



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No.1469 of 2005

1. Saroja

2. Illayaraja

3. Bhuvaneswari

...Appellants /Plaintiffs

Vs.

1. Government of Tamilnadu
rep. by The District Collector,
Nagapattinam.

2. The District Education Officer,
Mayiladuthurai,
Nagapattinam District.

3. Principal Accountant General
Thynampettai, Chennai.

4. Manivannan

... Respondents/Defendants

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 08.11.2004 passed in A.S. No.28 of 2004, on the file of the Additional Sub Court, Mayiladuthurai, upholding the decree and judgment dated 02.01.2004 passed in O.S. No.395 of 2002, on the file of the Principal District Munsif Court, Mayiladuthurai.

For Appellants : Ms. Kavitha
for Mr. Sounthar

For R1 & R3 : Dr. S.Suriya
Special Government Pleader.

For R4 : Mr. S.V. Karthikeyan

JUDGMENT

The unsuccessful plaintiffs before both the courts below have filed the present second appeal.

2. For the sake of convenience, the parties are



referred to as per their ranking in the trial court and at appropriate places, their ranking in the present appeal would also be indicated.

3. The minimum facts required for the disposal of the present appeal are as follows:

3.1 The first appellant is the second wife of late Pandian who was working as a driver under the District Education Officer, Mayiladuthurai. He died on 10.07.1996 while in service. Late Pandian, during his lifetime, divorced his first wife Saroja. The 4th defendant Manivannan and one Manimaran are the sons born to Pandian and his first wife Saroja. After the demise of Pandian, the family pension was fixed at Rs.2,550/- per month and 50% of the said amount was paid to the first plaintiff and the remaining 50% to the 4th respondent from 11.07.1996. The 50% of the pension to the 4th respondent was paid only till he attained the age of 25 years i.e. 05.05.1995. Thereafter, the 4th respondent filed an application for payment of 50% of the family pension to the Accountant General, Chennai, on the ground that he has been suffering from schizophrenia and mental disorder. The Accountant General sent a communication to the Tamil Nadu State Government requesting the latter to clarify as to whether 50% of pension can be paid to the 4th respondent. On 29.11.2007, the Accountant General also informed the 4th respondent to get a separate Government Order from the Tamil Nadu State Government. In the meanwhile, the District Education Officer, vide his proceedings 9361/m2/1996 dated 05.03.2008 rejected the application of the 4th respondent only on the ground that the present second appeal is pending before this Court. These communications were not filed before both the courts below and only in the present appeal these records are placed before this Court. It is most unfortunate that the Government has not even considered the application filed by the 4th respondent till date even though it is contended by him that he is suffering from schizophrenia and mental disorder.

3.2. The suit was filed by the second wife of late Pandian and her children born through the said Pandian for a declaration that the second wife is entitled for the full pension and for a permanent injunction restraining the respondents 1 to 3 from disbursing the 50% of the pension amount to the 4th respondent. According to the appellants, there was a family agreement in which 1/5th share of the family property worth Rs.5,50,000/- was agreed to be given to the 4th respondent and his brother Manimaran each and in lieu of which it was agreed that the entire family pension could be received by the



first appellant alone. Further it was also agreed upon that the said Manimaran would be allowed to take up a job offered by the employer on the compassionate grounds due to the demise of Pandian while in service. It is her contention that due to this arrangement, she was entitled to receive the entire pension amount without sharing it with the 4th respondent.

3.3. The respondents 1 to 3 contended that the family arrangement would not bind on them and that the representation of the 4th respondent is pending for consideration with the competent authority. It is also their contention that the 4th respondent can receive pension as per G.O. No.158 Rule 49 of the Tamil Nadu Pension Rules. The 4th respondent, in his written statement had contended that the family arrangement had not been implemented in letter and spirit and that as a person with disability he is entitled to receive his share of the family pension for lifetime as provided for in the pension rules.

4. The trial court after framing necessary issues and after full contest, dismissed the suit filed by the present appellants vide its decree and judgment dated 02.01.2004 by observing that the family arrangement has not been proved by adducing acceptable evidence and that since the representation filed by the 4th respondent is pending for consideration by the appropriate authority, the suit filed by the appellants is not maintainable.

5. Aggrieved over the same, the appellants filed an appeal in A.S. No. 28 of 2004, before the Additional Sub Court, Mayiladuthurai. The learned Sub Judge, after analysing the oral and documentary evidence on record, upheld the findings of the trial court vide his decree and judgment dated 08.11.2004.

6. Now, the present second appeal is filed on the following substantial question of law.

- (1) Whether the judgments of courts below are liable to be set aside for error apparent on the face of record in its holding that the fourth respondent is entitled to claim 50% of family pension in the absence of evidence or pleading to the effect that he is deprived of earning capacity due to physical or mental infirmity?
- (2) Whether the judgments of courts below are sustainable in law when the material admissions of D.W.2 with regard to family arrangement are not taken into consideration?

