975.

As per the G.O., cited, Tmt.Arputhamary, W/o Late.Thiru.Siluvaimuthu is eligible for getting exgratia pension of Rs.150/- per month. Hence, sanction is hereby accorded for payment of ex-gratia pension of Rs.150/- per month to Tmt.Arputhamary W/o Late Thiru.Siluvaimuthu, Forest Watcher."

3. Not satisfied with such ex-gratia pension of Rs.150/- per month, the petitioner made a demand to the respondents to pay the minimum family pension payable to the petitioner for the sudden demise of the petitioner's husband, who admittedly rendered service for ten years and more at the respondent Department based on which she was eligible to get the minimum family pension. Accordingly, the minimum family pension could have been calculated and paid to the petitioner. However, no such positive action has come from the respondents and hence the petitioner has filed the present writ petition with the aforesaid prayer.

4. Heard Mr.S.Kamadevan, learned counsel for the petitioner, who would submit that, admittedly the petitioner's husband has completed 10 years 02 months and 29 days service, which has been admitted by the respondent Department in the counter affidavit itself. As per the Pension Rules, any employee who puts in service for 10 years and more is eligible to get minimum pension and here in the case in hand, since the petitioner's husband has completed more than ten years of service and during his services he died, that too while he was on duty by a tragic accident, where an elephant attacked him, certainly the petitioner's family would be entitled to get not only family pension but also hefty ex-gratia amount. But, nothing has been paid to the petitioner and only a sum of Rs.150/-per month by way of ex-gratia pension has been paid by an order dated 10.01.1996. Therefore, in order to get the

minimum family pension, for which the petitioner is eligible, the petitioner has given a representation dated 17.11.2011. However, since the same has not been considered, the petitioner has approached this Court. Hence, the learned counsel for the petitioner seeks the indulgence of this Court to pass suitable orders.

5. Heard Mr.S.Prabhu, learned Additional Government Pleader appearing for the respondents 1 to 3 and Ms.T.Selvarani, learned Standing Counsel appearing for the fourth respondent.

6. Learned Additional Government Pleader appearing for the respondents 1 to 3 has relied upon the following averments made in the counter affidavit filed on behalf of the third respondent.

" Thiru A.Siluvaimuthu, son of Anthonymuthu, Vadakkupettai, Sathyamangalam was recruited temporarily as Plantation Watcher and posted to Thalamalai Bamboo Plantation Plot No.2 in District Forest Officer, Coimbatore North Division S.O.No.151 of 1965, C.No.18874/1964/E1 dated 07.07.1965 and joined duty on 16.07.1965. Subsequently, he was absorbed as Reserve Watcher and continuously worked in this department. On 14.10.1975, while he was on duty in Thanda Beat of Erode Division, an elephant attacked him and he died. Regarding this, Tmt.A.Arputhamary, W/o Late A.Siluvaimuthu sent a petition to the Honourable Chief Minister of Tamilnadu requesting to sanction pension benefit to her family. A monthly ex-gratia of Rs.150/- was sanctioned to the legal heir and wife of Late A.Siluvaimuthu, Reserve Watcher Tmt.A.Arputhamary and the same is being paid till today at the rate prevails as on date. The same petition was endorsed from the Honourable Chief Minister's Cell No.E.347120/ER/01 dated 28.08.2001 to the Principal Chief Conservator of Forests, Chennai. On receipt of the above petition from the Principal Chief Conservator of Forests C.No.AG1/65408/2001 dated 03.10.2001 necessary proposal to the Accountant General, Chennai in District Forest Officer, Erode Division, Erode (3rd respondent) C.No.9229/2002 dated 23.09.2002 has been sent for sanctioning Family Pension. The deceased Watcher has served in the Tamil Nadu Forest Department totally 10 years 02 months and 29 days only. The Accountant General (A&E), Chennai No.Pen21/IV/S-30-173/Pen/06-07/ADK/24/75 dated 27.06.2006, in which the Accountant General has returned pension proposals

along with the Service Register of Late A.Siluvaimuthu mentioning as follows and copy marked to Smt.S.Arputhamary, Kothamangalam Post, Via Bhavanisagar, Erode District.

"As the expired Government Servant had not been in pensionable establishment as per page 9 of the Service Register, Family Pension is not eligible in this case."

