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W.P.No.10208 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.10208 of 2012

G.Seethalakshmi

... Petitioner

Vs.

1. The Secretary to Government,
Finance Department,
Fort St. George, Chennai – 9.

2. The Secretary to Government,
School Education Department,
Fort St. George, Chennai – 9.

3. The Director of Elementary Education,
College Road, Chennai – 6.

4. The Accountant General of Tamil Nadu,
Teynampet, Chennai – 600 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the 4th respondent in Lr.No.Pr.AG(A&E)/Legal Cell/WP28282/2011/1875/172490 dated 07.02.2012 and quash the same and consequently direct the respondents to grant 50% of the family pension to the petitioner from 24.10.2001 to 23.08.2008 and grant 100% family pension with effect from 24.08.2008 with



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arrears of family pension and consequential monetary benefits in the revised scale of pay with interest.

For Petitioner : Mr. R.Prem Narayan

For R1 to R3 : Mr. K.Surendran,
Government Advocate

For R4 : Mr. V.Vijay Shankar

ORDER

This Writ Petition has been filed aggrieved by the orders passed by the fourth respondent in Lr.No.Pr.AG(A&E)/LegalCell/WP28282/2011/1875/172490 dated 07.02.2012, wherein the request of the petitioner for payment of family pension consequent upon the demise of her husband, Sri. N.Ganapathy and the first wife of Sri. N.Ganapathy, was rejected by the fourth respondent.

2. It is the case of the petitioner that she is the second wife of late N.Ganapathy, who worked as a Secondary Grade Teacher of Panchayat Union Elementary School, Ariyalur District. The said N.Ganapathy retired from service and while drawing the pension, he died on 23.10.2001. The petitioner herein claims to be the second wife of the said N.Ganapathy. The first wife of N.Ganapathy viz., Srimathi. Komalavalli was granted family



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pension only at the rate of 50%, while withholding the balance 50% of the family pension. However, neither the said Srimathi. Komalavalli nor the petitioner herein made a claim for the balance 50% during the lifetime of Srimathi. Komalavalli. It is only after the demise of the said Srimathi. Komalavalli, on 23.08.2008, the petitioner herein made a claim for payment of family pension. The said request of the petitioner was rejected by the fourth respondent by passing the impugned order on the ground that there is no eligible family member for payment of family pension and no nomination for life-time arrears was made.

3. It is contended by the learned counsel for the petitioner that the petitioner herein is the second wife of the late N.Ganapathy and the natural sister of the first wife of N.Ganapathy viz., Srimathi. Komalavalli. He also placed reliance on Rule 49(7)(a) of the Tamil Nadu Pension Rules contending that the petitioner herein, being the widow of the deceased employee is entitled for equal share along with the first wife of the deceased employee in terms of Sub Rule 7(a)(i) of Rule 49 of the Tamil Nadu Pension Rules, 1978, but the respondents have erroneously denied the equal share in the family pension payable, consequent upon the death of the deceased pensioner. It is



also contended by the learned counsel for the petitioner that the petitioner herein, being the clause II legal heir of Srimathi. Komalavalli, the family pensioner is entitled to claim for payment of family pension as well as to make a claim for arrears of family pension withheld by the respondents.

4. From the perusal of the Sub Rule 7(a)(i) of Rule 49 of the Tamil Nadu Pension Rules, 1978, it is evident that the family pension is payable to more than one widows. The family pensions shall be paid to widows in equal shares. The said Rule cannot be interpreted to say that a widow of a deceased pensioner under a void marriage can also be entitled to share in the family pension. It is only when more than one widow are available and the marriage of the said widows with the deceased pensioner, if valid under law, then only the question of sharing of the pension amount to the widows would arise and not in cases, where the marriage is void under law.

5. In the instant case, the petitioner is widow and the marriage of the petitioner herein with the late N.Ganapathy took place during the subsistence of the marriage of N.Ganapathy with his first wife and therefore, the claim of the petitioner for share in the family pension or payment of family pension



after the demise of the first wife of the pensioner cannot be accepted.

However, as seen from the affidavit filed in the support of the Writ Petition, the petitioner has also stated that she is the natural sister of the first wife of the pensioner and she was married to pensioner as the first wife of the late N.Ganapathy, suffered from certain deceases. If that be case, the claim of the petitioner being the natural sister of the family pensioner is concerned, the same needs to be considered by the respondents. Further, in the counter affidavit filed by the fourth respondent, it is stated that the first wife of the pensioner was paid only 50% of the family pension and remaining 50% of the family pension was withheld for want of a proper claim by the legal heirs of the said Srimathi. Komalavalli and the said amount would be paid, if any of the legal heirs approach the respondents. The relevant paragraph of the counter affidavit of the respondent no.4 reads as under:

“ 11. It is submitted that the petitioner has informed of the date of her marriage with Sri Ganapathy only in her representation dated 16.11.2011 and when it as found that she is not entitled to family pension, the first wife Smt. Komalavalli was already dead on 23.08.2008. Thus, the remaining 50% of the family pension could be authorized in her favour also mainly due to the non-furnishing of the information by



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the petitioner.

12. It is submitted that as per Government Letter No. 139183/Pen/92-1/Fin(Pen) dated 07.01.1993, where there is no eligible family member of the payment of family pension and no nomination for life time arrears, payment of life time arrears can be made to all the legal in equal shares and the payment can be to a single person on production of consent letter from other legal heirs. As smt.Komalavalli expired, the withheld 50% of family pension payable for the period from 24.10.2001 to 23.08.2008 could be authorized in favour of the persons who may be identified as the legal heirs of late smt. Komalavalli.”

In the considered view of this Court, in case, the petitioner herein, who is claiming to be the natural sister of Srimathi. Komalavalli, the family pensioner has got any claim for payment of the balance 50% withheld amount of the family pension for the period from 24.10.2001 to 23.08.2002 or for payment of family pension being the legal heirs of Srimathi. Komalavalli, it is for her to make such a claim before the respondents.

6. From the material on record, it does not appear that the petitioner



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has ever made any such claim before the respondents so far. In such circumstances, the relief sought by the petitioner in this Writ Petition cannot be granted. However, liberty is granted to the petitioner to make a claim, basing upon her claim that she is the natural sister of Srimathi. Komalavalli, the family pensioner and also Clause II heir under the provisions of the Hindu Succession Act, 1956, within a period of four weeks from the date of receipt of a copy of this order. In case, if any representation is submitted by the petitioner within the time stipulated, the respondents shall consider the same in the light of the statement made in paragraphs 11 and 12 of the counter-affidavit, as extracted above and pass appropriate orders thereon within a period of two months from the date of submission of representation of the petitioner.

7. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, shall stand closed.

29.11.2023

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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