BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2022
CORAM
THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P.(MD)No.2220 of 2018
and
W.M.P.(MD)Nos.2448, 2449 of 2018 & 596 of 2019

R.S.Mythili ... Petitioner

vs

1. The Principal Accountant General,
Tamil Nadu, Chennai.

2. The District Treasury Officer,
Madurai District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the Respondents resulting in the second respondent's impugned order dated 09/11/2017 passed in Na.ka.No.12011/2017/J1 and order of the first Respondent issued in Pen 13/I/dt.15730/17-18336-85646 and Pen 13/=/15730/2017-18/337-85653, dated 13/11/2017 and consequential order of recovery issued by the second respondent through his subsequent order dated 09/01/2018 in Na.Ka.No.12011/2017/J1 and quash the same and direction directing the second Respondent to continue to pay the petitioner's mother's pension also in respect of order No.P13/3/11307307/PPO.No.D1307307, dated 22.01.2014 and further not to deduct any amount from the petitioner's Family Pension by way of any mode of recovery.

For Petitioner : Mr.V.R.Venkatesan
For Respondents : Mr.P.Gunasekaran for R1
Mrs.D.Farjana Ghoushia for R2
Special Government Pleader

O R D E R

The petitioner has challenged the impugned order, dated 09.11.2017 and 13.11.2017 and the consequential order passed by the second respondent, dated 09.01.2018 and direct the second respondent to continue to pay the petitioner's mother's pension also in respect of Order No.P13/3/11307307/PPO.No.D1307307, dated 22.01.2014 and further not to deduct any amount from the petitioner's Family Pension by way of any mode of recovery and this Court, vide order, dated 02.02.2018 granted Interim Stay.

2.The brief facts of the case are that the petitioner's father had worked as Superintendent in the District Police Office, Madurai and died on 18.11.2003, leaving behind the petitioner and her elder brother as legal heirs. The petitioner's mother, namely, L.N.S.Mahalakshmi had worked as Teacher in Sitalakshmi High School, Thirunagar, Madurai and her mother also died on 06.04.2011. The petitioner is unmarried daughter and has completed +2 (XII Standard) examination. Due to her health condition and ailments, she was not able to work and there is no source of income. Since the petitioner's parents are Government servant, she made applications simultaneously to claim two pensions on the death of her father and mother and the petitioner requested to sanction Family Pensions. Since the petitioner was below 25 years, there is no bar in claiming the Family Pension. The Government has issued G.O.Ms.No.325, Finance (Pension) Department, dated 28.11.201 has extended the Family Pension to the unmarried daughters / divorce / widow who crossed the age of 25 years and now the upper age of 25 years was removed. Therefore, the petitioner claims that she is entitled to receive the pension of her parents on the status of unmarried daughter. On 11.07.2012, the petitioner applied for the Family Pension on the death of her parents but in the Form there is no column to state regarding whether the Applicant has applied for pension of their father or mother. Therefore, the contention of the petitioner is that there is no suppression of material facts. The said two applications were submitted to the concerned Departments where the petitioner's parents were working. The respective Departments directed the petitioner to submit Poverty Certificate, Certificate for not married, Legal Heirship Certificate and Death Certificate. The Department also directed the petitioner to submit Certificate of non-employment, Income Certificate, Passport size photos with signature. Based on the G.O.Ms.No.325, the petitioner has made applications requesting family pension on 11.07.2012. The petitioner's father's pension was sanctioned on 22.04.2013 and the Family Pension was admitted as per the G.O.Ms.No.325, Finance (Pension) Department, dated 17.04.2013 and the mother's pension was sanctioned on 27.01.2014. At the time of making applications, the petitioner has not received any pension and her income was mentioned as Rs.30,000/- (Rupees Thirty Thousand only) per annum.

