



W.P.No.770 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.770 of 2015

Duraivani
W/o Late M.Padmanabhan

.... Petitioner

VS

1. The District Collector,
Vellore District,
Vellore.
2. The kPrincipal accountant General
(Accounts & Entitlements),
Anna Salai,
Chennai.
3. The District Treasury Officer,
Vellore District,
Vellore.
4. The District Medical Officer,
Vellore District,
Vellore.
5. The Joint Director,
Health Services,
Vellore District, Vellore.

.... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the 4th respondent to sanction the Civil family pension to the petitioner for the service rendered by the petitioner's husband Padmanabhan as a "Ambulance Attender" at Vellore Tuberculoses Hospital, Vellore.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mr.J.C.Durairaj,
Additional Government Pleader
for R1, R3 to R5
Mr.S.Balaji for R2

ORDER

This writ petition has been filed to direct the 4th respondent to sanction the Civil family pension to the petitioner for the service rendered by the petitioner's husband Padmanabhan as a "Ambulance Attender" at Vellore Tuberculoses Hospital, Vellore.

2. Heard the learned counsel for the petitioner, the learned Additional Government Pleader appearing for the 1st, 3rd to 5th respondents and the learned counsel appearing for the 2nd respondent.

3. The case of the petitioner is that her husband Padmanabhan was an ex-serviceman. After discharged from service in Army, he joined as an



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ambulance attender in Vellore Tuberculosis Hospital and he was discharged from service in the year 1987. After his discharge from service, he applied for pension when he was alive. Since he was getting army pension, the State Government did not incline to grant him State Service pension. The petitioner being a widow have tried her level best to approach all the respondents for getting pension, but all went in vain. Hence, the writ petition has been filed.

4. When the matter is taken up for hearing, the learned counsel for the petitioner would submit that after filing of the present writ petition, the petitioner was getting Civil Family Pension from 02.09.2016 onwards. However, she is entitled to get Family Pension from 25.09.2002 onwards. The respondent did not pay Family Pension from 25.09.2002 to 01.09.2016 i.e., for a period of 13 years and 11 months. Therefore, he would pray to direct the respondents to grant family pension to the petitioner from 25.09.2002 to 01.09.2016.

5. It is also brought to the notice of this Court, the Government Order passed in G.O.(Ms)No.290 Public (Ex-Servicemen) Department dated 05.04.2017, in which, the Government has sanctioned Dual Family Pension



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for the families of Defence Personnel who had served in the State and retired. The relevant paragraph Nos.3 to 6 of the said G.O. reads as follows:

"3.The Joint Director (i/c) Directorate of Ex-Servicemen's Welfare has therefore requested the Government to issued orders for grant of dual family pension to the families of Ex-Servicemen who have been re-employed in Civil (i.e.) State Government Service and earned a pension out of the re-employment, prior to 01.04.2003 (i.e.) before the introduction of Contributory Pension Scheme.

4. After careful examination, the Government has decided to accept the proposal of the Joint Director (i/e) Directorate of Ex-Servicemen's Welfare and accordingly order for the sanction of Dual Family Pension to those families of Ex-Servicemen who have been re-employed in Civil (i.e) State Government Service and earned a pension out of the re-employment prior to 01.04.2003 (i.e.) before the introduction of Contributory Pension Scheme, in addition to Military family Pension already drawn by them.

5. This order shall take effect from 02.09.2016.

6. Necessary amendment to Rule-49 (13-B) of Tamil Nadu Pension Rules 1978 shall be issued by Finance (Pension) Department separately."



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6. In a similar circumstances, the Division Bench of this Court in Secretary to Government, Government of Tamil Nadu, Education Department, St.George Fort, Chennai - 9 vs. M.Alamelu, reported in 2018

(1) CWC 285 has held as hereunder:

"?3. After hearing both sides, the learned Single Judge, relying upon a decision of this Court reported in 2010(2) CWC 555 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam, rep. by its president and another Vs. Government of Tamil Nadu, rep. by its Secretary, Transport Department, Chennai - 9 and two others), has directed the third appellant to continue to pay the family pension to the respondent from the date of death of her husband. Aggrieved by the same, the present appeal has been filed by the State.

