



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.01.2022**

CORAM:

WEB COPY

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.3638 of 2018

and

W.M.P.(MD)No.3759 of 2018

R.Thulasiammal

...Petitioner

/Vs./

1.The Commanding Officer,
3 (TN) Girls Battalion NCC,
Maharaja Nagar,
Tirunelveli,
Tamil Nadu 627 011.

2.The NCC Directorate,
TN (P & AN (A.K),
Fort St.George,
Chennai 600 009,
Tamil Nadu.

3.The Office of the Principal,
Accountant General (A&E),
Anna Salai, Chennai 600 018,
Tamilnadu.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the 3rd respondent herein in PEN 22/IV/PT.7949/2017-18/109634/147 dated 09/01/2018 and in Ref.611/1/Accts dated 19/01/2018 quash the same insofar as denying state pension to the petitioner from the date of death of her husband on 26/04/1995 and consequently direct the respondents herein to sanction state pension to the petitioners from the date of death of her husband on 26/04/1995 with all arrears and interest at 7% p.a, accrued thereon till realization as per the order dt.17/02/2017 in WA(MD)No.679 of 2014 on the file of this Court.

For Petitioner

: Mr.K.Appadurai

For R1 & R2

: Mr.V.Om Prakash
Government Advocate

For R3

: Mr.P.Gunasekaran



ORDER

The husband of the petitioner, one G.Rengasamy was employed in Indian Army as a Driver. He was discharged from service on 22.05.1971 on medical grounds and was receiving pension from the Army. He thereafter joined the services of the Tamil Nadu National Cadre Corps (TNNCC) as Driver and worked there till his demise on 26.04.1995.

2.The petitioner, based on her entitlement for dual family pension, that is on account of her husband's employment in Army as well as in the State service, applied for state pension as well, upon demise of her husband. To be noted that she is in receipt of army pension till date.

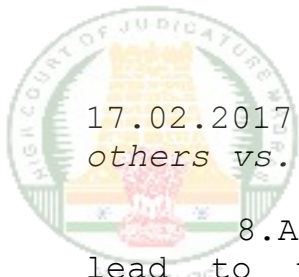
3.Her request for State pension was accepted and granted in line with the stipulation under G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 02.09.2016, which relaxed the provisions of Rule 49 (13-B) of the Tamil Nadu Pension Rules, 1978 (in short 'Rules') and permitted the grant of second pension attributable to State services to the families of Ex-Servicemen.

4.Thus, admittedly, the petitioner has been receiving State pension also with effect from 02.09.2016. She sent a representation seeking State pension from 26.04.1995, being the date of demise of her husband, which has come to be rejected under the impugned order and she hence challenges the same on various grounds in this writ petition.

5.The petitioner would argue that the Ministry of Defence, Department of Ex-Servicemen welfare, New Delhi, has issued proceedings bearing No.01(05)/2010-D (Pen/Policy), dated 17.01.2013 clarifying that pensioners, who opt for second employment after discharge from Military service would be entitled to draw two family pensions.

6.This entitlement was crystalised based on the report issued by a committee, that had analyzed the matter concluding that dual rights accrued upon the families of pensioners, who had rendered services both as service personnel as well as in the services of the State.

7.The petitioner relies upon a judgment of the Hon'ble Supreme Court in the case of *D.S.Nakara & others vs. Union of India* (1983 AIR 130), decisions of this Court in *TamilNadu arasu Pokkuvarathu Madurai Thozhilalar Sangam and another vs. Government of Tamilnadu and 2 others* (2010 (2) CWC 55) and in WP(MD)No.2583 of 2012 in *M.Alamelu vs. the Secretary to Government and others* dated 04.02.2013, which has been confirmed by the Division Bench on



17.02.2017 in W.A.(MD)No.679 of 2014 in *Secretary to Government and others vs. M.Alamelu*.

8. According to the petitioner, the aforesaid decisions would lead to the unambiguous conclusion that the families of Ex-Servicemen, who have opted for State services thereafter will be entitled for dual pension from date of demise of the pensioner.

