

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.11945 of 2014

M.Parvathy

... Petitioner

Vs.

1. The State of Tamilnadu Rep. by its Secretary to Government, Home (Fire and Rescue Service) Department, Chennai - 9.
2. The Director of Fire and Rescue Department, Egmore, Chennai - 600 008.
3. The Divisional Fire Officer, South Chennai Region, Chennai - 83.
4. Radha
5. Ganesh
6. Suresh

[R4 to R6 impleaded as per Order of this Court dated 24.10.2017 in M.P.No.1 of 2014 in W.P.No.11945 of 2014]

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the first respondent to consider and pass orders on the representation of the petitioner dated 17.02.2014 in regard to sanction the petitioner's husband terminal benefits and also pay full family pension as per the Pension Rules and pay arrears of pension with interest within the stipulated time.

For Petitioner : Mr.G.Elanchezhian

For Respondents: Mr.R.S.Selvam, GA - R1 to R3
No appearance for R4 to R6

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 to 3 and also perused the materials brought on record. Despite the service of notice, there is no representation for the respondents 4 to 6 either in person or through any counsel.

2.The case projected in this writ petition, would run thus:

2.1 The petitioner's husband by name S.Mohan, while working as a Head Constable in the Tamil Nadu Fire and Rescue Services, made an application seeking permission to voluntarily retire from service and accepting the same, he was permitted to retire from service on 31.05.1997. However, his retiral benefits were not settled immediately. In the meantime, he died on 13.09.1997 due to illness.

2.2 Stating that the petitioner is the legally wedded wife of the deceased Government servant, she made a representation to the respondents seeking terminal benefits due to her husband. The respondent authorities sanctioned and paid 50% of family pension to the petitioner. When the petitioner approached the respondent authorities and sought the remaining 50% of the family pension and retiral benefits, she was informed that one Radha and her children /respondents 4 to 6 herein, made a request to sanction of family pension on the ground that they are the legal heirs of the deceased Government servant.

2.3 Thereafter, the petitioner and her son Raju @ Rajiv, instituted a civil suit in O.S.No.706 of 1997 on the file of the District Munsif Court, Tambaram, declaring them as the legal heirs of the deceased Government servant and seeking permanent injunction restraining the respondents 4 to 6 herein from receiving the family pension and other benefits on the death of the deceased Government servant. The suit was decreed exparte on 29.04.2004.

2.4 Based on the aforesaid civil court decree, the petitioner made a representation to the respondent authorities seeking the remaining 50% of family pension and other benefits. Finding no response on the said representation, she filed WP.No.21106 of 2009, which was dismissed by this Court on 20.08.2009, after recording the undertaking given by the Director of Fire Service, Chennai that action would be taken based on the civil court decree.

2.5 Thereafter, the respondent authorities passed an order on 15.07.2004 directing to pay all the terminal benefits arising out of death of the Government servant and sought relaxation in terms of Pension Rules 49. However, no effective order was passed, which compelled the petitioner to file Contempt Petition bearing No.320 of 2012, which was subsequently, closed by this

Court, directing the petitioner to provide necessary documents for completing the process of considering the proposal sent by the Department.

2.6 Pursuant to the aforesaid order made in the Contempt Petition, the petitioner again made a representation on 07.08.2012 seeking settlement of the balance retiral benefits due to her deceased husband. Since the said representation was not considered by the respondent authorities, she preferred another writ petition bearing No.31920 of 2012, which, by order dated 30.11.2012, was disposed of by this Court, by directing the Director of Fire Service to consider the petitioner's representation dated 07.08.2012 and pass appropriate orders, within a period of 12 weeks from the date of receipt of the said order. Even thereafter, there was no response on the same, which forced the petitioner to initiate Contempt Proceedings in Cont.Petn.No.837 of 2013. By order dated 15.04.2013, this Court closed the said contempt petition, recording the proceedings of the respondent authorities dated 01.02.2013 to the petitioner informing that a proposal has been sent to the Government and orders are awaited.

2.7 Finding no orders from the Government after a lapse of more than one year, the petitioner made a representation dated 17.02.2014 to the respondent authorities to sanction the remaining 50% of family pension and other benefits due on account of the death of her husband. Since no order was passed till date, she has preferred this writ petition, seeking a direction to the first respondent to consider her representation dated 17.02.2014 and pass appropriate orders in regard to sanction her husband's terminal benefits and pay the remaining 50% of family pension along with arrears and interest.

