BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.02.2022
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.(MD)No.23135 of 2021
and
W.M.P.(MD)No.19581 & 19582 of 2021

A.C.Muthamizhselvi ...Petitioner

/Vs./

1.The Principal Accountant General (A&E),
O/o. The Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai - 600018.

2.The Director,
State Council of Educational
Research & Training Institute,
College Road, Chennai - 6.

3.The Joint Director (Admin),
State Council of Educational
Research & Training Institute,
College Road, Chennai - 6.

4.The Principal,
District Institute of Education & Training,
Mayanoor,
Karur District.

5.A.Chellapappu ...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned order passed by the 3rd Respondent vide his proceedings in K.Dis.No.3479/A2/2021 dated 18-11-2021 and the consequential impugned order passed by the 3rd Respondent vide his proceedings in Na.Ka.No.3479/A2/2021 dated 18-11-2021 and the consequential impugned order passed by the 3rd Respondent vide his proceedings in Na.Ka.No.3479/A2/2021 dated 18-11-2021 and quash the same as illegal insofar it relates the sanctioning the benefits of the deceased to the 5th respondent is concerned.

For Petitioner	:	Mr.H.Mohammed Imran for M/s.Ajmal Associates
For R2 to R4	:	Mr.N.Satheesh Kumar Additional Government Pleader
For R1	:	Ms.S.Mahalakshmi

ORDER

The writ on hand has been instituted questioning the order of rejection for grant of family pension in favour of the writ petitioner. The petitioner states that her husband, Mr.A.Ravikumar was appointed as PG Assistant (Maths) on 01.08.1991 and he succumbed to COVID-19 on 26.05.2021. At the time of his death, he was working as Principal at the District Institute of Education and Training, Mayanoor, Karur District. On account of the demise of the husband of the petitioner, she applied for settlement of terminal and pensionary benefits.

2.In the service records, the husband of the petitioner nominated the petitioner as well as her mother-in-law/5th respondent. Thus, the officials orally informed that the terminal benefits will be equally disbursed to the petitioner as well as to the fifth respondent mother-in-law.

3.It is contended that in the year 2014, twin children born to the writ petitioner and they are also equally entitled to get the retirement benefits. The petitioner states that she is working as Junior Engineer in the Public Works Department. Therefore, the benefits of her husband is to be disbursed in terms of the Tamil Nadu Pension Rules, 1978 (in short 'Rules').

4.In view of the fact that the respondents have orally said that the pension will be shared between the petitioner and the fifth respondent, the petitioner has moved the writ petition in respect of all other benefits, including family pension, leave encashment and other service benefits.

5.This Court has elaborately considered the issue regarding the grant of family pension to the spouses of the deceased employees in W.P.No.518 of 2018 dated 23.04.2019 and the relevant paragraphs are extracted hereunder:

> *10.It is useful to refer the counter filed by the Principal Accountant General of Tamil Nadu. The Principal Accountant General of Tamil Nadu has enumerated the provisions of the Tamil Nadu Pension Rules and clearly stated that the pension cannot be shared between the wife and the mother of the deceased employee and the relevant portion of the counter statement is as follows:-*
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> > *"3.In this connection, the connected rule provision is submitted below:*
> > *a) As per Rule 49(13)(b)(i) of Tamilnadu Pension Rules, the family pension in respect of the deceased government servant is payable initially to the spouse of the deceased government. Then*

only other family members, Children, parents, legally adopted children, failing which the mother, only in the case of unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant. The relevant portion of the Rule is reiterated below:

THE TAMIL NADU PENSION RULES, 1978

(e)The Audit Office or the Head of Office, as the case may be, on receipt of communication from the Government servant regarding any change in the size of family shall incorporate such a change in Form 3.

(13) For the purposes of this rule,

(a) "continuous service" means service rendered in a temporary or permanent capacity in a pensionable establishment and does not include.-

(i) period of suspension, if any; [and]

(ii) period of service, if any rendered before attaining the age of eighteen years; and
[(iii) period of extraordinary leave without medical certificate.]

(b) family, in relation to a Government servant mean-
[(i) (a) wife in the case of a male Government servant or husband in the case of a female Government servants;

(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.]

'[(ii) son who has not attained the age of [twenty one years] [twenty five years] and unmarried daughter who has not attained the age of [twenty four years] [thirty years] [twenty five years] [including such son or daughter legally adopted and also such son or unmarried daughter born through illegitimate wife] [***] [and such son or daughter born after retirement, on or after the 1" January 1979].]

[(iii) father and mother (including step mother] in the case of unmarried Government servants.]

[(iii) [legally adopted son and daughter, father), failing which the mother, in the case of unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant.]

(c) "pay" means the emoluments as specified in rule 30.
Provided that in a case in which average emoluments as referred to in rule 31 are treated as emoluments for the purpose of Death-cum-Retirement Gratuity referred to in rule 45, such average emoluments shall be treated as pay:

[Provided further that if the emoluments of the deceased Government servant have been reduced during the last ten months of his service other than as penalty, the average emoluments as referred to in rule 31 shall be treated as pay.]