9. Per contra, learned counsel appearing for the respondents, ie., the State as well as the office of the Principal Accountant General would draw attention to G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 02.09.2016, which is the basis upon which dual pension was infact sanctioned to the petitioner and other identically placed claimants.

10. The aforesaid Government Order has been issued on the heels of a statement made by the Hon'ble Chief Minister of Tamil Nadu on the floor of the house on 02.09.2016, accepting Demand No.38, Public Department that dual pension must be paid to the families of pensioners, who had rendered both military service as well as service to the State.

11. Acceding to the demand, the State has relaxed the provisions of Rule 49 (13-B) of the Rules, thus enabling the spouse of a State Government employee, to draw two family pensions, one for military service and another for services rendered by the spouse to the State. This Government Order specifically states that it shall take effect from 02.09.2016 at paragraph 5 thereof.

12. Thus a beneficial policy has been put in place by the State that is effective from a particular date only. In notifying the effective date, one assumes that the State will, and has, taken into account various and relevant parameters.

13. In such circumstances, it would not, in my view, be appropriate for this Court to intervene in the effective date fixed. Firstly, there is no challenge to G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 02.09.2016, atleast in regard to the effective date. Then again, nothing is shown as to how the fixation of date is perverse, except to imply that there is a discrimination between Central and State policy.

14. This would not in my view be reason enough to intervene or rewrite the GO itself and the compulsions of the Centre vis-a-vis the State in formulating policy and all aspects relating thereto, including fixation of a date from when such policy would be effective, would fall in different realms. Thus, the effective date as fixed under G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 02.09.2016 would bind all claimants to dual family pension and the impugned order is not shown to be visited by any infirmity or



15.The decisions relied upon by the petitioner are also distinguishable. The Hon'ble Supreme Court in the case of *D.S.Nakara* (supra) justifies the grant of pension stating that the *raison d'etre* for pension is the inability to provide for oneself due to old age. There is no dispute whatsoever on this score and the issue that arises before me is the effective date from when eligibility to dual pension commences.

16.In *TamilNadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam* (supra), this Court was concerned with grant of dual pension, once, attributable to military service, and secondly, attributable to service in the Transport Corporation. This claim has to be tested in the context of the *Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, 1971* (TNSTC EPF Rules). Those Rules do not contain a bar similar to the one imposed under Rule 49(13-B) of the Rules that states that *Family Pension admissible under this rule shall not be granted to a person who is already in receipt of family pension or is eligible therefor under any other pension rules.*

17.It is in the above context that the learned Single Judge, on an analysis of the TNSTC EPF Rules, came to the conclusion that the petitioner would be entitled to dual pension from the date of demise of the pensioner. This case does not therefore come to the aid of the petitioner.

18.In *M.Alamelu* (supra), the learned Single Judge applied the decision in *TamilNadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam*, to the benefit of a state pensioner (in the Education Department) and this decision came to be confirmed by the Division Bench.

19.It is relevant to note that G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 02.09.2016 was yet to be issued both when the decisions of the learned Single Judge and Division Bench were rendered. The restriction of effective date imposed did not stand in the way of this Court granting the benefit to that petitioner, at that point in time.

20.I wish the situation were the same today. Had it been so, this petitioner could similarly have been entitled to the grant of dual pension from the date of demise of the petitioner. However, this is not to be as the effective date imposed under G.O.Ms.No.290, dated 02.09.2016, cannot be wished away by this Court.

21.Should the petitioner choose to challenge G.O.Ms.No.290, Public (Ex-Servicemen) Department, dated 02.09.2016, within a reasonable time from today, learned counsel for the respondents, graciously state that they shall raise no dispute with regard to the maintainability of that writ petition.



22.This writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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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 Commanding Officer,
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- 2.The NCC Directorate,
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- 3.The Office of the Principal,
Accountant General (A&E),
Anna Salai, Chennai 600 018,
Tamilnadu.

+1 CC to M/s.K.APPADURAI, Advocate (SR-3277[F] dated 01/02/2022)

+1 CC to M/s.SPL.GP (SR-3354[F] dated 01/02/2022)

W.P. (MD)No.3638 of 2018

Dated:

31.01.2022

RK(09/02/2022) 5P 6C