7. Ms. Kavitha, learned counsel for the appellants contended that the 4th respondent himself had admitted the existence of the family arrangement, while arguing that it was not executed properly. It has not been explained by the 4th



respondent as to how the family arrangement has not been executed and the onus lies on him to substantiate the same. It is also contended by her that no medical evidence was adduced by the 4th respondent before both the courts below to prove that he was a disabled person entitled to receive 1/2 share of the family pension. It was also pointed out that the Government Order referred by the official respondents was not marked in the lower courts.

8. Per contra, Dr. S.Suriya, learned counsel for the official respondents had contended that since decision is yet to be taken by the pension disbursement authority on the representation of the 4th respondent, the suit is premature and not maintainable.

9. Mr.S.V. Karthikeyan, learned counsel for the 4th respondent contended that the family arrangement which has been relied upon by the appellants was never put in writing as the brother of the 4th respondent suffered paralysis and became unfit for any job even on compassionate grounds and thereby making the family arrangement invalid. It was also contended that there was no substantial question of law involved in the present appeal.

10. Pension is an important source of income for an employee after retirement after he/she ceases to receive the monthly salary. In the event of death of an employee while in service or on attaining superannuation, the family pension ensure flow of regular income though not equal to the original pension. In the instant case, the father of the 4th respondent who was also the husband of the 1st appellant died while he was in service. The first appellant being the second wife of the deceased Pandian was eligible to receive the family pension along with the 4th respondent. The 4th respondent was entitled to half share as his mother was the first wife of the deceased and the same was paid till the date of his attaining the age of 25. Subsequently, the 4th respondent had given a representation that since he was a person with disability he was entitled to receive the family pension throughout his life time and that the cessation of the payment at the time of attaining the age of 25 years was not in accordance with the Tamil Nadu Pension Regulations.

11. The Accountant General sent a communication to the Government seeking clarification in reply to the representation submitted by the 4th respondent. However, it appears that there was no response form the Government despite two reminders sent by the Accountant General. In the meanwhile, the first appellant filed the present suit, which was dismissed by both



the courts below citing the reasons which were already discussed earlier.

12. This court passed the following orders on 03.12.2020.

"2. The case where the widow and the disabled son are fighting over the retirement benefit and pension of one Pandian served as driver in the District Educational Office, Myladuthurai, Nagapattinam District. The appellant herein is the second wife, whereas the 4th respondent Mr.Manivannan is the son born to the first wife of the deceased Government servant. Earlier, proceedings was issued by the AGS Office apportioned the monthly pension among the wife and son, but after attaining the age of 25 years, 50% paid to the 4th respondent Manivannan has been stopped. However, he states that as per the pension rules, he is entitled to get pension even after attaining the age of 25 years as he is the physically disabled person. Whether Manivannan entitled to the benefit of extending beyond 25 years has to be established through adequate medical records.

3. On perusing the exhibits marked in the suit, which is now culminated in the second appeal, this Court could not lay on the medical records, which could substantiated the claim of 4th respondent Mr.Manivannan. However, this Court is of the view that before disposing of the second appeal, the physical condition of the 4th respondent has to be ascertained whether he is entitled to get the pension benefit beyond the age of 25 years. Hence the 4th respondent is directed to appear before the Medical Board at Thanjavur Government Hospital. The Dean of the Thanjavur Government Hospital is requested to constitute the Medical Board and to examine Manivannan, S/o.Pandian and submit the report at the earliest. The 4th respondent is directed to get medical certificate issued by the duly constituted board and submit it to this Court by 07.01.2021.

4. Call the matter on 08.01.2021."

Based on the said orders, the 4th respondent was medically examined by Dr. M. Thangaraj, H.O.D. & Professor of Neurology, Thanjavur Medical College, Thanjavur, and he sent a communication dated 17.12.2020 to the Chairman, Regional Medical Board, Government T.M.C. Hospital, Thanjavur, in which it is stated as follows:

"Mr. Manivannan, 48 year/Male, referred from medical



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board, is suffering from mental retardation and epilepsy since childhood. His last episode of seizure was 2 months back. His present neurological examination reveals he has moderate mental retardation and normal motor activity. His IQ assessment is 40% suggestive of moderate mental retardation. His cognitive assessment show he has poor attention. He depends on others for his activities of daily living.

FINAL IMPRESSION

1. Mental Retardation, Epilepsy, Developmental delay.
2. He depends on others for his activities of daily living
3. IQ 40%.
4. His disability is 80%
5. Non progressive disorder, not likely to improve."

Therefore, it is clear that the 4th respondent is suffering from disability as mentioned in the medical report.

13. Though G.O. 158 was not marked, the first appellate court had extracted the G.O.158 in its judgment, which reads as follows:

"GOVERNMENT OF TAMIL NADU

(Pension - Grant of Family Pension for life to the son or daughter of a Government servant suffering from disorder of disability of mind, et., Extension of the benefits to such sons / daughters of Government servants who retired/died before 1st January 1979) - Orders issued).

(G.O. M.S. No.158, Finance (Pension) dated 15th March 1988)

(1) From the Government of India, Office Memorandum No.1.4.87-P & P.W. dated 20th May 1987.

(2) from the Accountant-General (Accounts and Entitlements) Letter No.PM/I/GL/1-14/87-88/608, dated 10th February 1988.