NOTE 1 One half of deputation (Duty) allowance while on deputation to other Government shall also be taken into account as pay for the purpose of this rule.

[NOTE 2 Pay drawn by a Government servant appointed under rule 10 (a) (i) or rule 39 (a) (1) of the General Rules for the Tamil Nadu State and Subordinate Services shall not be reckoned as pay for the purpose of this rule.]

(13-A) A military pensioner, who on retirement from military service, on retiring pension, service pension, or invalid pension is governed for the grant of ordinary family pension under military rules and is re-employed in a civil service or civil post before attaining the age of superannuation, shall for the purpose of eligibility for the family pension under this rule or the family pension already authorized under military rules be governed as follows:-

(a) if he dies, while holding a civil post, his family shall be allowed family pension under this rule, or the family pension authorized at

the time of retirement or discharge from the military service, whichever is more advantageous to the family;

(b) if he has an appointment to a civil service or post, opted to retain military pension for the past military service and-

b) It is clear from the above rule provision, that only the petitioner Smt Lilly Rose, wife of the deceased is eligible to receive family pension and the Court Order is incontravention of the rule provision and Government, the first respondent is competent authority to relax the rule provision and issue orders sanctioning family pension as per the settlement deed. On receipt of the same along with family pension proposals only, this respondent office can take further action in the instant case."

6.As far as the family pension is concerned, as per Rules, the spouse of a deceased employee alone is entitled. The family pension cannot be shared between the spouse and the mother-in-law, mother or otherwise. Once a Government Employee is a married person, then, the family pension is to be settled in favour of the spouse and it cannot be shared between any other legal heirs. Other legal heirs are absolutely excluded from the Rules, as far as the family pension is concerned.

7.Regarding the nomination, the Government employee concerned is empowered to nominate any person. However, such nomination cannot be given effect in respect of family pension and the benefits all are directed to be settled in a particular manner.

8.Regarding the Death-cum-Retirement Gratuity, Rule 45(5) of the Rules, which reads as under:

"*(5) For the purposes of this rule and rule 46, 47 and 48 'family' in relation to a Government servant means.*

(i) Wife or wives, including judicially separated wife or wives in the case of a male Government servant.

(ii) husband, including judicially separated husband in the case of a female Government servant.

(iii) [sons including step sons, adopted sons and sons born through illegitimate wife.

(iv) unmarried daughters including step daughter, adopted daughters and unmarried daughters born through illegitimate wife.

(v) widowed daughters including step daughters, adopted daughters and widowed daughter born through illegitimate wife.]

(vi) father, including adoptive parents in the case of individuals whose personal law permits adoption.

(vii) mother [and step mother], including adoptive parents in the case of individuals whose personal law permits adoption.

(viii) brothers below the age of eighteen years, including step brothers.

(ix) unmarried sisters and widowed sisters, including step sisters.

(x) married daughters, and

(xi) Children of pre-deceased son."

9.Rule 46 states person to whom gratuity is payable. Sub-section (1)(b) contemplates that 'if there is no such nomination or if nomination made does not substitute, the gratuity shall be paid in the manner indicated below.

10.Therefore, two circumstances are contemplated. If there is nomination as per the Rules, then, it is to be honoured. If any nomination which all are not in accordance with the provisions of Rules, then, such nomination ought to be ignored. This being the scope of Rule 46 of the Rules, let us now consider Rule 48 of the Rules. Rule 48 contemplates nomination. The manner in which the nomination are to be given by the Government employees are prescribed.

11.Cogent reading of the above provisions of the Rules would reveal that even in the case of nomination, the eligibility with reference to the nomination, conditions are to be verified and accordingly, terminal benefits are to be settled.

12.Thus, it is crystal clear that family pension cannot be shared between the nominees, even in the case of nomination in favour of any other person, other than the spouse. Thus, spouse alone can be nominated for the purpose of family pension.

13.In respect of other benefits, including DCRG, etc., the nomination, if it is given by the employee in accordance with the provisions of the Rules, then such nominations are to be honoured and if the nomination is not in accordance with the provisions of the Rules, then the benefits are to be settled in accordance with the Rules. This being the scope of Rules, the petitioner, who is the legally wedded wife of the deceased employee alone is entitled for family pension and family pension cannot be shared with any other legal heirs of the deceased employee.

14.As far as the other benefits are concerned, the authorities are bound to verify the validity of the nomination and accordingly take a decision and disburse all the terminal benefits by following the procedures as contemplated under law. The respondents are directed to complete said exercise within a period of three months from the date of receipt of a copy of this order.

15.With these directions, this writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Principal Accountant General (A&E),
O/o. The Principal Accountant General (A&E),
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4.The Principal,
District Institute of Education & Training,
Mayanoor, Karur District.

+1 CC to M/s.H.MOHAMMED IMRAN (AJMAL ASSOCIATES), Advocate
(SR-5806[F] dated 11/02/2022)

Order made in
W.P.(MD)No.23135 of 2021
Dated:
10.02.2022

SB(CO)
GC(08.03.2022) 7P 6C