4.The learned Special Government Pleader appearing for the appellants,by relying upon Rule 49 (13-B) of the Tamil Nadu Pension Rules, 1978, (hereinafter referred to as "the Rules") submitted that Sub Rule (13-B) was inserted by G.O.Ms.No.23, dated 6th January, 1996, vide SRO B-59/1996 and as per the said Sub Rule, the family pension cannot be granted to a person, who is already in receipt of family pension. Since the respondent has been



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receiving pension from the Army, based on the past military service rendered by her husband, as per the said Rule, she is not entitled to get the family pension from the State based on the past service rendered by her husband in the Education Department. But, the learned Single Judge, without considering the same, has erroneously allowed the writ petition. Thus, he prayed for setting aside the order of the learned Single Judge.

5.Per contra, the learned counsel appearing for the respondent, by relying upon Rule 49(14)(b) of the Rules, submitted that Rule 49 (13-B) of the Rules is not applicable to the military pensioners, who are retired from military services on or after 1st April 1964 or retires from service after commencement of these rules and therefore, the respondent is entitled for both the pensions. More over, the respondent's husband had opted Rule 16(1)(a) of the Rules and retired from the State Government Service on 31.05.2004 and therefore, after his retirement, he had been receiving pension both from the State as well as from the Army, and he was not refused to avail such pensions. In support of his contention, he relied upon the decision of this Court in 2010(2) CWC 555 (Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam, rep. by its president and another Vs. Government of Tamil Nadu, rep.



by its Secretary, Transport Department, Chennai -9 and two others). Thus, he prayed for dismissal of this appeal.

6. Keeping the submissions made on either side, we have carefully gone through the entire materials available on record. It is the main submission of the learned counsel for the appellants that in view of the insertion of Sub Rule (13-B) in Rule 49 of the Rules, the respondent is not entitled to get pension from the State as she has been receiving pension from the Army. According to the respondent, as per Rule 49(14)(b), the Sub Rule (13-B) to Rule 49 is not applicable to the case of the respondent. When the matter came up for hearing before the First Bench of this Court on 21.01.2016, the First Bench of this Court has held as follows:

"1. The learned Special Government Pleader appearing for the appellants contends that both kinds of family pension are not admissible in view of Sub-Rule 13-B of Rule 49 of the Tamil Nadu Pension Rules.

2. We may note that Rule 49 itself deals with only family pension. Further, Sub Rule 13-B of Rule 48 was inserted by G.O.Ms.No.23, dated 06.01.1996. There appears, prima facie, some confusion arising over insertion of Sub-Rule 13-B, when Sub-Rule (14) continues to be in force.

3. The learned Special Government Pleader appearing for the appellants seeks time to place the notification by which Sub-Rule (13-B) was inserted and also to obtain instructions as to



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what is the mischief which it was supposed to cure.

4.List the matter on 28.01.2016."

Though the appellants sought time to place the notification by which Sub-Rule (13-B) to Rule 49 was inserted, he has not produced any such notification.

7. For better appreciation, Sub Rule (13-B) and (14)(b) to Rule 49 of the Rules are reproduced hereunder.

"(13-B) Family Pension admissible under this rule shall not be granted to a person who is already in receipt of family pension or is eligible therefore 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 forgoes family pension admissible from any other rules."

"(14) Nothing contained in this rule shall apply to -

(a)...

(b) a military pensioner who has retired from military service on or after the 1st April, 1964 or retires from such service after the commencement of these rules on retiring pension,



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service pension or invalid pension and is re-employees in a civil service or post before attaining the age of superannuation."

