IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 20.11.2023	PRONOUNCED ON 31.01. 2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.14585 of 2011

A.Ignatius Muthu ... Petitioner

Vs

1.The Secretary, Finance (Pension),
St.George Fort-Secretariat,
Chennai – 600 009.

2.The Secretary,
Department of Education,
Secretariat, Chennai – 600 009.

3.The Director (Pension),
259, Anna Salai, 3rd Block,
2nd Floor, D.M.S. Complex,
Tenampettai, Chennai – 600 006.

4.Director of Elementary Education,
College Road,
chennai – 600 006.

5.Accountant General,
261, Anna Salai,
Chennai – 600 018.

6.Assistant Elementary Educational Officer,
C/o.St.Antony's Primary School,
Koranadu, Mayiladuthurai – 609 001.

7.The Correspondent,
St.Antony's Primary School,
Koranadu, Mayiladuthurai – 609 001. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the 5th respondent in No.Pen.231.Pt.186/192 dated 22.08.2005 and consequential order passed by the 5ht respondent in Pen.23.I/Pt.68/05-06/ dated 21.12.2005 and quash the same.

For Petitioner	:	Mr.Prabhu Mukunth Arunkumar
For RR1 to 4 & 5	:	Mr.S.Ravichandran Additional Government Pleader
For R5	:	Ms.T.S.Selvarani
For R7	:	served

ORDER

The Writ Petition has been filed challenging the orders issued by the fifth respondent, in rejecting the claim of the petitioner for grant of family pension of his deceased daughter.

2. Heard, Mr.Prabhu Mukunth Arunkumar, learned counsel appearing for the petitioner and Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents 1 to 4 and 6, Ms.T.S.Selvarani, learned counsel for 5th respondent.

3. The learned counsel for the petitioner would submit that, the petitioner's daughter was appointed as a Secondary Grade Teacher on 01.09.1988, her initial qualification at the time of her appointment was B.A., B.Ed., further while in service she has also pursued M.A.,M.Ed. He would submit that, the daughter of the petitioner died on 14.08.2004, due to health

ailments and she was a spinster.

4. He would contend that, the petitioner worked in Indian Air Force, during the year 1946 and thereafter he had joined in Southern Railway and retired from service on 31.07.1980, and now he is a penisoner of Southern Railway. The petitioner's daughter served as a Secondary Grade teacher for 16 years, and after her death the petitioner was paid with gratuity and other benefits, but he was denied for the pension of his deceased daughter, stating that the petitioner is not eligible as he was receiving pension.

5. He would further submit that, on the direction of the school authorities, the petitioner had submitted the papers for pension of his daughter to the fifth respondent, Accountant General. The fifth respondent has denied pension to the petitioner. The claim of the petitioner is that he is eligible for the pension of his deceased daughter, as she was in service during the time of

her demise and she died as a spinster. Further, the fifth respondent in Letter No.Pen23/I/Pt186/192 dated 22.08.2005 had stated that, the parents of the deceased unmarried daughters who are in receipt of any income are not eligible for family Pension, this decision taken by the fifth respondent is against the Tamil Nadu Pension Rules. He would submit that as per, G.O.Ms.No.768 Finance, dated 21.08.1986, published in the Tamil Nadu Pension Rules, in Rule 49(13) (b)(ii) provides for the grant of family pension to the parents of an unmarried Government servants who had deceased while in service.

6. He would further submit that, the Government Joint Secretary and Public Information Office, in Letter No.4937/Pension/2011 dated 18.02.2011, has informed the petitioner that no amendment to the Tamil Nadu Pension Rules, 1978 has been made. He would submit that, as per the revised Pension Rule in G.O.No.327 dated 30.08.2001, which states that the parents of the

deceased unmarried daughters who are in receipt of any income are not eligible for family pension has not been included in the Pension Rules by way of an amendment.

7. He would contend that the revised pension Rule has brought into effect from 13.09.2004, the daughter of the petitioner died on 14.08.2004, so at that time G.O.768, was in place. The rejection of the fifth respondent is against the Rule. Therefore, the letters issued by the fifth respondent dated 22.08.2005 and 21.12.2005 are liable to be set aside. Hence seeks to allow this Writ Petition.

8. Countering his arguments, the learned counsel for the fifth respondent would submit that, the petitioner's daughter served as a Secondary Grade Teacher in the School of the 7th respondent and had died on 14.08.2004 while in service. She would submit that a family pension proposal of the

petitioner was forwarded by the 6th respondent in proceedings dated 07.12.2004. She would further submit that as per G.O.Ms.No.327 Finance (Pension) dated 30.08.2001, certain conditions were laid down for the payment of family pension, to the parents of a deceased Government Servant, the conditions are that,

(1) The parents should be wholly dependant on the government servant while he/she was alive.

(2) The government servant has not left behind a widow/widower, eligible son or daughter or a widowed/divorced daughter who will have a prior claim to family pension in the order indicated.

(3) The income criteria in respect of the parents and widowed/divorced daughters will be Rs. 2550/- per month.

9. She would submit that, as per the Government Letter No.

10554/Pension/2002-3 dated 13.09.2004, if either father or mother of the deceased Government Servant is receiving an income of Rs. 2550/- p.m., then they are not eligible for family pension as they cannot said to be dependent on their children, and further stated that in cases where the parents were in receipt of any income, even though less than Rs. 2550/- p.m., during the life time of the Government Servant, then also they will not be eligible for family pension.