3. Upon notice, the respondent authorities filed a detailed counter affidavit, wherein, it is inter alia stated that due to rival claims, the Principal Accountant General of Tamil Nadu sanctioned only 50% of family pension in favour of the petitioner and further informed that necessary relaxation orders from the Government has to be obtained in respect of sanction of the remaining 50% of pensionary benefits to the petitioner herein; and accordingly, necessary proposals were sent to the Government vide letter Rc.no.20082/C3/2005 dated 27.08.2009 and 02.03.2010 and the same are under consideration. It is further stated therein that as per the pension rules, the original wife and children and the children born through second wife are alone eligible to receive the pensionary benefits of the deceased Government servant and the delay in settlement of the same is only due to the rival claims and difficulty in ascertaining his legal heirs and hence, there is no fault on the part of the respondents in non-settlement of pensionary benefits to the petitioner.

4.From the pleadings and the submissions made by the parties, it is seen that the husband of the petitioner, while working in Guindy Fire and Rescue Services Station, voluntarily retired from service with effect from 31.05.1997. Subsequently, he died on 13.09.1997 due to illness. Admittedly, the petitioner married the deceased on 01.12.1975 in accordance with Hindu rites and rituals, which was registered on 05.10.1994, on the file of SRO, Tambaram and out of the said wedlock, one son was born to them. However, the respondents 4 to 6 claimed that they are the legal heirs of the deceased Government servant. As per the Tamil Nadu Pension Rules, the first wife and the children through the second wife are entitled to receive family pension and other benefits arising out of the death of the Government servant.

5.It is further revealed from the averments made in the counter affidavit filed by the respondent authorities that the deceased Government servant mentioned the respondents 4 to 6 as his legal heirs, in the service book and DCRG nomination form, but he stated the petitioner herein as his wife in the pension proposal application and requested to cancel the legal heirs names earlier furnished by him. In this regard, necessary clarification was sought from him, however, he died on 13.09.1997. It is also revealed that the Government vide letter No.68682/Police-17/2009-10 dated 19.08.2013, ordered enquiry by calling both the parties viz., petitioner and the fourth respondent and accordingly, enquiry was conducted and the District Officer, Chennai City South, sent a report stating that he was unable to find out the original wife of the deceased Government servant from the documentary and oral evidence given by the parties. Hence, there is a cloud over the legal heirs of the deceased Government servant, which is the reason for non-settlement of entire pensionary benefits due to him, on the part of the respondent authorities.

6.The petitioner, in support of her claim that she being a legally wedded wife, is entitled to receive all the pensionary benefits due to her husband, produced the marriage certificate, legal heir certificate, death certificate of her husband and family card, besides obtaining a civil court decree in her favour. Further, she has been agitating her claim from the date of death of her husband. On the other hand, the respondents 4 to 6 though claimed that she and her children are the legal heirs of the deceased Government servant, not produced any substantial document to substantiate her claim, except family card, wherein, her photo was affixed as a head of the family and she did not contest any of the proceedings initiated by the petitioner either before the Civil Court or this Court, which shows her disinclination over the claim made by her. In such

circumstances, taking note of the fact that based on the earlier orders, necessary proposal in this regard, was already pending with the Government, this Court has no other option except to direct the respondent authorities to settle the balance pensionary benefits in favour of the petitioner herein.

7. Accordingly, this writ petition stands disposed of, directing the first respondent to consider the representation of the petitioner dated 17.02.2014 and pass appropriate orders, with respect to settlement of pensionary benefits to the petitioner, in accordance with law, within a period of six weeks from the date of receipt of a copy of this order, failing which, the respondent authorities are liable to pay interest at the appropriate rate for the belated payment to the petitioner. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Secretary to Government,
State of Tamilnadu
Home (Fire and Rescue Service) Department,
Chennai - 9.
2. The Director of Fire and Rescue Department,
Egmore, Chennai - 600 008.
3. The Divisional Fire Officer,
South Chennai Region, Chennai - 83.

+1cc to Mr.G.Elanchezhiyan Advocate, S.R.No.4258.

+1cc to the Government Pleader, S.R.No.4323.

W.P.No.11945 of 2014

AAB(CO)
CSR 22.03.2021