8. When Sub Rule (13-B) contemplates that a person, who is already in receipt of family pension under any other pension rules, shall not be granted pension under this Rules, provided if he opted to forgo the pension granted under the other pension rules, contrary to the same, Sub Rule (14) contemplates that the Tamil Nadu Pension Rules are not applicable to the military pensioner, who has retired from military service on or after 01.04.1964 or retires from such service after the commencement of these rules on retiring pension, service pension or invalid pension and is re-employed in a civil service or post before attaining the age of superannuation. Sub Rule (13-B) of the Rules was inserted by G.O.Ms.No.23 only on 06.01.1996. Though Sub Rule (13-B) specifically states that the receipt of family pension "under any other Rules" would disentitle the person from getting pension under this Rule, Sub Rule (14) gives exclusion to Sub Rule (13-B) in respect of military pensioner, who has retired from military service on or after 1st April 1964 or after the commencement of these rules. Thus, it is clear that Sub Rule (13-B) will not apply



to a military personnel, who have retired from service on or after 1st April, 1964 or after the commencement of these rules. Further, Section 16(1)(b) of the Rules provides an option to ex-serviceman to continue to draw military pension, in which case his former military service shall not count as qualifying service in the reemployment.

9. Admittedly, in this case, the husband of the petitioner retired from State service on attaining the age of superannuation on 31.05.2004 and he had been receiving both the pensions by giving option as per Rule 16(1)(b) of the Rules. Therefore, now the petitioner, being the widow of the pensioner, cannot be denied pension by the State on the ground that she has been receiving pension from the Army. In other words, she is entitled to receive the pension both from the Army and also State as received by her husband. The learned Single Judge has also rightly allowed the writ petition and directed the third appellant to continue to pay the family pension to the respondent from the date of death of her husband. There is no merit in the contention of the learned counsel for the appellants. Thus, this writ appeal is liable to be set aside."

7. The learned counsel appearing for the petitioner submitted that the petitioner is entitled for family pension from the State Government after the



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death of her husband and the same cannot be denied.

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8. Mr.J.C.Durairaj, learned Additional Government Pleader appearing on behalf of the respondents apart from reiterating the contentions raised in the counter affidavit submitted that the Rule position is very clear under the Tamil Nadu Pension Rules. The learned Additional Government Pleader submitted that this issue was raised in the assembly and after considering the grievance expressed by similarly placed persons, the Hon'ble Chief Minister announced in the Floor of the Assembly on 02.09.2016 that Dual family pension will be sanctioned to the families of the Defence personnel who have also served in the State Government Service and retired. Immediately, after this statement was made by the Hon'ble Chief Minister, a Government order was passed in G.O.Ms.No.290, dated 05.04.2017 and relying upon the same, the petitioner was sanctioned family pension with effect from 02.09.2016. The learned counsel submitted that the petitioner is not entitled for any family pension for the period from 25.09.2002 to 01.09.2016, since the pension Rule bars such sanction of family pension.

9. This Court, considered the submissions made by the learned



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counsel on either side and also perused the material available on record.

10. The issue that has been raised in the present Writ Petition is squarely covered by the judgment of the Division Bench that has been referred supra.

11. The Division Bench after considering the relevant Pension Rules has come to a very categorical conclusion that dual pension is permissible and the bar that has been imposed in the pension Rules will not apply to Army men. In that particular case, the Division Bench has held that the husband of the petitioner therein was receiving dual pension.

12. In the present case, the petitioner's husband was receiving army pension and he died when his application for family pension was pending. His wife, the present petitioner is receiving army pension and family pension from 02.09.2016 onwards. The petitioner is entitled to receive pension both from the Army and also from the State and thus, she is entitled for family pension for the period from 25.09.2002 to 01.09.2016.

12. In view of the above judgment of the Division Bench, this Court is bound to follow the same and a different view cannot be taken in the present Writ Petition.



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13. In view of the above, the petitioner is held to be entitled for family pension for the period from 25.09.2002 to 01.09.2016. There shall be a direction to the second respondent to immediately rework the family pension that is payable to the petitioner from 25.09.2002 to 01.09.2016 and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order. Consequent upon the same, the petitioner shall be paid the arrears of the family pension within a period of six weeks thereafter.

14. This Writ Petition is allowed with the above directions. No costs.

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Index: Yes/No
Speaking/Non-speaking order
vsi

To

1. The District Collector,
Vellore District,
Vellore.
2. The kPrincipal accountant General
(Accounts & Entitlements),
Anna Salai,
Chennai.
3. The District Treasury Officer,

13/15



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Vellore.

4. The District Medical Officer,
Vellore District,
Vellore.
5. The Joint Director,
Health Services,
Vellore District, Vellore.



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