



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :01.02.2022
CORAM

**THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND**

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.(MD)No.2016 of 2021
and C.M.P.(MD)No.9333 of 2021
in W.P(MD) No.6999 of 2019

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The Principal Accountant General
(Accounts and Entitlements),
No.361, Anna Salai,
Chennai-600 018.

.. Appellant/Respondent 1

Vs.

1. Smt.Suriyakala

.. Respondent 1/Petitioner

2. Minor Puja Sivani,
D/o.Late Muneeswaran,
Rep. through her mother and next friend,
Mrs.Neelavathi (Inspector of Police),
D.No.15-2-10A, Nehruji Street,
P.C.Patti (Palanichettipatti),
Theni District. @

.. Respondents 2/Respondent 2

@ R2 is impleaded as per order
dated 14.07.2021 in WMP(MD)
No.8946/2021

Prayer : Writ Appeal filed under Clause 15 of Letter Patent against the order dated 14.07.2021 in W.P.(MD)No.6999 of 2019 on the file of this Court.

Prayer in WP(MD). 6999 of 2019 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Communication issued by the respondent in his remarks in admissibility report PPO No. F0425195 dated 18.12.2018 and quash the same and further to direct the respondent herein to disburse the family pension to the petitioner as per the award dated 09.09.2017 passed by lok adalat held by the district legal service authority Dindigul.

For Appellants : Mr.P.Gunasekar

For Respondents : Mr.Sarvagan Prabhu for R1

**J U D G E M E N T****PUSHPA SATHYANARAYANA, J.**

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The Principal Accountant of the State laid challenge to the order of the writ Court dated 14.07.2021 made in W.P.(MD)No.6999 of 2019.

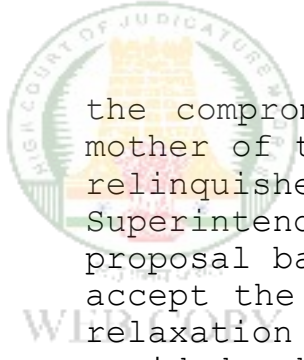
2. The appellant is the first respondent in the writ petition and the writ petitioner is the first respondent herein. The husband of the writ petitioner one Muneeswaran was an Assistant in the office of the Superintendent of Police, Dindigul District, who said to be married one Neelaveni for the second time, when the first marriage was alive and the second respondent herein, and also before the writ Court was born out of the said wedlock. He committed suicide on 06.11.2014. The dispute that arose between the two families with respect to settlement of his terminal benefits was settled before the Lok Adalat conducted by the District Legal Services Authority, Dindigul, in Lok Adalat Case Nos.318/2017 and 319 of 2017 in O.S.Nos.791 of 2014 and 66 of 2015 respectively on 09.09.2017, in and by which, the second wife agreed to relinquish the terminal benefits of the deceased. Based on the same, the request made for family pension was made by the writ petitioner, which was forwarded to the appellant. However, the first respondent passed the family pension order dated 18.12.2018 making the following remarks :

"As per TNPR, if a Government Servant is survived by two wives, 50% family pension is payable to first wife and 50% to children through second wife. In the instant case, Smt.Suryakala is eligible for 50% family pension and 50% family pension is payable to Ms.Puja Sivani daughter through second wife. The Court order to grant 100% FP to first wife is not in consonance with TNPR and hence, relaxation order may be obtained from Government. In order to avoid hardship, 50% FP is authorised to Smt.Suryakala and remaining 50% will be authorised to Ms.Puja Sivani on receipt of relaxation order along with proposals."

The writ petitioner questioned the said order in W.P.(MD)No.6999 of 2019 and sought a direction to disburse the family pension as per the award dated 09.09.2017 and the writ petition allowed vide order dated 14.07.2021, which is impugned before this Court.

3. Heard the learned counsel appearing on either side and perused the materials placed before us.

4. The facts are not in dispute. The first respondent/writ petitioner is the first wife of the deceased Government servant and the mother of the second respondent is the second wife. Pursuant to



the compromise arrived at between them before the Lok Adalat, the mother of the second respondent, on behalf of the second respondent, relinquished the right to receive 50% of the pension amount. The Superintendent of Police, Dindigul District, also forwarded the proposal based on such agreement. However, the appellant refused to accept the agreement arrived at between the parties and asked for a relaxation order to be obtained from the Government and in order to avoid hardship, authorised 50% of pension to the petitioner and stated that the remaining 50% will be authorised to the second respondent on receipt of relaxation order along with proposals.