ORDER:

According to proviso under sub-rule 6(iii) of Tamil Nadu Pension Rules, 1978, if the son or daughter of a Government Servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a



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living even after attaining the age of 18 years (now 21 years) in the case of the son and 21 years (now 30 years) in the case of the daughter, the family pension shall be payable to such son or daughter for life subject to the conditions laid down therein. The said proviso came into effect from 1st January 1979 i.e. the date from which Tamil Nadu Pension Rules 1978 were given effect.

(2) The Government have carefully examined the question of grant of the above benefit of family pension for life time to the sons/daughters of Government servants suffering from disorder or disability of mind etc., wherein Government servants retired/died before 1st January 1979 and decided to accept it. They accordingly direct that the benefit of family pension to the sons/daughters of Government servants who are suffering from any disorder or disability of mind or are physically crippled or, disabled so as to render them unable to earn a living be extended to such sons/daughters of Government servants who retired/died before 1st January 1979.

(3) The orders shall take effect from the date of this order.

(4) Necessary amendments to the Tamil Nadu Pension Rules, 1978 will be issued separately.

(By order of the Governor)...."

Rule 49 of the Tamil Nadu Pension Rule, 1978 deals extensively with family pension in which sub-section 6 deals with period for which the family pension is payable. Subsections 6(i), 6(ii) & 6(iii) provided that

(i) if such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor children in the order set out in clause (iii) of sub-rule (8) until the last minor child attains the age of 21 or [24] [30], as the case may be, [the age of 25] and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind including mentally retarded or who is physically crippled or disabled and shall be payable to him / her for life.

(ii) if there are more than one such son or daughter suffering from disorder or disability of mind (including mentally retarded) or who are physically crippled or disabled, the family pension shall be paid -



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(a) in the order of their birth, irrespective of the sex of the child and the immediate younger of him or her will be eligible for family pension only after the elder above him or her becomes ineligible for family pension;

(b) in cases of twin children to such twin children in equal shares. In the event of any of such children ceasing to be eligible for family pension his or her share of family pension will become payable to the other such child and when both such children become ineligible for family pension, the family pension will become payable to the next eligible child or twin children, as the case may be;]

[(iii) in the case of minor, the family pension shall be paid to such son or daughter through the guardian];

Rule 49(6) (iv) states that before allowing family pension to such son/daughter suffering from disorder and disability of mind the sanctioning authority should satisfy the handicap is of such a nature as to prevent him or her from earning his/her livelihood and the same shall be evidenced by a Medical certificate obtained from the Medical Officer not below the rank of a Civil surgeon setting out the exact physical and medical condition of the person disabled.

14. In the instant case, it is clear that the 4th respondent is disabled as per the report submitted by Thanjavur Medical College and therefore, he is entitled to get half of the pension amount.

15. As regards the family arrangement, as rightly pointed out by both the courts below, nothing was put in writing. Moreover, though the 4th respondent has admitted the existence of family arrangement, his contention that it was not executed fully appears to be reasonable. The reason being that the 4th respondent and his brother were even otherwise entitled to a share of their father's property as well as their grand mother's property. Therefore, the main reason for the 4th respondent agreeing to the proposal was the prospect of his brother Manimaran getting the compassionate appointment which would have ensured the steady flow of income for the family. However, since that could not take place due to the sudden illness of the said Manimaran, the 4th respondent was not in a position to forgo his only source of income i.e. the 50% of the family pension which he was already receiving till he attained the age of 25 years.

16. This Court, therefore concludes that the 4th respondent is entitled to receive 50% of family pension and the Secretary, Education Department, Tamil Nadu State Government, is



directed to pass necessary Government order sanctioning 50% of the family pension to the 4th respondent along with arrears from the date of the stoppage of pension to the 4th respondent within a period of one month from the date of receipt of a copy of this judgment/uploading of the judgment.

17. In the result,
- i. the second appeal is dismissed. No costs.
 - ii. the decree and judgment dated 08.11.2004 passed in A.S. No.28 of 2004, on the file of the Additional Sub Court, Mayiladuthurai, upholding the decree and judgment dated 02.01.2004 passed in O.S. No.395 of 2002, on the file of the Principal District Munsif Court, Mayiladuthurai, are upheld.
 - iii. The Secretary, Education Department, Tamil Nadu State Government, is directed to pass necessary Government order sanctioning 50% of the family pension to the 4th respondent along with arrears from the date of the stoppage of pension to the 4th respondent within a period of one month from the date of receipt of a copy of this judgment/uploading of the judgment.

Sd/-
Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Additional Subordinate Judge,
Mayiladuthurai.
2. The Principal District Munsif,
Mayiladuthurai.
3. The Secretary, Education Department,
Tamil Nadu State Government, Tamilnadu.



Copy To

The Section Officer,
VR Section, High Court, Madras.

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+1cc to Mr.S.Sounthar, Advocate SR.No.10153
+1cc to Mr.S.V.Karthikeyan, Advocate SR.No.9738
+1cc to the SpecialGovernment Pleader(CS) SR.No.10014

S.A.No .1469 of 2005

EV(C0)
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