



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2021

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P. (MD)No.1468 of 2018

and

W.M.P. (MD)No.1534 of 2018

A.Sahaya Mary

...Petitioner

/Vs./

1.The Chairman,

V.O.Chidambaranar Port Trust,

Thoothukudi.

2.The Chief Accounts Officer,

V.O.Chidambaranar Port Trust,

Thoothukudi.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Impugned order dated 10.03.2016 issued by the 2nd Respondent and quash the same and further direct the Respondents to pay the pension to the Petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.Karthik

for Mr.T.Lajapathi Roy

ORDER

The petitioner has challenged order dated 10.03.2016 of the Chief Accounts Officer of the V.O.Chidambaranar Port Trust and further seeks a direction to the respondents to pay her family pension. The petitioner had been married to one M.Antony who had been employed as a Lascar with the Thoothukudi Port Trust and who had died in harness on 02.06.1991.

2.The petitioner was provided by the respondent Port Trust with appointment as Safaiwala on compassionate grounds. She is presently working with the respondent Port Trust as Record Sorter,

due to retire in 2023.

3.Initially, she had been receiving family pension from the respondents, that was withdrawn on 01.07.1997, on the basis of a declaration made by her that she had re-married one S.Ramar on 30.06.1997 and that the family pension may thus be paid over to her minor son. Accordingly, on and from August 1997, the family pension has admittedly been paid over to her initially, as guardian of her minor son and upon the latter attaining majority, to him, direct.

4.While this is so and out of the blue, she made a representation to the respondent on 05.03.2014 stating that the family pension, to which she was entitled, had been abruptly withdrawn by them with effect from 01.07.1997 without any provocation. Prior thereto, the petitioner appears to have made a similar representation on 27.11.2013. A copy of the first representation has not been filed but finds mention in representation dated 05.03.2014.

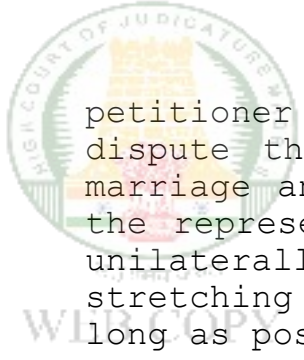
5.On account of the pendency of the representation, she filed a writ petition in W.P.(MD)No.1559 of 2014, that was disposed on 30.01.2014 directing the respondent to dispose the same on merits and in accordance with law, within a fixed timeframe. The representation has come to be rejected vide the impugned order, wherein the respondents refer to her earlier declaration dated 09.07.1997 to the effect that she had married S.Ramar on 30.06.1997 and requesting transfer of the family pension to her son, A.Prakashnathan.

6.The respondents state that since the CCS (Pension) Rules, 1972 (in short '1972 Rules') provide for family pension to be paid upto date of re-marriage and in light of the petitioner's statement that she had married Ramar, the family pension had been sanctioned to her son and was paid to her, as a guardian of the minor son.

7.On 25.12.2001, the family pension had been transferred to the son's name upon him attaining majority and had been paid over to him till his attaining the age of 25 years, when such entitlement ceased, as per Rules. The respondents thus categorically deny the allegation that payment of pension to her was abruptly stopped and would state that it would transferred to her son at her instance and on her representation that she had re-married.

8.In the affidavit filed in support of the writ petition, the petitioner sings an altogether different tune. She says that she never married the said Ramar, but had only received a proposal for marriage from him. In fact, Ramar was, she would say, a pervert, had attempted to molest her son, but had been driven away by onlookers and had not surfaced thereafter. Thus, according to her, she was never married to him and she would thus seek to revive her claim for family pension.

9.There is not a scrap of evidence on record to establish the facts put forth by the petitioner as recorded above. The



petitioner does not, either in the writ affidavit or before me, dispute the declaration made by her on 09.07.1997 about her re-marriage and requesting transfer of pension to her son. However in the representation made to the respondent she says the pension was unilaterally withdrawn by them. Her attempt clearly is to continue stretching the benefit of family pension, at all cost, and for as long as possible.

10.A legal point is put forth by Mr.G.Prabhu Rajadurai, learned counsel for the petitioner, relying upon the Central Civil Services (Extraordinary Pension) Rules, 1939 (in short '1939 Rules'). He draws my attention to Rule 12, which deals with the payment of family pension, specifically a Note thereunder, which says *'The family pension of a widow will cease on re-marriage but when such re-marriage is annulled by divorce, desertion or death of the second husband, her pension may be restored upon proof that she is in necessitous circumstances and otherwise deserving'*.

11.Though such clarification does not specifically figure in the 1972 Rules applicable to the petitioner, he would state that the same should be read into the 1972 Rules. Thus, according to him, even assuming that the marriage with Ramar had in fact taken place, with the annulment of the re-marriage, the payment of pension is to stand restored, if the beneficiary is able to prove that she is in necessitous circumstances and otherwise deserving.

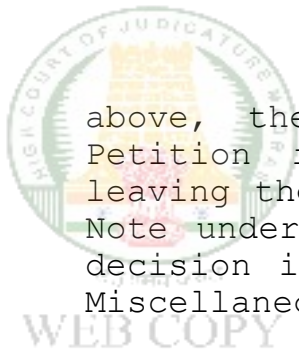
12.Without going into the applicability or otherwise of the Note to the 1972 Rules, the case of the petitioner is to be rejected simply on the narration of disputed facts as noticed and recorded in the preceding paragraphs. Whether the petitioner has annulled the re-marriage to Ramar is a mystery and this averment runs counter to the stand taken in the writ affidavit. Even if one were to view this stand as an alternate contention, the petitioner's declaration dated 19.07.1997 is unambiguous to the effect that she has re-married. It appears quite apparent to me that the entirety of this argument is inspired by the 1939 Rules that also find no place in the pleadings.

13.That apart, the petitioner is certainly not in either necessitous nor deserving circumstances, as she is holding a job with the respondent port trust and no other circumstances are put forth to justify this claim.

14.The facts as noticed and narrated inspire no confidence whatsoever to the effect that the petitioner is entitled to the family pension. Admittedly, she had made a declaration on 09.07.1997 about her marriage with Ramar on 30.06.1997. It is as per her request that the family pension was transferred to her son. Payment of family pension ceased in 2008 upon son attaining majority and this appears to have inspired the petitioner to try her luck and stake yet another claim for the pension.

15.This Court has no intention of encouraging what is clearly an avaricious tactic and on the admitted facts as noticed

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above, the claim of the petitioner stands rejected. This Writ Petition is thus dismissed, confirming the impugned order and leaving the legal question raised in regard to the applicability of Note under Rule 12 of the 1939 Rules to the 1972 Rules, open for decision in an appropriate case. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Chairman,

V.O.Chidambaranar Port Trust,
Thoothukudi.

2.The Chief Accounts Officer,

V.O.Chidambaranar Port Trust,
Thoothukudi.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-38175[F] dated 10/12/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-38080[F] dated 10/12/2021)

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NSN (CO)

KB (20.12.2021) 4P 5C