5. The learned counsel for the appellant relied on the judgment of a co-ordinate Bench of this Court dated 02.04.2008 in W.P.No.11228 of 2004 (R.Dhanalakshmi V. The Secretary to Government, Labour and Employment Department, Chennai-9), which was upheld by the Hon'ble Supreme Court in Civil Appeal No.1211 of 2018 vide order 03.12.2019, to contend that even the illegitimate children are entitled for a share in the property of the deceased Government servant in terms of the Tamil Nadul Pension Rules, 1978 (in short, "the Rules"). In the said judgment, the private arrangement between the parties, which was the basis for the decree in the suit, cannot be binding the State, when they were given up before the Munsif Court. In the said case, the petitioner, who claims to be the second wife, sought for the terminal benefits of the deceased Government servant based on the private agreement. On the other hand, in the case on hand, the pension benefits are relinquished by the mother of the second respondent.

6. It is pertinent to state that the learned Single Judge in the impugned order recorded the presence of the mother of the second respondent before the Court virtually and also filing of the affidavit and held as follows :

3. The learned counsel appearing for the petitioner submitted that the second wife is working as a Inspector of Police and she has independent income. She has given no objection for being paid full family pension to the petitioner. In the meantime, this Court by order, dated 02.07.2021, directed the petitioner to implead the daughter of the second wife, namely, Puja Sivani as a second respondent in the present writ petition. The petitioner filed W.M.P(MD)No.8746 of 2021 to implead Puja Sivani, the daughter of the second wife Neelaveni. The second wife represented for her minor daughter filed an affidavit. In the affidavit, she has stated that she is working as Inspector of Police and she has sufficient means to support and bring up her daughter Puja Sivani. She also stated that the petitioner is unemployed with two minor children and the said Neelaveni, who is the second wife of the deceased, has no objection to pay the full family pension to the petitioner. As per the



direction of this Court, the second wife Neelaveni appeared before this Court today (14.07.2021) through Video Conferencing. Her counsel identified the said Neelaveni as a mother of the second respondent Puja Sivani. The mother of the Puja Sivani reiterated the averments made in the affidavit and confirmed that she has no objection for receiving the full family pension by the petitioner.

8. Considering the above facts, especially, 50% of the terminal benefits, paid to the minor daughter through second wife Neelaveni, economical and financial position of the petitioner, no objection given by the second respondent minor daughter through her mother, it will be in the interest of justice, this Court directs the first respondent to authorise and pay full family pension to the petitioner and also arrears of family pension from the date of death of the employee. In view of the above, the impugned order of the first respondent, dated 18.12.2018 is quashed insofar as not authorising the full family pension to the petitioner is concerned."

7. From the above it is clear that with eyes wide open knowing well the consequences, the mother of the second respondent relinquished the rights of the minor daughter qua pension benefits. It is to be stated that the Rules is silent about relinquishment of rights by the parties.

8. At this juncture, it is apt to rely upon the judgment of the Hon'ble Supreme Court in **Smt.Violet Issaac and Others Vs. Union of India and Others** reported in (1991) 1 SCC 725, wherein, it has been held as follows:

"The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The employee has no title nor any control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition. Accordingly, in the present case the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased."



9. As has been held by the Hon'ble Supreme Court, the family pension scheme is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee and it does not form part of the estate of the deceased Government servant and thus, he cannot dispose the same by testamentary disposition and only the designated persons of the family can receive the same. However, when the beneficiary under the scheme is ready to forgo the rights, the same could be accepted for the benefit of the remaining beneficiaries. Of-course, it is for the authorities to ensure the genuineness of the claim and take all possible steps to avoid impersonation, etc.,. When the concerned authorities act *bona fidely* after taking all precautions to ensure the right of the claimants and forward the proposal with relinquishment to the Accountant General, having accepted the genuineness of the claim, there should be no bar to grant terminal benefits to the such eligible members of the deceased family in accordance with the Rules. The hyper-technicalities raised under the alleged letter of the Government issued way back on 25.06.1993 ought not to be allowed to stall or delay the process of extending the pensionary benefits and rightly, the concerned Department of the State has not raised their little finger to deny the benefits to the writ petitioner and it is only the office of the Accountant General is before this Court.

10. As indicated above, the learned Single Judge, after considering the factual position, economical and financial position of the writ petitioner and also no objection given on behalf of the second respondent, rightly came to the conclusion that the writ petitioner is entitled to receive full 100% family pension and set aside the portion of the impugned order denying the said benefit. In the facts and circumstances of the case, we do not find any infirmity or illegality in the said findings.

11. In the result, the Writ Appeal fails and the same is dismissed as devoid of merits affirming the order of the learned Single Judge. The appellant is directed to comply with the directions issued by the learned Single Judge within a period of eight weeks from the date of receipt of a copy of this judgment. The parties shall bear their own costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Principal Accountant General
(Accounts and Entitlements),
No.361, Anna Salai,
Chennai-600 018.

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-3440[F] dated
01/02/2022)

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-3843[F] dated
03/02/2022)

W.A. (MD) No.2016 of 2021
01.02.2022

MGJ(15.02.2022) 6P 4C