



WEB COPY



WP.No.12065 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.12065 of 2023

V.Manjula

.. Petitioner

Versus

1.The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai

3.The Superintending Engineer
Electrical Department
Pension Section (G.D.)
Greater Chennai Corporation
Chennai – 600 003

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 2nd respondent herein to sanction the arrears of family pension accrued for 209 months from May 2005 to September 2022.

For Petitioner : Mr.R.Sathiyamurthi
For Respondents : Mr.S.Gopinath

ORDER

This writ petition has been filed seeking to direct the 2nd respondent herein to sanction the arrears of family pension accrued for 209 months from May 2005 to September 2022.



WP.No.12065 of 2023

2. It is the case of the writ petitioner that her father died on 25.04.2005.

From that time, she is unmarried and also physically disabled. Therefore, she is entitled to family pension as per Rule 49 of the Tamil Nadu Pension Rules, 1978.

3. On earlier occasion, she has filed a writ petition in W.P.No.1119 of 2022 to consider her representation seeking family pension. Despite the order of this Court dated 04.08.2022 to consider her representation, the amount has not been paid to the petitioner. Hence, this writ petition.

4. It is the contention of the respondents that to pay the family pension after 25 years to unmarried daughter is introduced only as per Government Order in G.O.Ms.No.325, Finance (Pension) Department dated 28.11.2011. Therefore, it is the contention that at the utmost the petitioner is entitled to family pension only from 2011 onwards and not prior to that.

5. Heard both sides and perused the materials placed on record.

6. It is relevant to extract Sub Rule (iii) of the 6 of the Rule 49 of the Tamil Nadu Pension Rules, 1978:-



"49

...

WEB COPY

(6) The period for which the family pension is payable shall be as follows:-

- (i) in the case of a widow or widower up to the date of death or remarriage, whichever is earlier;
- (ii) in the case a son until he attains the age of twenty-five years;
- (iii) in the case of a unmarried daughter, until she attains the age of twenty-five years or until she gets married whichever is earlier;

Provided that if the son or daughter of a Government servant including the son or daughter, born after retirement from the marriage solemnized before or after retirement of a Government servant, is suffering from any disorder or disability of mind including mentally retarded or is physically crippled or disabled, whether such handicap manifests before or after retirement or death while in service of a Government servant, so as to render him or her unable to earn a living even after attaining the age of 25 years in the case of the son and 25 years in the the case of the daughter, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely:-

(i) if such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor children in the order set out in clause (iii) of sub-rule (8) until the last minor child attains the age of 25 and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind including mentally retarded or who is physically crippled or disabled and shall be payable to him / her for life.

(ii) if there are more than one such son or daughter suffering from disorder or disability of mind including mentally retarded or who are physically crippled or disabled, the family pension shall be paid -

(a) in the order of their birth, irrespective of the sex of the child and the immediate younger of him or her will be eligible for family pension only after the elder above him or her becomes ineligible for family pension;



WEB COPY

(b) in cases of twin children to such twin children in equal shares. In the event of any of such children ceasing to be eligible for family pension his or her share of family pension will become payable to the other such child and when both such children become ineligible for family pension, the family pension will become payable to the next eligible child or twin children, as the case may be;

(iii) in the case of minor, the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor;

(iv) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child.

(v) the person receiving the family pension as guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind including mentally retarded or continues to be physically crippled or disabled.

(vi) such daughter shall not be eligible for family pension from the date on which she gets married.

(vii) the family pension payable to such son or daughter shall be stopped if he or she starts earning his (or) her livelihood; and in the case of such daughter that she has not year married.

(ix) in the case of mentally retarded son or daughter, the family pension shall be payable to a person nominated by the Government servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Office by such Government servant or pensioner during his life time, to the person nominated by the spouse of such Government servant or family pensioner, as the case may be, later on."

Emphasis supplied



WP.No.12065 of 2023

7. On perusal of the above, it makes it clear that in respect of unmarried daughter suffering from any disorder or disability of mind including mentally retarded or is physically disabled, so as to render her unable to earn a living, even after the age of 25 years, the family pension shall be payable to such daughter for life, this amendment is made with effect from 01.06.1988 itself.

8. The petitioner appears to be physically disabled and unmarried, these facts are not dispute. Such view of the matter, the respondents cannot contend that the petitioner is entitled only from 2011 onwards under the guise of the Government Order in G.O.Ms.No.325, Finance (Pension) Department dated 28.11.2011. As the Rules itself has already came into existence. Thus, the respondent cannot deny the family pension to the petitioner and the same has to be paid as per the Rules.

9. Accordingly, there shall be a direction to the respondents to pay the family pension to the petitioner as per Tamil Nadu Pension Rules, 1978. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this Order.



WEB COPY



WP.No.12065 of 2023

N.SATHISH KUMAR, J.

dhk

10. In view of the above, this writ petition stands disposed of. No costs.

19.09.2023

Internet : Yes/No
Index : Yes/No
Neutral Citation: Yes/No

To

1.The Commissioner
Greater Chennai Corporation
Rippon Buildings
Chennai

3.The Superintending Engineer
Electrical Department
Pension Section (G.D.)
Greater Chennai Corporation
Chennai – 600 003

W.P.No.12065 of 2023