



W.P.(MD)No.12354 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 12354 of 2018

Selvi V.Senthamarai

... Petitioner

Vs.

1.The Principal Secretary to Government,
Finance Department,
Secretariat, Chennai.

2.The Accountant General (A & E),
O/o. the Accountant General (A & E),
No.261, Anna Salai,
Chennai - 18.

3.The Headmistress,
Government Higher Secondary School,
Pappanaickerpatti,
Malli Post - 626 141,
Srivilliputhur Taluk,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to



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the impugned order made in Pen/13/I/DL 15971/17-18 /GO 325/ 395-100886 dated 14.12.2017 on the file of the second respondent and to quash the same as illegal and unconstitutional and consequently, direct the respondents to sanction the eligible civil family pension to the petitioner from the date of death of her deceased mother Lakshmiammal.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.V.Omprakash - for R1 & R3
Government Advocate

Mr.P.Gunasekaran - for R2

ORDER

This writ petition is filed challenging the impugned order, dated 14.12.2017 and also seeking consequential direction to the respondents to sanction the eligible Civil Family Pension to the petitioner from the date of death of her mother Lakshmiammal.

2. Heard Mr.M.Thirunavukkarasu, the Learned Counsel appearing for the Petitioner, Mr.V.Omprakash, the Learned Government Advocate appearing for R1 & R3, Mr.P.Gunasekaran, the Learned Counsel appearing for R2 and perused the material documents available on record.



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3. The petitioner's father was serving in Indian Army and retired from service. After retirement he was an employee in School Education Department and while he was working in the 3rd respondent school, he died on 29.09.1978. After the demise of the petitioner's father, the petitioner's mother, namely, V. Lakshmiammal being a Primary Legal Heirship was sanctioned, both the Defence Family Pension and Civil Family Pension. Thereafter, the petitioner's mother died on 16.04.2012 leaving the petitioner and four others, as surviving Legal heirs. The other four legal heirs got married and the petitioner is an unmarried daughter.

4. The contention of the petitioner is that during the life time of the petitioner's mother, she was able to maintain by the family through the pension derived from the mother. After her demise, she was sanctioned the eligible family pension from the Indian Defense Services as Ex-Serviceman Family Pension alone. The further contention of the petitioner is that she is entitled to receive both pension from the respondents for the Defence service and for Civil service rendered by the petitioner's father, since the petitioner's mother was receiving both family pension for Defence service as well as Civil service. But the



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respondent had denied the family pension for civil service but had granted family pension for defence service.

5. The petitioner has submitted a representation, but the respondents after delay of so many years, through a communication informed that in order to get family pension from the respondents, the petitioner's income should be below Rs. 2,550/- and the petitioner was also directed to opt either Defence pension or Civil pension and also directed the petitioner to apply Civil pension as per G.O.325 Finance (Pension) Department, dated 28.11.2011. The further contention of the petitioner is that only the Government of Tamilnadu after considering the plight of the Defence Personnel has passed G.O.Ms.No.290 Public (Ex-Servicemen) Department, dated 05.04.2017 and granted duly Family pension to the Ex-Service man. Therefore, the petitioner being an unmarried daughter, she is entitled, as per G.O.Ms.No.290 Public (Ex-Servicemen) Department, dated 05.04.2017.

6. The 2nd respondent had objected to the claim of the petitioner and submitted that the petitioner is more than 25 years old, therefore, as per Rule 49 of the Tamil Nadu Pension Rules, the petitioner is not entitled to duly pension and



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only minors are entitled to family pension. Moreover, the G.O.Ms.No.290 Public (Ex-Servicemen) Department, dated 05.04.2017 only states about the policy decision of the Government and the same is subject to the Pension Rules. Therefore, the G.O.Ms.No.290 Public (Ex-Servicemen) Department, dated 05.04.2017 ought to be read along with Pension Rules, especially, Rule 49(VI) (iii), wherein it specifically states as under:

49. Family pension:-

(6) The period for which family pension is payable shall be as follows :-

(iii) in the case of an unmarried daughter, until she attains the age of [twenty- four years] [thirty years] [twenty-five years] or until she gets married whichever is earlier:

Even the G.O.Ms.No.325 also states that the unmarried daughter is entitled to pension until 25 years and has also stated several conditions.

7. However, the Learned Counsel appearing for the petitioner submitted that if the unmarried daughter has any physical ailment, then the unmarried daughter is entitled to civil pension also. For which the respondent



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submitted then the physical aliment ought to be assessed by the competent Medical Board. The petitioner also expressed her willingness to prove her physical disability before the competent Medical Board.

8. Therefore, this Court is of the considered opinion that the petitioner is directed to submit a representation to the 1st respondent. The 1st respondent shall direct the petitioner to appear before the Medical Board. Based on the report of the Medical Board, the petitioner's claim shall be considered in the light of the Rule 49 read with other Government orders and other applicable Rules and Regulations. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of the order.

9. With these directions and observations, this Writ Petition is disposed of. No Costs.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

ksa

**Order made in
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