7. Relying upon the aforesaid averments, the learned Additional Government Pleader would submit that, though proposal had been sent to the fourth respondent to sanction minimum family pension to the petitioner, the same has not been sanctioned by the fourth respondent and in this regard, out of the services rendered by the petitioner for 10 years 02 months and 29 days, according to the stand taken by the fourth respondent, only 50% of service ie., 05 years 01 month and 15 days was taken as the net qualifying service for calculating pensionable benefits and hence the deceased employee was not eligible to get even minimum pension, correspondingly the petitioner may not be entitled to get minimum family pension.

8. However, the learned Additional Government Pleader for the respondents 1 to 3 would further submit that, if the fourth respondent accepted the services of the petitioner's husband as full time service and if it is taken the full service as 10 years 02 months and 29 days, correspondingly the petitioner can be considered for sanction of minimum family pension and it is for the fourth respondent to take a decision in this regard, he contended.

9. However, Ms.T.S.Selvarani, learned Standing Counsel for the fourth respondent submits that, the fourth respondent would not stand in the way of the respondents 1 to 3 if they come forward to sanction the pension, as the fourth respondent is only pension disbursing authority and therefore, if at all the net qualifying service of the petitioner's husband is treated as 10 years 02 months and 29 days, certainly the petitioner's husband would be eligible for all pensionable benefits and the petitioner also would be entitled to get minimum family pension, she contended.

10. I have considered the rival submissions made by the learned counsel on either side and have perused the materials placed on record.

11. As has been averred in the counter affidavit filed by the third respondent, which has been quoted herein above, the petitioner's husband had completed 10 years 02 months and 29

days service as on 14.10.1975, while he was attacked by an elephant, while he was on duty, and died.

12. As rightly pointed out by the learned counsel for the petitioner, a hefty ex-gratia payment should have been paid to the family of the deceased employee ie., the petitioner for such an untimely death of the petitioner's husband while he was on duty. Be that as it may. Insofar as the family pension is concerned, admittedly the petitioner's husband had completed 10 years 02 months and 29 days service, which has been specifically mentioned in the counter affidavit filed by the third respondent and in that case, treating 50% of service as eligible service and reducing it to 05 years 01 month and 15 days, is not based on any reasonable ground.

13. In this context, it has been clarified by the learned Additional Government Pleader that, the services rendered by the petitioner's husband was a full time service from day one and this has been admitted by the respondents. Otherwise, they would not have stated that the petitioner's husband had completed 10 years 02 months and 29 days service.

14. Therefore, from 1964 to 1975, the petitioner's husband had completed 10 years 02 months and 29 days service and therefore, at no stretch of imagination, it cannot be reduced to 50% ie., 05 years 01 month and 15 days. Hence, certainly the petitioner's husband had completed the minimum eligible service of 10 years for the purpose of getting minimum pension. Correspondingly, the petitioner would be eligible to get minimum family pension, which should have been sanctioned to her. However, by order dated 10.01.1996, as quoted herein above, the respondents have sanctioned only a sum of Rs.150/- per month as ex-gratia pension, for which this Court finds no plausible reason.

15. Therefore, this Court is of the considered view that, the petitioner is entitled to get minimum family pension by taking into account the services of the petitioner's husband as 10 years 02 months and 29 days as net qualifying service for the purpose of sanctioning the minimum family pension to the petitioner.

16. Accordingly, this writ petition is disposed of with the following directions.

That there shall be a direction to the respondents 1 to 3 to pass a revised order sanctioning the minimum family pension to the petitioner by taking into account the service rendered by the petitioner's husband as 10 years 02 months and 29 days and communicate the same to the fourth respondent within a period of eight weeks from the date of receipt of a copy of this order.

On receipt of the same, the fourth respondent shall calculate and disburse the minimum family pension to the petitioner. Accordingly, the fourth respondent shall also calculate the arrears of family pension payable to the petitioner and pay the same in one lump sum and also continue to pay the minimum family pension to the petitioner till her lifetime. The arrears of pension to be calculated and paid to the petitioner shall carry an interest at 6% per annum. The needful as indicated above shall be undertaken by the fourth respondent, after receipt of the orders from the respondents 1 to 3, within a period of eight weeks thereafter.

17. With the above directions, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Principal Chief Conservator of Forests
Panagal Building, Chennai-15.
2. The Conservator of Forests
Erode Circle, Erode.
3. The District Forest Officer
Erode Division, Erode-4.
4. The Accountant General (A&E)
Tamilnadu, Teynampet
Chennai-18.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.21792

+1cc to the Government Pleader, S.R.No.20779

W.P.No.5213 of 2012

MG(CO)
KM(27/04/2021)
CS/17/06/2021