BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19899 of 2021
and
W.M.P(MD)No.16604 of 2021

N.Krishnammal ... Petitioner

Vs

1.The State represented by
The Secretary to Government,
Revenue Department,
Secretariat,
St.George Fort,
Chennai – 600 009.

2.The Commissioner of Revenue Administration,
Ezhilagam,
Chennai.

3.The Accountant General,
361, Anna Salai,
Chennai – 600 018.

4.The District Collector,
Thoothukudi District,
Thoothukudi.

5.The District Treasury Officer,
Office of the District Treasury,
Collector Office Complex,
Thoothukudi – 628 101.

6.Muthulakshmi
(R.6 is impleaded vide order of this Court dated 10.03.2023 in W.M.P(MD)No.10727 of 2022) ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to grant family pension to which the petitioner is entitled under the Tamil Nadu Family Pension Rules, 1964 in her capacity as widow of Late Narayanan PPO No.C/2905/Rev with arrears within a reasonable time period and interest to be fixed by this Court.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.G.Suriyananth
Additional Government Pleader
for R.1, R.2, R.4 & R.5

Mr.P.Gunasekaran for R.3

Mr.S.Mandhiralingeswaran for R.6

ORDER

Heard the learned counsel on either side.

2. One Narayanan retired on 31.01.1996 as Manager in TAHDCO (Tamil Nadu Adi Dravidar Housing and Development Corporation). He was receiving

pension as per Tamil Nadu Family Pension Rules, 1964 till his demise on 30.01.2018. The question that arises for consideration is whether the petitioner is entitled to receive family pension under Rule 49(6) of Tamil Nadu Pension Rules, 1964. It is beyond dispute that the petitioner was the legally wedded wife of the deceased Narayanan. However, the petitioner's request was not accepted by the official respondents for the simple reason that an objection had been raised by the sixth respondent, namely, Muthulakshmi. The case of Muthulakshmi is that the petitioner and the deceased Narayanan had matrimonial differences and that the issue was resolved by granting one time settlement to the writ petitioner and that the writ petitioner had given up all her claims on her husband. In view of such waiver on the part of the writ petitioner, the sixth respondent as the destitute daughter of the deceased Government employee ought to be paid pension. The authorities have not taken any decision in the matter. That led to filing of this writ petition.

3. Before I test the plea of waiver, let me consider the status of the sixth respondent. It is seen that the petitioner filed O.S.No.170 of 1979 on the file of District Muncif Court, Srivaikundam claiming maintenance from her husband, namely, Narayanan. The petitioner had alleged that on account of development of illicit intimacy between her husband and one Vedhavalli, the petitioner was constrained to keep away from the matrimonial home. In response, Narayanan

denied the allegation and had categorically stated that he had nothing to do with the said Vedhavalli. Admittedly, Muthulakshmi / the sixth respondent herein is the daughter of Vedhavalli. When Narayanan himself in his written statement in O.S.No.170 of 1979 on the file of District Munsif Court, Srivaikundam had denied any relationship with Vedhavalli, Muthulakshmi / Vedhavalli's daughter cannot claim that she is the illegitimate daughter of the deceased Narayanan.

4. What nails the case of the sixth respondent is the order dated 15.10.2004 passed in H.M.O.P.No.44 of 2003 on the file of Sub Court, Thoothukudi. It is seen therefrom that even though the earlier round of litigation between Krishnammal and Narayanan had concluded on 19.06.1997 in S.A.Nos.2192 and 2193 of 1983, Narayanan filed H.M.O.P.No.44 of 2003 on the file of Sub Court, Thoothukudi seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. The pleadings of Narayanan in the said H.M.O.P are highly significant. Narayanan categorically stated that he treated Muthulakshmi, daughter of Vedhavalli like his daughter and that he did not have any illicit intimacy either with Vedhavalli or Muthulakshmi. That apart, Narayanan had made one important averment in the said petition. According to him, Vedhavalli was wife of the one Sriram Iyyangar and Muthulakshmi was their daughter. This totally undermines the case now

projected in this writ petition. In any event, there is nothing on record to show that Muthulakshmi is the daughter, whether legitimate or illegitimate of the said Narayanan. I hold that Muthulakshmi, the sixth respondent herein has no *locus standi* to oppose the petitioner's claim.

5. Even if the status of Muthulakshmi as claimed by her is accepted, still the petitioner cannot be non-suited on that ground. Rule 49 (6) of the Tamil Nadu Pension Rules, 1978, clearly states that widow of the deceased employee has to be paid family pension till her death or re-marriage whichever is earlier. Sub Rule (8) of Rule 49 states that except as provided in Sub Rule (7), the family pension shall not be payable to more than one member of the family at the same time. The petitioner's status as the legally wedded wife of Narayanan has been admitted by Narayanan himself. The judgment of this Court in the aforesaid Second Appeals also confirmed the said factual position. The question of waiver will not arise. It is true that in the maintenance proceedings initiated by Krishnammal, there was a compromise. Krishnammal had only stated that she will not make any monetary claim on the deceased Narayanan. Now, she is not taking any claim on Narayanan. She is making claim only on the Government. The petitioner's claim for pension does not run counter to the settlement earlier entered into in the execution proceedings.

6. The learned counsel appearing for the petitioner would further point out that the said settlement cannot be put against the petitioner on account of the subsequent filing of H.M.O.P by Narayanan himself in the year 2003. The foregoing discussion leads to the following conclusions:

a) Narayanan was a Government employee and was in receipt of his pension till his demise in the year 2018;

b) Krishnammal / the writ petitioner herein is the legally wedded wife of Narayanan and their marriage was never dissolved. Even according to Narayanan, their marital tie held good till the end. As per the Pension Rules, the widow is entitled to pension to exclusion of all other legal heirs, if any;

c) Muthulakshmi cannot be recognized as the legal heir of the deceased Narayanan.

In this view of the matter, Writ of Mandamus as sought for is issued. The official respondents are directed to grant family pension to the writ petitioner. The petitioner will be entitled to arrears from the date of death of Narayanan.

7. The learned counsel appearing for the petitioner states that within 10 days from the date of receipt of a copy of this order, the petitioner will submit a formal application to the second respondent. The second respondent shall process the same and forward the same either by himself or through the

concerned authority to the third respondent. On receipt of the same, the third respondent will sanction the family pension payable to the petitioner within a period of four weeks thereafter. The entire exercise of sanction as well as disbursement will be completed within a period of eight weeks thereafter. Question of paying interest does not arise.

8. This writ petition is allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.04.2023

Note: Issue order copy immediately
Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

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2.The Commissioner of Revenue Administration,
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3.The Accountant General,
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G.R.SWAMINATHAN, J.

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