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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No. 2255 of 2021

A.Kanniammal

...Appellant/Petitioner

-vs-

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

2. The Chief Engineer,
Engineering Department,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

3. The Accounts Officer (Pension),
O/o.Financial Advisor & Chief Accounts Officer,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act,
to set aside the order passed in W.P.No.4560 of 2020, dated
15.04.2021, on the file of this Court.

Prayer in W.P. No. 4560/2021:

To issue a Writ of Mandamus, directing the first
respondent to grant family pension to the petitioner with effect
from 09.06.1996 and grant such other relief.

For Appellant : Mr.S.Udhayakumar

For Respondents : Mr.P.M.Subramaniam



J U D G M E N T

S.VAIDYANATHAN., J

and

MOHAMMED SHAFFIQ., J

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This Writ Appeal has been filed against the order passed by the learned Single Judge dated 15.04.2020, by which the learned Single Judge has not granted the relief sought for by the writ petitioner on the ground of laches and directed her to approach the civil court for redressing her grievances.

2. The learned counsel appearing for the Appellant/ Writ Petitioner submitted that she got married to one M.Arjunan who was employed as Senior Mazdoor (Conservancy) in the Department of Engineering, Chennai Port Trust, and her husband died on 08.06.1996. After the death of her husband, the Appellant made a request for family pension. According to the learned counsel for the Appellant, the family pension has got to be extended to her and the learned Judge ought not to have dismissed the Writ petition on the ground that there was a delay of 40 years in making the claim.

3. In support of his submissions, the learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of Smt.Violet Issac and Ors Vs. Union of India and Ors reported in (1991) 1 SCC 725, wherein the decision of the Hon'ble Apex Court in Jodh Singh Vs. Union of India reported in (1980) 4 SCC 306 was referred and the Hon'ble Supreme Court has held as follows:

5. In Jodh Singh Vs. Union of India, this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which developed on his death to the widow. The Court observed: (SCC p.310, para 10)

"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could



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ever from part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

The Court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition."

4. Learned counsel for the Appellant also submitted that the claim of family pension cannot be simply thrown on the technical ground and even if there is a delay, family pension can be granted to the Appellant at least from the date of filing the writ petition.

5. The learned counsel for the Respondents contended that though the employee retired from service as early as on 30.06.1991 and died in the year 1996, the Appellant has belatedly made her representation only in the year 2009 seeking family pension and has filed a writ petition after a lapse of 11 years. He also drew the attention of this Court to a letter dated 15.04.1991 given by the deceased employee, wherein it was stated as follows:

"Respected Sir,

Sub: Settlement of Accounts-wife
deserted-intimation-Reg.

I am herewith submitting a few lines for your kind information and necessary action.

My wife Smt.Kanniammal deserted me and my two children during the year 1980. Subsequently she has settled in life with someone I do not know whereabouts she is. Till date I had no contact with her. Hence, I could not produce the



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photograph with my deserted wife. And also, in the event of my death, the settlement of my accounts may kindly be settled in favour of my son A.Siva, my younger son. My elder son, A.Shankar, predeceased me during the year 1989. At any case, no settlement has to be made to my wife, in the event of my death.

Thanking you,"

6. Thus relying on the same, it was strenuously contended that the writ petitioner is not entitled for the family pension.

7. Heard both sides. Perused the material available in record.

8. According to the Respondents, the wife of the deceased employee has deserted him as early as in 1980 and approached this court after 40 years to claim the benefits of her late husband. Learned Single judge also took note of the date of desertion and calculated the period as four decades. Admittedly there is a delay and a disputed question of fact is involved. Though the petitioner claims relief on the ground that she is legally entitled for family pension, she must have some moral values for claiming such relief. Hence, the learned Single Judge has rightly rejected the prayer sought for by the Appellant. We find no error in the order passed by the learned Single Judge.

9. In such view of the matter, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

arr
To:

1. The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.



2. The Chief Engineer,
Engineering Department,
Chennai Port Trust,
Rajaji Salai,
Chennai-600 001.

3. The Accounts Officer (Pension),
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Chennai Port Trust,
Rajaji Salai,
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+1 CC to Mr.P.M.Subramaniam, Advocate sr 8922

W.A.No. 2255 of 2021

AJS (CO)
SP(14/03/2022)