

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.33305 of 2014

G.Saraswathi

... Petitioner

Vs

1. The Chief Executive Officer
Tamil Nadu Khadi and Village Industries Board
Kuralagam
Chennai 600 108

2.The Assistant Director
Khadi and Village Industries
Kuralagam (Second Floor)
Chennai 600 108

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondent No.1 to consider and decide the representation of the petitioner dated 09.12.2013 in accordance with law within a reasonable time fixed by this Court.

For Petitioner : Mr.M.Radhakrishnan

For Respondents: Mr.J.Ramesh
Additional Government Pleader

ORDER

The prayer made in this writ petition is to direct the first respondent to consider the representation of the petitioner dated 09.12.2013 in accordance with law, within a reasonable time that may be fixed by this Court.

2.It is the case of the petitioner that her husband by name M.Govindaraj, was working as Khadi Assistant Grade II in the respondent Board, at the time of retirement on 30.04.2002. Since he was facing disciplinary proceedings, he was not allowed to retire from service on reaching the age of superannuation initially. During the pendency of enquiry, pursuant to the charge memo dated 28.01.1999, he passed away on 06.05.2006. After his death, the first respondent by order dated 25.01.2007, dropped all the charges against

him and treated the suspension period as duty. By order dated 31.01.2008, the provisional family pension payable to the petitioner was fixed at Rs.2,460/- per month, however, by order dated 15.04.2009, it was refixed at Rs.1,476/- per month and the petitioner was getting the same with effect from 08.04.2009. At her request, the said pension was revised to Rs.3,337/- per month with effect from 08.04.2009 and the petitioner has been getting the said amount without Dearness Allowance. Further, she did not receive any other retirement benefits due to her husband. Hence, she made a representation on 09.12.2003 to the first respondent in this regard. However, there was no response, which compelled the petitioner to file this writ petition for the aforesaid relief.

3.The learned counsel for the petitioner submitted that the petitioner submitted a representation dated 09.12.2013 seeking retirement benefits due to her husband and the same was not considered till date. Hence, the learned counsel sought appropriate direction to the first respondent in this regard.

4.On the other hand, the learned Additional Government Pleader appearing for the respondents fairly submitted that the first respondent would consider the representation of the petitioner, if not already considered and pass appropriate orders, in accordance with law.

5.Heard both sides and perused the materials placed before this Court.

6.It is seen from the proceedings of the Tamil Nadu Khadi and Village Industries Board, Kuralagam, Chennai in Rc.No82213/E3(3)/96 dated 25.01.2007, a copy of which is enclosed at page 1 of the typed set of papers filed along with this writ petition, that for the alleged irregularities committed by the husband of the petitioner, charges were framed against him and he was suspended from service; while the disciplinary action initiated against him was pending finalisation, he expired on 06.05.2006; in view of the orders passed by the Government in G.O.Ms.No.2999, Public Service (B) Department, dated 04.12.1969 and G.O.Lr.Ms.No.230, Personnel & Administrative Reforms (Per-N) Department, dated 07.04.1988, the disciplinary action initiated against the husband of the petitioner was dropped; and hence, the period of suspension i.e., from the date of his suspension to the date of his retirement (20.12.2000 to 30.04.2002) was ordered to be treated as duty and the subsistence allowance shall be adjusted in the duty pay. Such being the position, the petitioner being the wife of the deceased employee, is entitled to receive the retirement benefits payable to him, if there is no other legal impediment.

7.At this juncture, it is apropos to refer to the decision of the Supreme Court in Poonamal v. Union of India [1985 (3) SCC 345], wherein, at paragraph 7, the object of the family pension was explained, which reads thus:

"7.It is not necessary to examine the concept of pension. As already held by this Court in numerous judgments, pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. (Devaki Nandan Prasad v. State of Bihar [1983 SCR (2) 921], State of Punjab v. Iqbal Singh [1976 AIR 667] and D.S. Nakara v. Union of India [1983 SCR (2) 165]). Where the Government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in D.S. Nakara judgment. At the hearing of this group of matters we pointed out that since the family pension scheme has become non-contributory effective from September 22, 1977 any attempt at denying its benefit to widows and dependents of Government servants who had not taken advantage of the 1964 liberalisation scheme by making or agreeing to make necessary contribution would be denial of equality to persons similarly situated and hence violative of Article 14. If widows and dependents of deceased Government servants since after September 22, 1977 would be entitled to benefits of family pension scheme without the obligation of making contribution, those widows who were denied the benefits on the ground that the Government servants having not agreed to make the contribution, could not be differently treated because that would be introducing an invidious classification among those who would be entitled to similar treatment...."

