



W.P.No.25245 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.25245 of 2017

T.Sudha

... Petitioner

Vs.

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai – 600 009
2. The Director of Municipal Administration,
Chepauk, Chennai – 600 005
3. The Director of Local Fund Audit,
Animal Husbandary Hospital Complex,
Nandanam, Chennai – 600 035
4. The Commissioner,
Namakkal Municipality,
Nammakkal.

... Respondents

Writ Petition is filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus to direct the respondents to sanction family pension to the petitioner under Tamilnadu Pension Rules, 1978 with effect from 07.10.2013, i.e., the date on which the petitioner's husband died



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and pay the arrears of family pension and other consequential service and monetary benefits with interest at the rate of 18% per annum from 07.10.2013 to the actual date of disbursal.

For Petitioner : Mr.N.Om Prakash

For Respondents : Mr.M.Shahjagan for R1 and R2
Special Government Pleader
Mr.M.Rajamathivanan for R4

ORDER

The present Writ Petition has been filed for issuance of a Writ of Mandamus to direct the respondents to sanction family pension to the petitioner under Tamilnadu Pension Rules, 1978 with effect from 07.10.2013, i.e., the date on which, the petitioner's husband died and pay the arrears of family pension and other consequential service and monetary benefits with interest at the rate of 18% per annum from 07.10.2013 to the actual date of disbursal.

2. The brief facts of the case is that the petitioner's husband, viz., K.Thangavel was working as malaria worker in the public health division IV in Nammakkal Municipality and he died on 07.10.2013, while in service.



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Initially the petitioner was appointed as NMR in Namakkal Municipality on 10.05.1996 and based on the order issued by the 1st respondent in G.O.Ms.No.125 Municipal Administration and Water Supply Department dated 27.05.1999, the 4th respondent issued proceedings dated 10.10.2000 regularising the services of petitioner's husband. Subsequently, the 4th respondent issued proceedings dated 17.10.2001, bringing the services of petitioner's husband into regular time scale pay of Rs.2550-55-1660-60-3200 with effect from 11.10.2001. While that being the case, suddenly, the petitioner's husband expired on 07.10.2013 leaving behind the petitioner, two daughters, one son and his mother as his legal heirs. Thereafter, the petitioner approached to the 4th respondent for family pension and settlement of other terminal benefits. Further, a sum of Rs.5,000/- was given towards funeral expenses and after a lapse of 2 years, the 4th respondent paid a sum of Rs.2,25,000/- towards leave salary, LIC amount etc., however, the family pension has not been granted till date and there is no response for the representation of the petitioner, hence this petition.

3. The learned counsel for the petitioner by relying upon and extracting the Pension Rules of the Government, viz., 45-A, 49, 49(1), (2), (2-A), (3)(a) and Rule 74 has submitted that a widow of a government



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servant is also entitled to family pension and even a person put in very meager years of service is entitled to family pension. Further, the learned counsel for the petitioner also contended that there is no reason whatsoever to deny the sanctioning of family pension and a duty is cast upon the head of office, in which the deceased government servant was lastly working, to address the family of the deceased government servant for making a claim for family pension. Admittedly, the 4th respondent, who is the head of office had failed to perform the duty imposed on him. That apart, Rule 45(A) of Tamilnadu pension rules provides interest on delayed payment on gratuity.

4. Further, the learned counsel for the petitioner in support of his contention has relied on the following decisions of the Hon'ble Supreme Court:-

(i) Deoki Nandan Prasad Vs. State of Bihar and Others reported in (1971) 2 SCC 330

(ii) State of Jharkhand Vs. Jitendra Kumar Srivatsava reported in (2013) 12 SCC 210

(iii) Dr.Uma Aggarwal Vs. State of U.P. Reported in (1999) 3 SCC 438



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(iv) Gorakhpur University Vs. Dr.Shitla Prasad Nagendra reported in (2001) 6 SCC 591

(v) SK Dua Vs. State of Hariyana reported in 2008 3 SCC 44

5. Per contra, the learned Special Government Pleader has filed a counter affidavit and submitted on 17.02.2015, the 2nd respondent, by way of proceedings had directed the 3rd respondent to sanction the family pension to the legal heirs of the deceased late Thangavel. Further, in order to obtain audit certificate, the family pension retirement benefits in duplicate and the service register of the petitioner's husband were sent to the authorities. After verification, the same has been returned back and it was requested that the same may be examined and permitted to pay the retirement benefits as early as possible. Also, the steps have been taken to sanction the family pension to the petitioner and thereby sought to dismiss the petition.

6. Heard the learned counsel on either side and perused the documents placed on record.



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7. It is an admitted fact that the petitioner's husband Late K.Thangavel was initially appointed as an NMR in the 4th respondent Municipality 10.05.1999. Based on the order issued by the 1st respondent in G.O.(Ms) No.125, the Municipal Administration and water Supply Department dated 27.05.1999, the petitioner's husband was regularised by the respondent-Municipality by its proceedings dated 10.10.2000. Subsequently, the petitioner's husband was brought under the regular time scale of pay of Rs.2550-55-1560-60-3200 with effect from 11.10.2001 by its official proceedings dated 17.10.2001. While so, the petitioner's husband died on 07.10.2013, while he was working as Malaria Worker.

8. It is pertinent to point out that the Additional Chief Secretary to Government has addressed a Letter (3pa) No.02 dated 08.03.2023 to the 3rd respondent and on perusal of the same, wherein at paragraph no.9, it is clear that the employees, who were appointed after 30.04.1997 on consolidated pay and regularised before 01.04.2003 [before commencement of contributory pension scheme] are entitled for retirement benefits and their legal heirs are entitled for family pension.



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9. Considering the fact that the petitioner's husband, late K.Thangavel was initially appointed as an NMR in the 4th respondent Municipality on 10.05.1999 and pursuant to the order issued by the 1st respondent in G.O.(Ms) No.125, the Municipal Administration and water Supply Department dated 27.05.1999, the petitioner's husband was regularised by the respondent-Municipality by its proceedings dated 10.10.2000 and the same squarely covers under the clarification issued by the Additional Chief Secretary to Government vide Letter (3pa) No.02 dated 08.03.2023, this Court is of the view that the petitioner, who is the wife of late K.Thangavel is entitled for family pension.

In view of the above, the present writ petition is allowed and the respondents are hereby directed to calculate the family pension and the appropriate amount shall be paid to the petitioner immediately, within a period of eight weeks without any further delay. No costs.

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Index : Yes/No
Internet : Yes/No
ssd



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To

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V.BHAVANI SUBBAROYAN, J.,

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