



W.A.No.2128 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

W.A.No.2128 of 2021

and C.M.P.No.13449 of 2021

The State of Tamil Nadu,
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai 600 009.

.. Appellant

Vs

1. Rukumani Balasingh
2. The Senior Accounts Officer/PEN-8,
O/o The Principal Accountant General,
No.361, Anna Salai, Teynampet,
Chennai 600 018.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters patent against the order dated 28.08.2019 passed in W.P.No.17222 of 2019 on the file of this Court.

For the Appellant

: Mrs.M.Sneha
Special Counsel



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For the Respondents : Mr.T.K.S.Bharathy
for R-1
: Mr.S.Magesh
for Mr.V.Vijayshankar
for R-2

JUDGMENT

(Judgment of the Court was made by
S.M.SUBRAMANIAM, J.)

The State has preferred this writ appeal.

2. The husband of the first respondent was appointed as a Medical Officer in the Health and Family Welfare Department. Late Dr.R.Balasingh, husband of the first respondent, unfortunately expired on 25.06.1981 due to illness while he was in Government service. Admittedly, late Dr.R.Balasingh had not completed even one year of service as Medical Officer in Government services. The first respondent, widow of the late Government servant, filed the writ petition in the year 2019 challenging the rejection order and for a direction to sanction family pension to the first respondent from the date of the death of her husband on 25.06.1981.

3. The learned special counsel, Mrs.Sneha, would submit that the husband of the first respondent had not even completed one year



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of service as Medical Officer. No doubt, the Government issued G.O.Ms. No.967, Finance (Pension) Department, dated 29.08.1989 amending the Tamil Nadu Pension Rules, 1978 and granting family pension to the spouse of the deceased employee even when the death occurs prior to the completion of service for one year. However, the said G.O. was taken effect from the date of the order and therefore, the Government Order amending the Pension Rules would be applied in respect of death cases occurring on or after the date of G.O.Ms.No.967, dated 29.08.1989.

4. Rule 49 of the Tamil Nadu Pension Rules provides family pension. The rule was amended and the said amendment was included by way of a proviso to clause (2) and added by G.O.Ms.No.447, Finance (Pension) Department, dated 07.06.1995. The said amendment reads as under:

"49. Family Pension - (1) ...

(2) ...

Provided that family pension shall be payable to the family of a Government servant who dies before the completion of one year continuous service, if he was declared fit for Government service by the appropriate medical authority prescribed under the relevant rules immediately prior to his appointment."



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That rule was amended and the benefit of family pension was granted to the spouse of the deceased employee who had not completed one year of service, but was declared fit by the appropriate medical authority. The said benefit cannot be extended to the first respondent since her husband died on 25.06.1981 prior to the date of amendment issued with effect from 29.08.1989.

5. The learned counsel for the first respondent would rely on the orders passed by a learned Single Judge in ***Radha Bai and Another vs. State of Tamil Nadu and Another (W.P.No.12437 of 2007 dated 03.12.2014)***, reported in ***2016 (1) CTC 768***. It is brought to the notice of this Court that several such orders are passed and implemented by the Departments. We have no hesitation in arriving at a conclusion that such orders granting family pension which are all running counter to Rule 49 of the Tamil Nadu Pension Rules cannot be followed as a precedent for extending the benefit of family pension. Although such orders denuded to lose their status as precedent, relying such orders which were passed in contravention to the amendment issued in G.O.Ms.No.447, Finance (Pension)



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Department, dated 07.06.1995, may not be proper.

6. In view of the facts and circumstances, we make it clear that the amendment granting family pension under Rule 49 was notified by the Government in G.O.Ms.447, Finance (Pension) Department, dated 07.06.1995 with effect from 29.08.1989 and all those cases where the death of Government servants who have not completed one year of service for grant of family pension is to be considered with reference to the above G.O.

With these observations, the impugned order dated 28.08.2019 passed in W.P.No.17222 of 2019 is set aside. The writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) (C.K., J.)
26.06.2024

Index : Yes
NC : Yes
sra



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S.M.SUBRAMANIAM, J.
AND
C.KUMARAPPAN,J.

(sra)

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