BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.26167 of 2019

D.Sarojini ... Petitioner

vs.

The Chairman,
Tamilnadu Grama Bank (TNGB),
Head Office, 6, Yercaud Road,
Hasthampatti, PO, Salem-636 007. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondent to issue petitioner to payment of family pension order and facilitate her to file the same under "PGB (Employees') Pension Regulations, 2018" within a stipulated time fixed by this Court based on her representation, dated 08.11.2019.

For Petitioner : Mr.C.Masilamani
For Respondent : Mr.N.Dilip Kumar
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O R D E R

This writ petition is filed for writ of Mandamus, to direct the respondent to issue petitioner payment of family pension order and facilitate her to file the same under "PGB (Employees') Pension Regulations, 2018" within a stipulated time fixed by this Court based on her representation, dated 08.11.2019.

2. The petitioner's husband namely M.Donald Edward Samuel worked in the respondent Bank. Previously, he was working in Pandyan Grama Bank. Subsequently, it was merged with Tamilnadu Grama Bank with effect from 01.04.2019. The petitioner's husband was suspended from service from 12.05.2009 and FIR was registered based on the complaint at Chennai by CBI in No.SPE/CBI:ACB:2009RCMA1 2009 A

0040, dated 30.07.2009 under Section 120 B read with 409, 420, 468 and 471 of IPC and Sections 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. On 29.10.2013, he was issued with charge sheet for initiating departmental proceedings. Based on the above proceedings, the respondents issued cessation of service by letter PAD/R-27/2013-14, dated 30.10.2013, wherein it is stated that the petitioner's husband was not entitled to retirement benefits if any and it will be considered after the completion of the disciplinary proceedings. Pending disciplinary proceedings and criminal proceedings, the petitioner's husband died on 02.08.2014 leaving behind the petitioner and two sons and the mother of the deceased employee. On death of the petitioner's husband, the departmental proceedings and the criminal proceedings are abated. Therefore, the petitioner filed W.P.(MD)No. 18120 of 2017, for writ of Certiorarified Mandamus, to quash the charge memo issued by the respondent and to settle retirement benefits and other monetary benefits. The said writ petition was allowed with a direction and based on the orders of this Court the respondent has settled all the terminal benefits applicable to the deceased employee. Now, the petitioner has come before this Court for family pension under the new scheme formulated by the respondent in Pandyan Grama Bank (Employees') Pension Regulations, 2018. The petitioner submitted a representation, dated 06.10.2019 and the same was not considered. Subsequently, the petitioner submitted another representation, dated 08.11.2019. Since the respondent has not considered the same, the petitioner is before this Court.

3. The respondent has filed counter affidavit stating that the petitioner is not entitled to the family pension and the reason stated is that the petitioner's husband joined duty in 1979 and died in the year 2014 but the scheme was formulated in the year 2018. Hence, the

petitioner is not entitled to. The respondent also stated that the petitioner has submitted an application to disburse the family pension and the application is dated 15.02.2019, which is beyond the time prescribed under the scheme, hence, the petitioner is not entitled to. Therefore, the respondent prayed to dismiss the writ petition.

4. Heard Mr.C.Masilamani, learned Counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned Counsel appearing for the respondent and perused the records.

5. The learned Counsel appearing for the petitioner submitted that the respondent relied on Regulation 3 of the scheme and declined. Under Regulation 3 it is states that the employee died before the effective date i.e. 01.04.2018 without the employee exercising the option, then the family is not entitled to the scheme. But the scheme is covering the

person who was in service on or after 01.09.1987. Since the deceased employee was in service on the said date, then the employee is entitled to pension consequently the family is entitled to family pension. Moreover, pension and family pension are not bounty but a right and it ought to be interpreted liberally. Therefore, the contention of the respondent ought to be rejected.

6. The Learned Counsel appearing for the petitioner relied on Regulation 32, wherein the payment of family pension is granted and the relevant portion is extracted hereunder:

> *"32. Payment of pension or family pension in respect of certain employees.-*
>
> *(1) An employee who was in service between 1st day of September, 1987 and 31st day of March 2010 and retired from the service of the Bank before 31st day of March, 2018 shall, subject to the provisions of these regulations, be eligible for payment of*

pension from the effective date.

(2) The family of a deceased employee, who was in service between the 1st day of September, 1987 and 31st day of March 2010 and died before the 31st day of March, 2018 shall, subject to the provisions of these regulations, be eligible for payment of family pension from the effective date."

Under regulation 32, sub-clause 2, if any employee who was in service between 1st September, 1987 and 31st March 2010 and died before 31st March 2018, the family is entitled to family pension. This regulation is applicable to the deceased employee, but the respondents have not considered this regulation. Even in the counter affidavit the respondent has not referred the said regulation. Therefore, this Court is of the considered opinion that it is totally non- application of mind on the part of the respondent to deny the said benefit to the petitioner.

7. The learned Counsel appearing for the respondent submitted

that the application is belated and hence it cannot be considered. The said contention was refuted by the petitioner by citing the clarification issued by the Gramin Bank of Aryavart, dated 20.12.2018, wherein it has been stated as under:

> *"NOTE: Since the Notification is ambiguous regarding process for joining Pension Scheme from employees who were in service between 01-09-1987 and 31-03-2010 but retired on or after 01-04- 2010 to 31-03-2018, we have sought clarification from NABARD on the same. In the meantime, Branches/RO/GMO may accept option applications from such employees also up to 26-03-2019 and forward to Head Office after due processing. Decision on such applications will be taken by Head Office in line with guidance received from NABARD on this matter. Similarly, option for Family Pension in case of such deceased employees shall also be accepted by Branch / RO/GMO up to 26-03-2019 and forwarded to Head Office after due process."*

The said clarification clearly states that the application should be received on or before 26.03.2019. The petitioner has submitted the application on 15.02.2019. Even as per the counter affidavit, it is well within the time limit prescribed under the clarification note.