3.The contention of the petitioner is that she submitted a representation, dated 16.03.2015 stating the she is receiving the Family Pension and requested the second respondent to cancel the petition and it was also cancelled. After the death of the father on 18.11.2003, leaving behind the petitioner's mother and children, the petitioner's mother became eligible and entitled to receive the pension of her father. The contention of the petitioner is that she has not concealed any facts before any authorities. The impugned order was passed on 09.11.2017 and the consequential order was passed on 09.01.2018 by that time, the petitioner received dual pension for six years. Now the respondents are taking active steps to recover Rs.4,34,635/- (Rupees Four Lakh Thirty Four Thousand Six Hundred and Thirty Five only). The claim of the petitioner is she was not able to work because of her illness and therefore, Rs.4,34,635/- (Rupees Four Lakh Thirty Four Thousand Six Hundred and

Thirty Five only) is a huge amount and she cannot repay the amount and prayed to quash the recovery.

4.The second respondent has filed a counter affidavit along with the Vacate Stay Petition stating that the petitioner has concealed that she is receiving two pensions. As per G.O.Ms.No.23, Finance (Pension) Department, dated 06.01.1996 whereby Rule 49(13) (B) which reads as under:

> "Family Pension admissible under this rule shall not be granted to a person who is already in receipt of Family Pension or is eligible there for under any other pension rules, provided that a person, who is otherwise eligible for Family Pension under this rule, may opt to receive family pension under this rule if he foregoes family pension admissible for many other rules."

5.Therefore, the petitioner is not entitled to two family pensions. The erroneous sanction of dual family pension to the petitioner has recently come to the knowledge of the Accountant General. Thereafter, the second respondent stopped the sanctioned teacher family pension and ordered to recover the excess amount. The petitioner has received Rs.4,34,635/- (Rupees Four Lakh Thirty Four Thousand Six Hundred and Thirty Five only) for a period from 28.11.2011 to 31.10.2017. The petitioner has concealed the facts that she is receiving her father's pension and therefore, the respondents prayed to dismiss the writ petition.

6.Heard Mr.V.R.Venkatesan, learned Counsel appearing for the petitioner and Mr.P.Gunasekaran, learned Counsel appearing for the first respondent and Mrs.D.Farjana Ghoshia, learned Special Government Pleader appearing for the second respondent.

7.It is seen from the records that the petitioner is an unmarried daughter and based on G.O.Ms.No.325, the Family Pension was granted. The learned Counsel appearing for the petitioner has submitted that the petitioner submitted a letter, dated 16.03.2015 requesting to cancel her father's petition. The respondents having acted upon and it was requested before the second respondent and the second respondent has not guided the petitioner properly. Taking the financial status into consideration, the petitioner has received Rs.4,34,635/- (Rupees Four Lakh Thirty Four Thousand Six Hundred and Thirty Five only) for a period from 2011 to 2013 and it may be difficult for her to pay the amount. Since the second respondent has not acted on the representation dated 16.03.2015, this Court is inclined to reduce the amount from Rs.4,34,635/- (Rupees Four Lakh Thirty Four Thousand Six Hundred and Thirty Five only) to Rs.3,85,00/- (Rupees Three Lakh Eighty Five Thousand only). Therefore, the petitioner is directed to pay Rs.3,85,00/- (Rupees Three Lakh Eighty Five Thousand only) in easy instalment. Therefore this Court is of the considered opinion if the petitioner is directed to pay Rs.2,000/- (Rupees Two Thousand only) per month which would be easy instalment for her.

8.Therefore, this Court is directing the respondents to deduct Rs.2,000/- (Rupees Two Thousand only) per month and if there is any increase in amount, there will be a periodical increase in the payment also and accordingly, the instalments may increase.

9.With this above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Principal Accountant General,
   Tamil Nadu, Chennai.

2. The District Treasury Officer,
   Madurai District.

+1 CC to M/s.V.R.VENKATESAN, Advocate (SR-7315[F] dated 21/02/2022)

+1 CC to M/s.SPL GP (SR-7107[F] dated 18/02/2022)

Order made in
W.P.(MD)No.2220 of 2018
17.02.2022

RS(21.03.2022) 4P-5C