BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **10.01.2022**
CORAM:
THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
W.P.(MD)No.15534 of 2018

B.Rathinam ...Petitioner

/Vs./

1.The Principal Accountant General (A&E),
Tamil Nadu, Chennai.

2.The Secretary to Government,
Highways Department,
State of Tamil Nadu,
Fort St.George,
Chennai - 9.

3.The Assistant Divisional Engineer,
Highways, C&M,
Sathur,
Virudhunagar District. ...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to sanction and pay family pension to the petitioner with arrears with effect from 18.02.2013, the date on which his son B.Karthikeyan, passed away.

For Petitioner : Mr.A.Rahul
For R1 : Mr.P.Gunasekaran
For R2 & R3 : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

Heard Mr.A.Rahul, learned counsel for the petitioner, Mr.P.Gunasekaran, learned counsel for R1 and Mr.D.Sadiq Raja, learned Additional Government Pleader for R2 and R3.

2.The petitioner seeks a mandamus, directing the respondents to sanction and pay family pension to her with arrears with effect from the date of passing of her son, one B.Karthikeyan, on 18.02.2013, while he was in service of the Highways Department.

3.Mr.Karthikeyan, had joined the Department as a Trainee Gang Mazdoor with effect from 10.01.1997, his service was confirmed with effect from 10.11.1998 and he had passed away on 18.02.2013, after putting in 10 years and 10 months of service.

4.His father, ie., the petitioner's husband, one Mr.Balar has also been in service with the State and on superannuation, is stated to be in receipt of pension in his individual capacity relatable to the service put in by him.

5.The petitioner's claim for family pension is premised on Rule 49(13)(b)(iii) of the Tamil Nadu Pension Rules, 1978, (in short 'Rules') which states as follows:

> "*49.[....]Family pension.-*
> *.......*
> *(13) For the purposes of this rule,-*
> *.................*
> *(b) family, in relation to a Government servant means.-*
> *..........*
> *[(iii) [legally adopted son and daughter, father] failing which the mother, in the case of an unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant.]"*

6. Though the aforesaid rule specifically refers to the parents of a legally adopted son and daughter, Mr.P.Gunasekaran, learned counsel would fairly state that this takes into ambit and coverage, a natural parent as well.

7.The premise of the rule is that in the case of unmarried son or daughter, who has predeceased the parents, the father or mother will be entitled to the family pension subject to a declaration that he or she was dependent upon deceased Government servant. In the present case, Mr.Karthikeyan, has predeceased his parents and there is admittedly a declaration of dependency by the petitioner, who claims family pension.

8.The objection put forth by the respondents to the claim is that the father of Mr.Karthikeyan, is in receipt of pension himself and this would disentitle the petitioner to family pension claimed. In this regard, they rely on a clarification issued in Letter No.10544/Pension/2002-3, dated 13.09.2004.

9. The specific point raised for clarification by the State is as follows:

> "*When the father of a Government servant is not eligible for family pension because of his income and if the claim is made by the mother of the deceased Government servant, whether the mother is eligible for family pension."*

and the clarification issued is as follows:

> *"If either father or mother of the deceased Government Servant is having an income of Rs.2550/-p.m. They are not eligible for family pension as they cannot said to be dependent on their children"*

10.The sum and substance of the clarification issued is that, if either of the parents of the deceased Government servant has an income in excess of Rs.2550/-, they would stand disentitled for family pension in terms of Rule 49(13)(b)(iii) of the Rules. Thus, the respondents would state that since the father is in receipt of pension, this would disentitle the mother to the family pension claimed.

11.In my considered view, the clarification imposes a condition, which is contrary to the explicit language, spirit and the intention of Rule 49(13)(b)(iii) of the Rules. Nowhere is such a condition envisaged, that a dependent parent would stand disentitled to family pension, if the other parent is in receipt of income.

12.This would result in a situation, where one presumes dependency of the non-earning parent upon the earning parent. It is precisely to avoid such a situation that Rule 49(13)(b)(iii) provides, that where the dependency of a parent upon the deceased government servant is certified, he or she will be entitled to the family pension in relation to the service put in by that government servant upon his demise.

13.The clarification in my view imposes a condition, which would render Rule 49(13)(b)(iii) otiose and is thus unacceptable. I thus eschew the same and proceed on the basis of the clear and unambiguous language in which the Rule is couched as well as the intention thereof. The respondents are directed to grant family pension to the petitioner, to be computed from date of demise of Mr.B.Karthikeyan, and to be paid over to her, within a period of eight weeks from the date of uploading of this order in the official website of this Court.

14. The application of the petitioner for family pension appears to have returned by the first respondent on 30.06.2015 as non-eligible citing the clarification that has been referred to and dealt with above. This order has not been challenged by the petitioner. However, seen in the light of the observations made in this order, order dated 30.06.2015 would cease to have effect and stands quashed for all intents and purposes.

15.In line with the direction given above, the proposal for family pension shall be forwarded by R3 to R1 and the pension payment order shall be paid over to her. This exercise shall be completed within a period of six weeks from the date of uploading of this order in the official website of this Court. This Writ Petition is allowed. No costs.

16.Before signing off, I address a legitimate apprehension expressed by the respondents, that, hypothetically, if the husband of the petitioner were to predecease her, this would entitle her to two family pensions, one granted by by virtue of the present order and the second, due to her through her husband.

17.This apprehension stands answered by reference to Rule 49 (13-B) which 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.*

18.Thus, should such a situation arise, where the petitioner becomes entitled to a second family pension in addition to the family pension now granted, her entitlement shall be restricted only to one, that shall be the higher of the two family pensions as computed by the State.

Sd/-

Assistant Registrar (AE)

// 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

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Tamil Nadu, Chennai.

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Highways Department,
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3.The Assistant Divisional Engineer,
Highways, C&M,
Sathur,
Virudhunagar District.

+1 CC to M/s.SPL GP (SR-1294[F] dated 11/01/2022)

+1 CC to M/s.A.RAHUL, Advocate (SR-1096[F] dated 10/01/2022)

W.P.(MD)No.15534 of 2018
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