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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

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

W.P.No.9317 of 2017

and

W.M.P.No.10296 of 2017

S.Varalakshmi

...Petitioner

-vs-

1. State of Tamil Nadu
Rep. by the Secretary to Government
Finance (Pension) Department
Secretariat, Chennai - 600 009.
2. The Director
Fire and Rescue Services
Greens Road, Chennai - 600 006.
3. The Deputy Director & District Officer
Fire & Rescue Services, Southern Region
Madurai - 625 001.
4. The Deputy Director & District Officer
Fire & Rescue Services, Central Region
Tiruchirapalli.
5. The Senior Accounts Officer /Pen.33
Office of the Accountant General (Accounts & Entitlements)
Tamilnadu
No.361, Anna Salai
Teynampet, Chennai - 18.

...Respondents

Prayer:-Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Fifth Respondent which is made in Pen 33/I/Pt 16069/16-17 dated 30.01.2017 and quash the same, consequently to direct the Respondents to grant and pay family pension along with arrears of family pension at the rate of 12% per annum to the Petitioner. (Prayer amended vide order dated 02.03.2022 in W.M.P. No. 2930 of 2022)



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For Petitioner : Mr. R.Malaichamy

For Respondents: Mrs. C.Sangamithirai (For R1 to R4)
Special Government Pleader

Mr. V.Vijayashankar (For R5)

O R D E R

Heard Mr. R.Malaichamy, Learned Counsel for the Petitioner, Mrs. C.Sangamithirai, Learned Special Government Pleader appearing for the First to Fourth Respondents and Mr. V.Vijayashankar, Learned Counsel for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2.The husband of the Petitioner, viz., A.Selvaraj, was appointed as Station Fire Officer, Musiri in the Fire and Rescue Department of the Second to Fourth Respondents on 08.04.1979 and he died in an accident involving a fire rescue vehicle on 28.03.1980 while attending duty. The claim made by the Petitioner seeking family pension has been declined by Order No. Pen 33/I/Pt 16069/16-17 passed by the Fifth Respondent, which is challenged in this Writ Petition.

3.In terms of Rule 49(2)(a) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Rules' for short), where a Government servant dies after completion of not less than one year continuous service, the family of the deceased shall be entitled to family pension. A proviso was inserted to the said Rule by G.O. Ms. No. 447, Finance (Pension) Department dated 07.06.1995 with effect from 29.08.1989 that enables family pension to be payable to the family of a Government Servant who dies before the completion of one year continuous service, if he was declared fit for Government service by the appropriate medical authority prescribed under the relevant rules immediately prior to his appointment. It is contended by the Respondents that the said A.Selvaraj, who had rendered service for a period of 11 months and 21 days, had not completed the required period of one year of continuous service and the said proviso which had come into effect after his death could not be applicable to this case.

4.At this juncture, it would be relevant to point out here that Rule 82 of the Rules provides as follows:-

"82. Power to relax:-- Where any Department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, the Department may by order for reasons to be



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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 though the husband of the Petitioner has not completed the minimum period of one year of qualifying service for grant of family pension to the Petitioner and the amendment to the rule was made after his death, there is nothing precluding the Petitioner from seeking relaxation of the 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.

5. In such circumstances, the following order is passed:-

- (i) the Petitioner may make necessary application 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 her for grant of family pension;
- (ii) if such application is made, the concerned authority shall immediately consider the claim made by the Petitioner for relaxation of the relevant rules for grant of pension taking into account any undue hardship that may be suffered by her in terms of Rule 82 of the Rules;
- (iii) if it is found that the Petitioner has not produced any



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details or supporting documents satisfying the eligibility criteria for the benefits claimed, the deficiencies in that regard shall be informed in writing to her requiring the same to be furnished within a time frame of not less than 15 working days;

- (iv) in the event of the concerned authority not being 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 her 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; and
- (v) if the Petitioner is found entitled to the relaxation of the relevant rules for grant of family pension as claimed, it shall be ensured that the eligible amount of arrears of family pension is paid within three months from the date of passing of that order, apart from family pension for future months on the due dates.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The Secretary to Government
Finance (Pension) Department
Secretariat, Chennai - 600 009.
2. The Director
Fire and Rescue Services
Greams Road, Chennai - 600 006.
3. The Deputy Director &
District Officer
Fire & Rescue Services
Southern Region
Madurai - 625 001.



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4. The Deputy Director &
District Officer
Fire & Rescue Services
Central Region
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5. The Senior Accounts Officer /Pen.33
Office of the Accountant General
(Accounts & Entitlements)
Tamilnadu
No.361, Anna Salai
Teynampet, Chennai - 18.

+1cc to Mr.R.Malaichamy, Advocate, S.R.No.13681
+1cc to Mr.V.Vijayshankar, Advocate, S.R.No.13956
+1cc to the Government Pleader, S.R.No.14130

W.P. No. 9317 of 2017

CA(CO)
RGA(02/06/2022)