



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V . KARTHIKEYAN**

W.P.No. 43024 of 2016

Backiyam @ Ponnamal

.. Petitioner

Vs.

1.Establishment Officer,
Defence Service Staff College,
Wellington,
Nilgiris - 643 231.

2.Commandant,
Defence Service Staff College,
Wellington,
Nilgiris – 643 231.

3.The Senior Accounts Officer (PAY)
O/o. Controller of Defence Accounts,
618 Anna Salai, Teynampet,
Chennai – 600 018.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to make payments of family pension to the petitioner, payable from 05.01.2014.



For Petitioner .. Mr. V. Balamurgane

For R1 & R2 .. Mr. A. Murugan,

Additional Central Government Standing Counsel

ORDER

This Writ Petition has been filed in the nature of Mandamus, seeking a direction to the 1st respondent / Establishment Officer to make payments of family pension to the petitioner herein, in view of her status as widow of late C. Doraiswamy, who was employed at Defence Service Staff College, Wellington, Nilgiris, Tamil Nadu and who died after superannuation on 05.01.2014 at Gurkha Camp at Wellington.

2.The said C. Doraiswamy appears to be a person with extreme views on his personal life. There are documents which reflect that the petitioner is his wife. This includes the Family Card / Ration Card which has been produced as documents and also the Adhaar Card of the petitioner herein. There is also a communication issued by the respondents themselves on 08.05.2015, wherein they have recognized the petitioner as the widow of late C. Doraiswamy and stated as follows:



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PENSION AND OTHER BENEFITS

1. *Reference your application dated 06 Apr 15.*
2. *Your husband Shri (Late) C Doraiswamy, Ex Junior Gestetner Operator of this College, while filing his pension claim declared that his pension shall be made admissible to him till his death and the same will not be extended to his family after his death.*
3. *In order to claim your right as his wife for Family Pension, you may submit Orders from the Court stating that you are his legally wedded wife so that further action can be taken in this regard.*
4. *It is to be mentioned that no affidavit has been sent to this office by your son as stated vide your application under reference and no enclosures have been found attached with the application.*

Sd/-

*(HN Vimalanathan)
Establishment Officer
for Commandant”*

3.The only requirement for respondents at that particular point of time was an affidavit from the son and for some strange reason an order from the Court that the petitioner was the legally wedded wife of late C.



Doraiswamy. The son had given an affidavit as required and that has also been filed as document dated 11.10.2014 even earlier to the aforementioned letter by the respondents.

4.The only reason why the respondents had taken a decision to withhold family pension payable to the petitioner, as a matter of right, consequent to her status as wife, is an affidavit filed by the said C. Doraiswamy, which had been notarized. The said affidavit is dated 06.06.2007. It is a very brief affidavit and it is as follows:

“I, Shri. C. DORAISWAMY son of Mr. A. Chinnappan, aged 60 years, employed as Junior Gestetner Operator (JGO), at Defence Service Staff College, Wellington, The Nilgiris, Tamilnadu, and at present residing at Venkatesh Lane, Gurkha Camp, Wellington Barracks Post, The Nilgiris, Tamilnadu, hereby declare that my pension shall be made admissible to me till my death and the same will not be extended to my family after my death.”

5.The reading of the aforementioned affidavit would make it clear that my statement at the beginning that he is a person of extreme views is



justified. He claimed that he is entitled to receive pension consequent to his service with the respondents and that thereafter, it should not be paid to his family members after his death. He had not denied that the petitioner herein was not his wife. If he had done so, then the requirement by the respondents calling upon the petitioner to prove that, she was the legally wedded wife would be justifiable. He having not done so, it does not lie on the mouth of the respondents to call upon the widow to go to Court to establish that she was actually married to the person earlier died. It would not be possible also consequent to the death of individual and there would be no evidence in contra and getting such decree would only be a paper decree and not have any legal effect at all. The respondents must realize their responsibilities. They have a duty to discharge pension irrespective of the whims and fancies extended by the person who served under them and whose widow is entitled for the family pension. It should have been granted voluntarily by the respondents. The petitioner should not have been made to run from pillar to post, seeking this basic recognition of her status as widow of the said C. Doraiswamy.



6.The learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in ***Jodh Singh Vs. Union of India and Anr.*** reported in ***1980 AIR SC 2081***. The Hon'ble Supreme Court as always had been very succinct in examining an issue whether the retirement benefit could be the subject matter of testamentary disposition.

7.In the instant case the pensionary benefits had been wished away by the said C. Doraiswamy by filing an affidavit, which was only notarized. A duty was caste on the respondents, when that affidavit was filed to call upon the said C. Doraiswamy and record his statement and clarify whom he actually meant as his family and the reasons why he wanted the pensionary benefits not to be paid to his family members. An affidavit of a living person should never be taken into consideration at all, particularly, when it touches upon the right of his own family members, who have a right to receive the family pension. This is a purport of the judgment referred supra in ***Jodh Singh Vs. Union of India and Anr.*** In that particular case, it had been very specifically stated that special family pension sanctioned to the widow of an officer of the Indian Air Force by the President of India under Rule 74 of the Rules could not be subject matter of testamentary disposition.



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8. In the instant case, it had been the subject matter of an affidavit whose veracity is doubtful, whose legality is doubtful and which is clearly unlawful. The respondents should never, to repeat, have acted upon it, without an enquiry on the same and without calling upon the said C. Doraiswamy to disclose the names of the family members whom he wanted to exclude and the reason why he had taken such extreme decision.

9. The issue before the Hon'ble Supreme Court in the aforementioned judgment was reduced as follows:

“Whether a special family pension award by the President to the widow of a deceased officer who belonged to Air Force could be the subject-matter of a testamentary disposition by the deceased in his life time, presents the core problem in this petition.”



WEB COPY 10.This has been answered as follows:

“Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject-matter of testamentary disposition.”

11.It is thus seen that the petitioner herein in consequent to the status of the widow of the deceased C. Doraiswamy, is entitled for the family pension. The respondents are directed to forthwith prepare necessary documents relating to this particular aspect and disburse the family pension to the petitioner herein in accordance with the rules and regulations. They may not withhold any portion of the family pension and they may also examine the issue of interest payable for the delayed payment and voluntarily come forward to pay such interest if it is admissible. The entire



exercise must be completed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order.

12. Accordingly, this Writ Petition stands allowed. No costs.

03.07.2023

Index: Yes/No
Internet: Yes/No
smv

To,

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C.V.KARTHIKEYAN,J.

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