



W.P.(MD)No.19915 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19915 of 2020

D.Merlin Dharma Shibhala

... Petitioner

Vs

- 1.The Accountant General
(Accounts and Entitlement),
No.361, Annasalai,
Thenampettai,
Chennai – 600 018.
- 2.The District Collector,
Nagarcoil,
Kanyakumari District.
- 3.The District Educational Officer,
Kulithurai,
Marthandam Post,
Kanyakumari District.
- 4.The Headmaster,
Government Higher Secondary School,
Kaliyakkavilai – 629 153,
Kanyakumari District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned letter issued by the first respondent in Pen.II/IV/SL.No.7 dated 30.04.2019/Sr.DAG complaint/5/8144, dated 01.05.2019 and quash the same and consequently direct the respondents herein to pay family pension to the petitioner who is not earning and physically handicapped person.

For Petitioner : Mr.S.Veeranasamy

For Respondents : Mr.P.Gunasekaran
Central Government Standing Counsel
for R.1

Mr.N.Sathees Kumar
Additional Government Pleader
for R.2 to R.4

ORDER

Heard the learned counsel on either side.

2.The petitioner's mother was employed as Secondary Grade Teacher in a Government High School. She was receiving pension. She passed away on 29.05.2015. The question that arises for consideration is whether her daughter is entitled to family pension on account of her suffering from physical disability. The petitioner's request was rejected by the first respondent on the ground that she had already got married. The stand of the first respondent is impugned in this writ petition.



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3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petitioner and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The primary contention of the learned counsel is that the petitioner is suffering from physical disability and that their husband is earning hardly Rs.24,000/- per month and that therefore factum of her marriage cannot be put against the petitioner.

5.The first respondent has filed counter affidavit and the learned Standing Counsel took me through its contents. The learned Standing Counsel would argue that statutory position is very clear and that therefore no interference is called for.

6.I carefully considered the rival contentions and went through the materials on record.



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7.The relevant Rule is Rule 49 of the Tamil Nadu Pension Rules, 1978.

Rule 49 (6) of the Tamil Nadu Pension Rules, 1978 is as follows:

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

(i) in the case of a widow or widower upto the date of death or remarriage, whichever is earlier;

(ii) in the case of a son until he attains the age of [twenty five] years;

(iii) in the case of an 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 sons and [25 years] in 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)



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of sub-rule (8) until the last minor child attain 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 or who is physically crippled or disabled and shall be payable to him/her for life.”

8.It is true that an able-bodied son of a pensionary can receive pension only up to the age of 25 years. He can still get pension even thereafter if he is suffering from any disorder or disability of mind (including Mentally retarded) which renders him or her unable to earn a living. The same would apply in the case of an unmarried daughter also. However, the Rule makes it clear that she will not be eligible for family pension from the date on which she gets married. The Rule is clear, unambiguous and categorical. It does not admit of an exception. The moment the daughter gets married, she cannot receive pension thereafter. The impugned order merely reflects the statutory provision and no interference is called for.

9.This writ petition stands dismissed. There shall be no order as to costs.

10.04.2023

Index : Yes / No
Internet : Yes/ No
NCC : Yes / No
MGA



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G.R.SWAMINATHAN, J.

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