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W.P.No.15702 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

CORAM:

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

W.P.No.15702 of 2023
and W.M.P.Nos.15185 & 15186 of 2023

1.The Union of India,
Rep. by the Secretary,
Railway Board,
Rail Bhavan,
New Delhi – 110 001.

2.The General Manager,
Southern Railway,
Park Town, Chennai – 600 003.

3.The Divisional Personnel Officer,
Southern Railway,
Tiruchirappalli Division,
Trichy – 620 001.

4.The Senior Divisional Accounts Officer,
Southern Railway,
Tiruchirappalli Division,
Trichy – 620 001.

... Petitioners

Vs.

1.R.Jayalakshmi

2.The Registrar,



W.P.No.15702 of 2023

Central Administrative Tribunal,
Chennai Bench,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to order dated 04.08.2022 passed in Original Application No.584 of 2020 on the file of the 2nd respondent and quash the same.

For Petitioners : Mr.A.R.Sakthivel

For R1 : Mr.Karthik Rajan

For R2 : Tribunal

ORDER

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

Under assail is the order dated 04.08.2022 passed in O.A.No.584 of 2022.

2. The claim of the first respondent seeking family pension was allowed by the Central Administrative Tribunal, which resulted in filing of the present Writ Petition.

3. The facts that are not in dispute between the parties are that the



W.P.No.15702 of 2023

father of the first respondent namely K.Rajangam was employed in Southern Railway and died in the year 1975. After the death of the employee, his wife/mother of the first respondent received family pension and she died in the year 2012. After the death of the wife of the employee, the first respondent who is the daughter of the employee filed an application seeking family pension on the ground that she was a divorcee, in the year 2014. An order of dissolution of marriage was passed by the Competent Court on 10.12.2014.

4. The writ petitioners rejected the claim of the first respondent for grant of family pension based on the Office Memorandum dated 19.07.2017 on the ground that the divorced daughter, fulfilling the conditions regarding eligibility for family pension alone will be considered. In the present case, the decree of divorce was obtained by the first respondent from her husband in the year 2014 after a lapse of 2 years from the date of death of the family pensioner. Therefore, she is not eligible for family pension.

5. The Central Administrative Tribunal considered the issues and made a finding that the case of the first respondent is to be considered with



W.P.No.15702 of 2023

reference to the Office Memorandum dated 19.07.2017. The reason stated by the Tribunal in the order impugned is that the similar cases were considered on earlier occasions and more specifically, the Central Administrative Tribunal, Chennai Bench, vide its order dated 29.01.2019 in O.A.No.588 of 2017, directed the respondents to consider the case by relaxing the provisions of DoPPW's Office Memorandum dated 19.07.2017 for granting family pension to the applicant therein. In yet another case in O.A.No.467 of 2017 also the Tribunal considered the similar issue and granted the relief.

6. Mr.A.R.Sakthivel, learned counsel appearing on behalf of the writ petitioners would submit that the consideration extended by the Tribunal on earlier occasions were in violation of the policy for grant of family pension to the divorcees. Therefore, the similar decision followed in the present case deserves to be set aside. He would further submit that those decisions which are all not supported by Statute, Rules or Office Memorandums, cannot be extended in perpetuity for the purpose of granting family pension. Therefore, the Department has filed the present Writ Petition challenging the aforesaid order of the Tribunal. The learned counsel would further submit



W.P.No.15702 of 2023

that the Office Memorandum dated 19.07.2017, unambiguously stipulates that at the time of divorce, either the pensioner or the family pensioner must be alive and the daughter must be dependent during that relevant point of time. However, in the present case, the family pensioner died in the year 2012 and admittedly, the first respondent obtained decree of divorce from her husband only in the year 2014. Therefore, she is not eligible under the scheme for family pension extended to the divorcees. Thus, the present Writ Petition is to be considered.

7. Mr.Karthik Rajan, learned counsel appearing for the first respondent would oppose by stating that the Division Bench of the Madras High Court considered similar issue in W.P.No.9460 of 2019 dated 13.08.2019. The appeal filed by the Southern Railway was dismissed, confirming the order of the Tribunal, wherein a direction was issued to consider the case of the divorcee for grant of family pension. The learned counsel also relied on the judgment of the Bombay High Court in the case of **'Union of India & another Vs. Usha Eknath Patil'** reported in **'2018 (4) Mh.L.J. 450'**, wherein the Bombay High Court also had taken a similar view by relying on the Office Memorandum dated 19.07.2017 and granted



W.P.No.15702 of 2023

WEB COPY

8. Heard the arguments as advanced between the respective learned counsels appearing on behalf of the parties to the lis on hand.