8.In S.K. Mastan Bee v. G.M., South Central Railway, [2003 (1) SCC 184], wherein, denial of family pension by the High Court to an illiterate widow of a Gangman in the Railways for certain period on the ground of delay in approaching the Court, was not approved by the Supreme Court. The relevant passage of the said decision is reproduced hereunder:

"6.We notice that the appellants husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husbands employer viz. The Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellants lack of resources to approach the legal forum timely is not disputed by the Railways. The question then arises on facts and circumstances of this case, was the Appellate Bench justified in restricting the past arrears of pension to a period much subsequent to the death of the appellants husband on which date she had legally become entitled to the grant of pension? In this case as noticed by us hereinabove, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellants right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal, in spite of the same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1-4-1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact that her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate, the learned Single Judge, in our

opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1-4-1992.

7. In the said view of the matter, we allow this appeal, set aside the impugned order of the Division Bench to the extent that it restricts the right of the appellant to receive family pension only from 1-4-1992 and restore that right of the appellant as conferred on her by the learned Single Judge, that is from the date 21-11-1969. The Railways will take steps forthwith to compute the arrears of pension payable to the appellant w.e.f. 21-11-1969 and pay the entire arrears within three months from the date of the receipt of this order and continue to pay her future pension."

9. Applying the above said legal proposition to the facts of the present case, this Court is of the opinion that the payment of family pension to the petitioner is not a charity, but a legal right, which cannot be denied by the Government, without any basis. In such view of the matter, the first respondent is directed to consider the representation of the petitioner, dated 09.12.2013 and settle the retirement benefits due to her deceased husband, if not already settled, within a period of six weeks from the date of receipt of a copy of this order, failing which, they shall pay interest at 6% p.a. for the belated payment.

10. With the aforesaid directions, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

msv

To

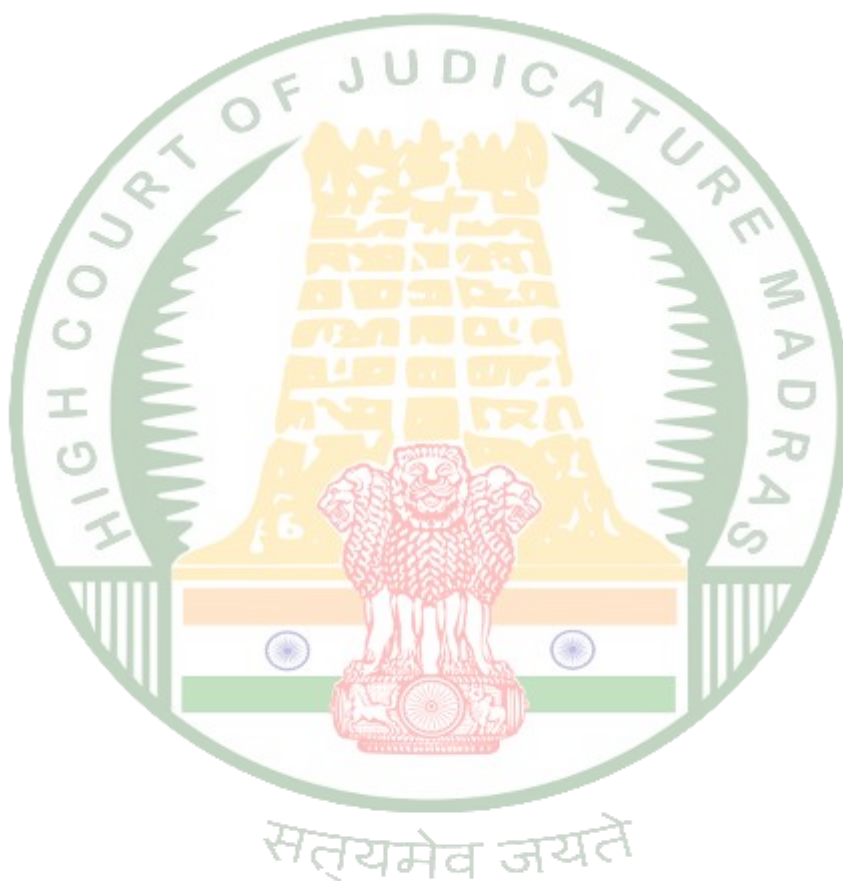
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+1cc to Mr.M.Radhakrishnan, Advocate SR.3470

W.P.No.33305 of 2014

MP(CO)
CB(16/03/2021)



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