



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) Nos. 21290 of 2014 and 18238 of 2016

and

W.M.P. (MD) .No.13142 of 2016 & 155/2017

and

M.P. (MD) .Nos.2 and 3 of 2014

WEB COPY

W.P. (MD) .No.21290/2014:

1.Micheal Kethsy

2.Hersome Savio

.. Petitioners

Vs

1.The Director of Medical Services,
No.258, DMS Complex 3rd Floor,
Near Fires Service,
Anna Salai, Teynampet West,
Chennai-600 006.

2.The Dean,
Kanyakumari Medical College,
Asaripallam-629 201,
Kanyakumari District.

3.The Accountant General (A&E),
Office of the Principal Accountant General,
No.361, Anna Salai,
Chennai-600 018.

4.Melkias

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the third respondent in No.P32/3/13211248/PPO No.F3211248 dated 12.11.2014 and quash the same in so far as authorising the 4th respondent to receive 100% family pension of the deceased Justin and direct the respondents 1 to 3 to disburse family pension to the petitioners.

For Petitioner
For Respondents

: Mr.N.Saravanan
: Mr.C.M.Marichelliah Prabhu
Additional Government Pleader
for R1 and R2



Mr.P.Gunasekaran
for R3
Mr.M.Subash Babu
for R4

W.P. (MD) .No.18238/2016:

Hersome Savio

.. Petitioner

Vs

1.The Director of Medical Services,
No.258, DMS Complex 3rd Floor,
Near Fires Service,
Anna Salai, Teynampet West,
Chennai-600 006.

2. The Secretary to Government,
Finance (Pension) Department,
Secretariat,
St.George Fort,
Chennai-600 009.

3.The Accountant General (A&E),
Office of the Principal Accountant General,
No.361, Anna Salai,
Chennai-600 018.

4.The Dean,
Kanyakumari Medical College,
Asaripallam-629 201,
Kanyakumari District.

5.Malgiyas

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 1 to 4 to sanction family pension in favour of the petitioner due to the death of the petitioner's mother, namely, Justin on 23.07.2013 within the stipulated time as fixed by this Court.

For Petitioner
For Respondents

: No appearance
: Mr.C.M.Marichelliah Prabhu
Additional Government Pleader
for R1, R2 & R4
Mr.P.Gunasekaran
for R3
Mr.N.Dilip Kumar
for R5



COMMON ORDER

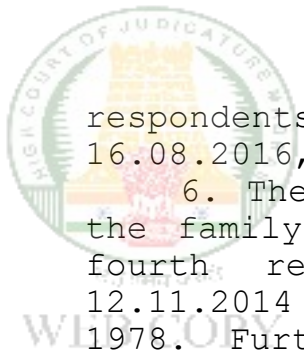
By consent of both parties, these writ petitions are taken up for final disposal at the admission stage itself. Since the issue involved in these writ petitions are one and the same, these writ petitions are disposed of by way of common order.

2. The prayer sought for in W.P.(MD).No.21290/2014 is to call for the records pertaining to the impugned order passed by the third respondent in No.P32/3/13211248/PPO No.F3211248 dated 12.11.2014 and quash the same in so far as authorising the 4th respondent to receive 100% family pension of the deceased Justin and direct the respondents 1 to 3 to disburse family pension to the petitioners.

3. The prayer in W.P.(MD).No.18238/2016 is to direct the respondents 1 to 4 to sanction family pension in favour of the petitioner due to the death of the petitioner's mother, namely, Justin, who died on 23.07.2013 within the stipulated time as fixed by this Court.

4. The case of the petitioners is that the petitioners are the son and daughter of the deceased employee Justin. They filed writ petition in W.P.(MD).No.21290/2014 for claiming of family pension due to the death of their mother, namely, Justin, who died on 23.07.2013, on the ground that the fourth respondent, namely, Melkias, who is the father of the petitioners filed a divorce petition in I.D.O.P.No.143/2012 against the petitioners' mother, which is pending on the file of the learned District Judge, Nagercoil. The petitioners' father had left away from the petitioners in the year 2006 and living separately for nearly 10 years and he did not give any financial assistance to the petitioners family and even he did not live with their mother Justin throughout her life time. Hence, without considering these facts and without considering the pendency of the above divorce petition, the third respondent passed the impugned order in No.P32/3/13211248/PPO No.F3211248 dated 12.11.2014 authorising the 4th respondent to receive 100% family pension of the deceased Justin, which is not sustainable one. In this regard, the petitioner/son of the deceased Employee, Justin, sent a representation on 16.08.2016 to the respondents, but so far no action has been taken on the said representation. Hence, the petitioners approached this Court with the above said prayer in W.P.(MD).No.21290/2014 and W.P.(MD).No.18238/2016 is filed by the son of the deceased employee Justin for the very same relief of disbursement of family pension in his favour.

5. The learned counsel for the petitioners would submit that it would be suffice if a direction is issued to the official



respondents to consider the representation of the petitioner dated 16.08.2016, within a reasonable time as fixed by this Court.

6. The learned Additional Government Pleader would submit that the family pension was sanctioned by the third respondent to the fourth respondent in No.P32/3/13211248/PPO No.F3211248 dated 12.11.2014 as per Rule 49(6)(1) of the Tamil Nadu Pension Rules, 1978. Further, he would submit that the third respondent had informed in his letter Pr.AG (A&E) / LegalCell / W.P(MD).6849/2014/2014-2015 dated 09.09.2014 to the second respondent that the fourth respondent continues to be the deceased Justin's legally wedded husband (in the absence of any decree of divorce) family pension is payable to him alone as per the above said Rule. Hence, he prays for dismissal of these writ petitions.

7. Heard the learned counsel appearing on both side and perused the materials placed on record.

8. Considering the facts and circumstances of the case, unless the divorce petition, which is pending in IDOP.No.143/2012 on the file of the District Judge, Nagercoil, is concluded, the prayer sought for in these writ petitions cannot be considered. Further, pending divorce petition, the petitioners' mother passed away and hence, the official respondents had rightly granted family pension to the fourth respondent, who is the legally wedded husband of the deceased employee, Justin.

9. In view of this Court, the prayer sought for in these writ petitions are misconceived and accordingly, these writ petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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 Secretary to Government,
Finance (Pension) Department,
Secretariat,
St.George Fort,
Chennai-600 009.

2.The Director of Medical Services,
No.258, DMS Complex 3rd Floor,
Near Fires Service,
Anna Salai, Teynampet West,
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3.The Dean,
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Kanyakumari District.

4.The Accountant General (A&E),
Office of the Principal Accountant General,
No.361, Anna Salai,
Chennai-600 018.

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-7700[F])
+1CC TO MR.P.GUNASEKARAN, ADVOCATE, SR NO 7735
+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-7820[F])
+1CC TO MR.N.DILIPKUMAR, ADVOCATE, SR NO 7660
+1cc to M/s.Special Government Pleader, SR No 7911

**W.P. (MD) Nos. 21290 of 2014
and 18238 of 2016
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SSS(CO)
KK(29.03.2021) 5P 10C