10. She would further submit that, the petitioner himself is a pensioner of Railways and the wife of the petitioner is also receiving pension in excess of the income limit specified in G.O.Ms.No.327 dated 30.08.2001, therefore the petitioner has no rights to claim any pension on behalf of his deceased daughter. As the petitioner is not eligible by way of any Rules and Government Orders, fifth respondent has initmitated the same to the petitioner. Therefore, there is no infirmity in the letters issued by the fifth respondent and seeks to dismiss the writ petition.

11. I have heard the submissions on behalf of the respective parties and have perused the materials available on record before this Court.

12. The claim in this *lis* by the petitioner is seeking for a family pension in respect of their unmarried daughter who had died in harness. The petitioners claim has been rejected by the 5th respondent by holding that as per the Pension Rules, the parents of the deceased unmarried daughter who are in receipt of any income are not eligible for family pension. Such order came to be passed on 22.08.2005. A further order dated 21.12.2005 had also been communicated by placing reliance upon the G.O.Ms.No.327 dated 30.08.2001, where a clarification had been issued. The said communication also indicates that the petitioner was drawing a family pension of Rs.4,800/- and in view of the aforesaid order and the clarification given by the Finance Department dated 19.09.2004, the parents of the deceased daughter would not

be entitled to any pension. The Tamil Nadu Pension Rules was published in the year 1978 which came into force from 01.01.1979. Rule 49 provides for Family Pension. Sub Rule 13(b) provides as to who is a family in relation to a Government servant. For better appreciation, the relevant Rule is extracted hereunder:-

13(b) family, in relation to a Government servant means

(i) (a) Wife in the case of a male Government servans or husband in the case of a female Government servant;

(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery; and

NOTE.- Wife and husband shall include respectively judicially separated wife and husband.

NOTE.- Where the appointing authority referred to in sub-rule (3) of Rule (6) decides that for reasons to be recorded in writing, a child or children from a judicially separated deceased female Government servant should receive the family pension in preference to judicially separated husband of the deceased Government servant, such husband shall not be regarded as covered by the expression family.

(ii) son who has not attained the age of 2 (twenty-five) years and unmarried daughter who has not attained the age of twenty- five years including such son and daughter adopted legally adopted and also such son or unmarried daughters born through illegitimate wife before retirement and such son or daughter born after retirement, on or after 1st January 1979.

(iii) legally adopted son and daughter, father failing which the mother, in the case of an unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant.

13. Sub Clause 3 of Clause (b) of Sub Rule 13 deals with a case of a unmarried Government servant. It is to be noted that when originally the Rule was introduced the said clause which read as thus under:-

"(iii) Father and mother in the case of unmarried Government servants."

14. The said clause came to be amended by the G.O.Ms.No.581 Finance (Pension) dated 06.09.1996. After the said amendment, the aforesaid Sub-Clause (iii) reads as thus under :-

"(iii) father, falling which the mother, in the case of an unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant. "

15. Thereafter, the said Clause underwent a modification by G.O.Ms.No.337 Finance (Pension) dated 07.09.2001 and thereafter the same read as thus under:-

> *(iii) legally adopted son and daughter, father failing which the mother, in the case of an unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant.*

16. However, the petitioner had claimed that the Clause (3) had never been amended as provided under G.O.Ms.No.327 Finance (Pension) dated 30.08.2001 and to substantiate the same, he had also produced an information sought under Right to information Act from the Public Information Officer of the Government indcating that no amendment had been carried out in the Tamil Nadu Pension Rules pursuant to the G.O.Ms.No.327 Finance (Pension) dated 30.08.2001. Thus, it is clear that the order impugned

which had been passed by the 5th respondent by placing reliance upon the G.O.Ms.No.327 dated 30.08.2001 and a further clarification dated 31.09.2004 based on the aforesaid G.O. cannot stand scruitny and on that ground alone, the orders impugned in this Writ Petition would have to be set aside.

17. But, however, it is imperative of this Court to take a decision as to whether the petitioner would be entitled for a Family Pension of his deceased unmarried daughter. From the amended Rule position as it stood amended on the date of the death of his deceased unmarried daughter, it clearly envisages that the legally adopted son and daughter, father, failing which the mother in the case of an unmarried Government servant would be entitled to a family pension subject to the condition that such person declares to be a dependant of the deceased servant. In the present case, it is an admitted fact that the petitioner is a pensioner having receiving pension from the Railways where he had been in employment. Since, the petitioner is already in

receipt of his own pension for the services rendered by him, he cannot be said to be a person dependant on the Government servant and therefore, he cannot also be in a position to give such a declaration. Only if such a declaration is given that he is solely dependant on the deceased Government servant, he would be entitled to a family pension. Even though, I have found that the order impugned is wholly illegal, I have also found that the petitioner would not be entitled to family pension in view of the amended provisions of Rule 49, 13 (b) (iii) of the Tamil Nadu Pension Rules.

17. In fine, this Writ Petition fails and is accordingly, dismissed. However, there shall be no order as to cost.

31.01.2024

gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

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A Pre-delivery order made in
W.P.No.14585 of 2011

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