



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 4992 of 2022

K. Babu

...Petitioner

-vs-

1. The State of Tamil Nadu,
Rep., by its Secretary to Government,
Municipal Administration & Water Supply Department,
Fort St.George,
Chennai - 600 009.

2. The Commissioner,
Kancheepuram Municipality,
Kancheepuram.

3. The Principal Accountant General of Tamil Nadu,
Teynampet,
Chennai - 600 018.

4. The Director,
Local Fund Audit Department,
IV Floor, Finance Department,
Nandanam - 600 035.

...Respondents

(R4 is suo motu impleaded vide this order)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus directing the Respondents to pay the family pension to the Petitioner as per the proviso to Sub-rule 6(iii) under Rule 49 of the Tamil Nadu Pension Rules, 1978 from the date of death of his father to till date and throughout life in accordance with law within time frame.

For Petitioner : Mrs. K.Jenitha
For Respondents : Mr. V.Jeevagiridharan,
Additional Government Pleader
(for R1 and R4)

Mr. P.Srinivas (for R2)

Mr. V.Vijayashankar (for R3)



O R D E R

Heard Mrs. K.Jenitha, Learned Counsel for the Petitioner, Mr. V.Jeevagiridharan, Learned Additional Government Pleader, who takes notice for the First Respondent, Mr. P.Srinivas, Learned Counsel, who takes notice for the Second Respondent and Mr. V.Vijayashankar, Learned Counsel, who takes notice for the Third Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a physically disabled person suffering from 100% blindness, claims to have been a dependant of his father, viz., Kathavarayan, who was permitted to retire from service of the Second Respondent on 31.03.2004 and had been receiving pension till 08.10.2013 when he died. The mother of the Petitioner, who died on 12.08.1999, had pre-deceased his father. According to the Petitioner, he had made an application invoking Rule 49(6)(iii) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Pension Rules' for short) for family pension as a dependant of the deceased employee, but it had been returned in the Order Mu. Mu. No. 1902/ NaOSa(2)/2021 dated 20.07.2021 passed by the Director, Local Fund Audit Department, IV Floor, Finance Department, Nandanam, Chennai - 600035, who is suo motu impleaded as the Fourth Respondent in this Writ Petition, stating that the total income of the family of the deceased person was exceeding Rs. 72,000/- due to which the Petitioner cannot be eligible for family pension. The Writ Petition has been filed for directing Respondents to pay the family pension to the Petitioner as per the proviso to sub-rule 6(iii) to Rule 49 of the Pension Rules from the date of death of his father till date and throughout life in accordance with law within time frame, but the said order passed by the Fourth Respondent has not been challenged by him. At the same time, it also requires to be taken note here that the basis for requiring fulfillment of such condition has not been mentioned in that order.

3. In this backdrop, reference must be made to Rule 82 of the Pension Rules, which provides as follows:-

"82. Power to relax:- Where any Department of the Government is satisfied that the operation of any of these rules causes under hardship in any particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.



Provided that no such order shall be made except with the concurrence of the Finance Department."

While construing a similar provision contained in Rule 88 of the Central Civil Services (Pension) Rules, 1972, the Hon'ble Supreme Court of India in Union of India -vs- Gandiba Behera (Order dated 08.11.2019 in Civil Appeal No. 8497 of 2019) has observed as follows:-

"25. We are also of the opinion that the authorities ought to consider their cases for exercising the power to relax the mandatory requirement of qualifying service under the 1972 Rules if they find the conditions contained in Rule 88 stand fulfilled in any of these cases. We do not accept the stand of the appellants that just because that exercise would be prolonged, recourse to Rule 88 ought not to be taken. The said Rules is not number specific, and if undue hardship is caused to a large number of employees, all of their cases ought to be considered. ..."

This would obviously mean that even if the Petitioner may not satisfy any of the prescribed conditions for grant of family pension as claimed, there is nothing precluding him from seeking relaxation of such requirements of the Rules in the prescribed manner before the concerned authority who would have to examine whether the conditions for the same have been fulfilled in this case. Learned Counsel for the Petitioner states that the Petitioner would make such application to the concerned authority.

4. In such circumstances, the Writ Petition is disposed on the following terms:-

- (i) the Petitioner may make necessary representation along with supporting documents to the concerned authority under Rule 82 of the Tamil Nadu Pension Rules, 1978, for relaxing the relevant rules so as to entitle him for grant of pension;
- (ii) if such application is made, the concerned authority shall immediately consider the claim made by the Petitioner following the prescribed procedure for relaxation of the relevant rules for grant of pension taking into account any undue hardship that may be suffered by him in terms of Rule 82 of the Rules;
- (iii) Though obvious, it is made clear that while deciding the matter afresh, the concerned authority shall not be inhibited and influenced by Order Mu. Mu. No. 1902/ NaOSa (2)/2021 dated 20.07.2021 passed by the Fourth Respondent;



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- (iv) if it is found that the Petitioner has not produced any details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to him requiring the same to be furnished within a time frame of not less than 15 working days;
- (v) if the concerned authority is not satisfied with the compliance of the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and the concerned authority shall pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment;
- (vi) in the event that the Petitioner is found entitled to the relaxation of the relevant rules for grant of pension as claimed, it shall be ensured that the eligible amount of arrears of pension is paid within three months from the date of passing of that order, apart from monthly pension for future months on the due dates; and
- (vii) there shall be no order as to costs.

s/d-

Assistant Registrar(CS VI)

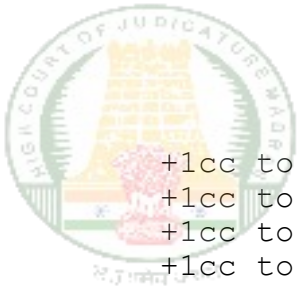
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Sub-Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu,
Municipal Administration & Water Supply Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner,
Kancheepuram Municipality,
Kancheepuram.
3. The Principal Accountant General of Tamil Nadu,
Teynampet,
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4. The Director,
Local Fund Audit Department,
IV Floor, Finance Department,
Nandanam - 600 035.



+1cc to M/s.V.Vijay Shankar, Advocate, Sr.15331
+1cc to M/s.K.Jenitha, Advocate, Sr.15262
+1cc to M/s.P.Srinivas, Advocate, Sr.15598
+1cc to Special Government Pleader, Sr.15553

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SKM(CO)
KKV/13/04/2022