8. The learned Counsel for the petitioner relied on the extract of the family pension disbursed to several persons, wherein they have submitted the application beyond the time prescribed by the scheme. But the respondents have disbursed the family pension to them and more than 10 persons are benefitted through the scheme, but the petitioner alone was discriminated. On perusal of the extract of family pensioner it is seen that more than 10 persons were granted pension even though they had submitted belatedly application. In the present case the petitioner had filed the application before the prescribed time as stated supra. Therefore, the petitioner is entitled to the family pension.

9. At the instance of the Learned Counsel appearing for the respondent the case is post under the caption "For clarification" on 19.06.2023.

10. The learned Counsel appearing for the respondent submitted that the claim of the petitioner cannot be entertained for three reasons. Since the Regulation, 2018-19 dated 01.11.2018 under Chapter 2 Regulation 3 states that the regulation is applicable to certain categories of persons. Under (a) it states that the employee ought to have served on or before 31st March 2010. In the present case, the deceased employee had joined the service in the year 1979. Therefore, the same is not applicable. Likewise, Clause (b) is not applicable since the deceased employee was not in service on the notified date i.e. 18.12.2018. Clause (c) is not applicable since the deceased employee has not continued in service on or after effective date but retired before the notified date. But

it is seen that the entire regulation as anomaly and ambiguous where it has taken the persons who have joined the service from 1987 to 2010. The regulation has not addressed the persons who are in service from 1987 and are in service until 2018. The regulation is not addressing the persons who have retired on or after 01.04.2010 to 31.03.2018. In short the regulation has not addressed the period from 2010 to 2018. Therefore, the contention of the respondent cannot be accepted. Exactly, for this anomaly / ambiguous, the Nabard has issued guidelines that has been incorporated by Gramin Bank of Aryavart, Lucknow. In the note, it has been categorically addressed to rectify the said anomaly and has given a cutoff date and directed the employees or the family of the employees should submit an application on or before 26.03.2019.

11. Even though the petitioner has not produced the NABARD guidelines, on seeing this note, this Court is of the considered opinion

that based on the guidelines of NABARD only the said note has been incorporated in the said clarification. Moreover, it is the NABARD has issued direction, hence it is binding the respondent bank also. Therefore, this Court is convinced that the petitioner submitted an application on 15.02.2019 which is accepted by the respondent as well. Since the application was submitted within the period prescribed in the NABARD guidelines, this Court is of the considered opinion that the petitioner is eligible for the pension.

12. The next contention of the respondent is that the deceased employee is not retired. He was a delinquent facing serious charges. Therefore, the provisions applicable to the retired employees is not applicable to the petitioner. This Court is not accepting the said contention, since legally if a person is facing any disciplinary proceedings or facing any criminal proceedings, on death, the entire

proceedings will be abated. Therefore, the deceased employee should have been considered as retired persons. Therefore, this contention of the respondent is also rejected.

13. The 3rd contention raised by the respondent is that the petitioner has not submitted an application expressing the willingness to refund the employment provident fund which was granted to the deceased employee in the year 2010 itself. The learned Counsel for the petitioner submitted that after the regulation, the respondent issued the circular, dated 03.01.2019, wherein it has been stated that the Bank will advise in due course, the amount of Bank's contribution to the EPF ought to be refunded to the retired employee / to the family of the deceased employee. Since the Bank has not intimated to the petitioner, the petitioner could not give a petition or willingness to refund the EPF.

14. The learned Counsel for the petitioner further brought to the notice of the Court that one R.Puliyoorudayan was intimated on 20.05.2019 which is after the cutoff date prescribed by the respondent. The Bank has directed the said person to refund the amount of Rs. 6,10,007/-. Therefore, the Bank has every power to direct the employees to refund the said amount. In the present case, the respondents have not acted upon the regulation. In the present case, the Bank was under the impression that the petitioner's husband was not retired from service, the deceased petitioner was facing delinquencies, the proceedings were abated on the death of the employee. Hence the bank is still under the impression that the deceased employee is an accused and hence he is not entitled to the benefits. For this reason the Bank was not inclined to allow the petitioner to exercise option, hence refused to direct the petitioner to refund the amount.

15. Therefore, this Court is of the considered opinion that the Bank cannot deviate from the settled principles of law. Since on death of the employee, the entire proceedings are abated and it has to be treated as retired from service.

16. Therefore, this Court is of the considered opinion that the petitioner is entitled to family pension as per the scheme and the following directions are issued:

i. The respondent is directed to intimate the petitioner that the amount has to be refunded from the EPF within a period of two weeks from the date of receipt of a copy of this order.

ii. On such intimation, the petitioner is directed to refund the said amount within a period of four weeks thereafter.

iii. The respondent is directed to grant family pension in the light of Regulation 32 read with the clarification issued in the circular, dated 20.12.2018 within a period of eight weeks thereafter.

iv. The time line prescribed above shall be strictly adhered to.

17.With the above said observations and directions, the writ petition is allowed. No costs.

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

13.06.2023

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S.SRIMATHY, J

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