9. Pension is the deferred portion of the services already rendered by an employee. It is not a bounty as ruled by the Constitutional Bench in the case of '*D.S. Nakara & others Vs. Union of India*' reported in '*1983 AIR 130*'. However, the eligibility for pension is to be considered strictly in accordance with the Rules in force. Courts cannot expand the scope of the eligibility criteria contemplated under the pension scheme, as the scheme itself is part of service benefits to an employee and to his family with reference to the services rendered by him in the Department. Therefore, exercise of discretion expanding eligibility for grant of pension or family pension is absolutely impermissible. Though scheme being a welfare scheme, relaxation or expansion of conditions of the scheme or eligibility would result in financial loss to the State Exchequer and will open Pandora's box whereby many such persons will claim pension or family pension in an unguided manner. Schemes like pension scheme ought to be interpreted



W.P.No.15702 of 2023

strictly and the terms and conditions stipulated regarding eligibility, are to be complied with scrupulously.

10. Extending the family pension scheme to the divorcee, who is a dependant of pensioner or family pensioner itself is a concession granted by the Government. Such concession cannot be claimed as an absolute right but to be claimed only in accordance with the terms and conditions stipulated under the scheme.

11. In this context, it is relevant to consider the eligibility criteria fixed by the Government of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare in its Office Memorandum dated 19.07.2017, in paragraph 4, which states that *“It was clarified that a daughter if eligible, as explained in the preceding paragraph, may be granted family pension provided she fulfills all eligibility conditions at the time of death/ineligibility of her parents and still on the date her turn to receive family pension comes. Accordingly, divorced daughters who fulfill other conditions are eligible for family pension if a decree of divorce had been issued by the competent court during the lift time of at least one of*



W.P.No.15702 of 2023

the parents.” During the life time of one of the parents would indicate either the pensioner or the family pensioner. Further, paragraph 6 of the aforesaid Office Memorandum dated 19.07.2017 states that “The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to grant family pension to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the life-time of the employee/pensioner or his/her spouse but divorce took place after their death - provided the claimant fulfills all other conditions for grant of family pension under Rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce. Therefore, the family pension scheme was extended to the divorced daughter of a pensioner or a family pensioner on fulfillment of the conditions stipulated under the Railway Pension Rules and the consequential Office Memorandum issued by the Government of India.

12. The undisputed fact in the present case is that the pensioner died in the year 1975, the family pensioner died in the year 2012 and the first respondent secured a decree of divorce from her husband in the year 2014



W.P.No.15702 of 2023

and on receipt of the decree of divorce, an application was filed seeking family pension under the extended scheme. Since the application itself was submitted after a lapse of 2 years from the date of death of the family pensioner, the decision of the writ petitioners/authority is in consonance with the terms and conditions of the scheme and therefore, we do not find any infirmity.

13. Certain discretionary orders of the Courts cannot be followed as a precedent, which could violate the very objectives of the scheme itself. The power of discretion is to be exercised judiciously only to mitigate certain exceptional circumstances, where the Court found that there is gross injustice. If the power of discretion is exercised in a routine manner, it would result in miscarriage of justice. Misplaced sympathy in financial matters in pension schemes would result in encouraging the ineligible persons to make claim against the Government for grant of pension, family pension and all other monetary benefits etc. Therefore, the discretionary orders passed in certain cases by the Courts ought to be confined with reference to the facts of that particular case and the Courts are not bound to follow the same as precedent. Therefore, the judgments relied on by the



W.P.No.15702 of 2023

learned counsel for the first respondent are of no avail since those judgments are discretionary orders in our considered opinion, which cannot be construed as precedent.

14. In view of the above discussion, we find that the reasons stated by the Central Administrative Tribunal in its impugned order, are neither candid nor convincing but running counter to the terms and conditions of the family pension scheme itself. Thus, the said order needs to be set aside.

15. For the foregoing reasons, the Writ Petition stands allowed and the impugned order dated 04.08.2022 passed in O.A.No.584 of 2022 is set aside. No costs. Connected miscellaneous petitions are closed.

(S.M.S, J.)

(M.J.R, J.)

05.12.2024

Index: Yes/No

Speaking order/Non-speaking order

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W.P.No.15702 of 2023

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To

The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai.



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W.P.No.15702 of 2023

S.M.SUBRAMANIAM, J.
and
M.JOTHIRAMAN, J.

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W.P.No.15702 of 2023

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