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W.P.(MD)No.3400 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.3400 of 2019

P.Suganthi

.

... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by the Secretary,
Department of Revenue and Water Supply,
Fort.St.George, Secretariat,
Chennai-9.
- 2.The Principal Accountant General,
Office of the Accountant General (A&E),
Tamil Nadu,
361, Anna Salai, Teynampet,
Chennai-600 018.
- 3.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Cheppauk, Chennai-5.



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4.The Chief Engineer,
Tamilnadu Water Supply and Drainage Board ,
Project Division, Ganesh Nagar,
Opposite to Mattuthavani,
Madurai District- 7.

5.The Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
(Project Formulation Division),
Shanthi Nagar, Palayankottai,
Tirunelveli District- 2.

6.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Plot No.A1, Housing Board,
Sethupathi Nagar, Near Collectorate,
Ramanathapuram District – 03.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents to provide pension, gratuity, provident fund and all other retirement benefits for the period from 08.01.1973 to 31.05.2007 with 9% interest as per Revised Scale of Pay Rules, 2009, by treating the petitioner's father Mr. R. Pandi (Late) as retired from service as Record Clerk with the office of the Respondent No.5 within the time stipulated by this Court.



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For Petitioner : Mr.I.Pinaygash
For R1 : Mr.P.Thambidurai
Government Advocate
For R2 : Mr.P.Gunasekaran
For R3 : M/s.Porkodi Karnan
For R4 : Mr.B.Vijayakarthiskeyan

ORDER

This writ petition is filed for writ of Mandamus, to direct the respondents to provide pension, gratuity, provident fund and all other retirement benefits for the period from 08.01.1973 to 31.05.2007 with 9% interest as per Revised Scale of Pay Rules, 2009, by treating the petitioner's father Mr. R. Pandi (Late) as retired from service as Record Clerk from the office of the 5th respondent within the time stipulated by this Court.

2. Heard Mr.I.Pinaygash, the learned Counsel appearing for the petitioner, Mr.P.Thambidurai, the learned Government Advocate



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appearing for the 1st respondent, Mr.P.Gunasekaran, the learned Standing Counsel appearing for the 2nd respondent, M/s.Porkodi Karnan, learned Counsel appearing for the 3rd respondent and Mr.B.Vijayakarhikeyan, the learned Counsel appearing for the 4th respondent.

3. The petitioner's father joined the service on 08.01.1973 as Peon. Thereafter, he was promoted as Record Clerk. While he was in serving in the respondent Department, he frequently absented himself. Hence, show cause notice, dated 16.11.2004, was issued and then charge memo, dated 26.10.2005 was issued. In the meanwhile, the respondents have issued several notices directing the employee to appear before the enquiry officer but the employee did not appear before the enquiry officer. In the meanwhile, he attained superannuation on 31.05.2007. Finally, he died on 28.10.2011. However, the respondents have not passed any orders in the disciplinary proceedings. Now, this writ petition



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is filed by the second daughter of the deceased employee seeking pension, gratuity, provident fund and other retirement benefits by calculating the petitioner's father's service in the respondent department.

4. The respondents have filed counter stating that the deceased employee joined the service as peon and then promoted as Record Clerk, then attained superannuation on 31.05.2007. The petitioner has approached the respondents after the demise of the employee, hence the petitioner was directed to submit power of attorney on behalf of the other legal heirs. The Board had never refused to grant the petitioner's father's terminal and pensionary benefits. However, the claim of family pension was vehemently opposed by the respondents by stating that the petitioner is the second daughter of the deceased employee and the deceased employee is having three daughters (including the petitioner) and one son. The first and second daughters are widow. As per G.O.No.325, Finance (Pension) Department, dated 28.11.2011 only a widow /



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unmarried daughter who is above the age of 25 is entitled to the family pension. As per hierarchy the first daughter (first legal heir) is entitled to family pension, after the demise of the first daughter only then the second daughter would get the family pension. The said portion is extracted here under:

“25 வயதிற்கு மேற்பட்ட திருமணமாகாத/ விதவை/ விவாகரத்தான மகள்களில் அவர்களின் வயதின் அடிப்படையில் முத்தவருக்கு முதலில் வாழ்நாள் குடும்ப ஓய்வூதியம் வழங்கப்பட வேண்டும். முத்தவர் மறுமணம் புரிந்தாலோ/ இறக்க நேரிட்டால் மட்டுமே அடுத்த இளைய மகள் குடும்ப ஓய்வூதியம் பெற தகுதியுடையவராவார்.”

5. Even according to the Tamil Nadu Pension Rules, the widow / unmarried daughter above the age of 25 is entitled to the family pension. As per hierarchy the first legal heir is entitled to family pension, after the first legal becomes ineligible then the second legal heir would get the family pension. The relevant portion is extracted hereunder:



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“8. i...

ii.

iii.(a) *If sons and unmarried daughters are live, the eligible male or female children will be entitled for family pension 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 become ineligible for family pension.*”

Since the petitioner is the second daughter, the petitioner would be entitled to the family pension, only after the first daughter would become ineligible. In the present case, the first daughter is also a widow and after her demise or remarriage, the petitioner would be entitled to. Therefore, the petitioner is not eligible as of now, but in future she may be eligible.

6. However, the learned Counsel for the petitioner submitted that there is a compromise agreement between the petitioner and other legal heirs, more particularly, the first daughter of the deceased employee has



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accepted to disburse the monetary benefits and other benefits to the petitioner. This Court is of the considered opinion that the private contract between the petitioner and her elder sister cannot be enforced in writ jurisdiction and the private contracts between the petitioner and her elder sister are not binding the respondent. Moreover, the such contract is against the Rules stated supra.

7. Therefore, this Court is directing the respondents to pay the benefits to the family pension to the first daughter. In turn, the first daughter would pay the benefits to the second daughter as per the contract between the petitioner and her elder sister. The petitioner is at liberty to enforce the same as per law. It is made clear that the family pension alone shall be disbursed as stated supra.

8. As far as the terminal benefits and other accrued benefits are



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concerned, the deceased employee is entitled to the same and the respondents are not denying the eligibility to the deceased employee. It is seen from the records that the deceased employee is entitled to the following accrued benefits:

- i. The terminal benefits for the service period from 08.01.1973 to 31.05.2007.
- ii. The accrued pension benefits from 01.06.2007 to 28.10.2011 (date of death of the employee).

As far as the above said accrued benefits all the four legal heirs are entitled to the benefits. It is submitted by the parties that the petitioner's mother is not alive. Therefore, the respondents are directed to disburse the amount equally among the four legal heirs.

9. The learned Counsel appearing for the 2nd respondent assisted this Court and this Court appreciates the service rendered by the learned Counsel.



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10. The learned Counsel appearing for the TWAD Board submitted that the TWAD Board is in financial constraints and the Board is maintaining seniority list for disbursing the terminal benefits. Therefore, this Court is directing the TWAD Board to disburse the benefits at least within a period of four months from the date of receipt of a copy of this order.

11. With the above said observation, the writ petition is disposed of. No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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To

The Secretary,
State of Tamil Nadu,
Department of Revenue and Water Supply,
Fort. St. George, Secretariat,
Chennai-9.



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S.SRIMATHY, J

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