IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17769 of 2023
and W.M.P.No.16873 of 2023

C.Karpagam ...Petitioner

-Vs -

1. The Accountant General (A&E)
Teynampet,
Chennai – 600 018.

2. The District Sidha Medical Officer,
Medical College Hospital Campus,
Thoothukudi – 628 003.

3. The Director of Indian Medicine
and Homeopathy,
Arumbakkam,
Chennai – 600 106. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Ceritiorarified Mandamus, calling for the entire records pertaining to the impugned order dated 02.11.2021 in PPO No.F0825432 of the first respondent, quash the same and consequently direct the first respondent to sanction family pending to the petitioner – mother with effect from 11.03.2014, the date of death of the government servant Dr.C.Muralidharan, with 12% interest till the date of payment of arrears as per the final order dated 24.11.2020 passed by the III Additional District Court, Tirunelveli in S.O.P.No.185/2015 .

For Petitioner : Dr.T.Ramasamy
For Mr.A.S.Palanisamy

For Respondents : Mr.M.Brindan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the order dated 02.11.2021 passed by the first respondent, thereby denied the claim of the petitioner claiming family pension of her deceased son.

2. The petitioner is a widowed mother of late Dr.C.Muralidharan, who died while he was in service as Assistant Medical Officer (Siddha), Primary Health Centre, Kayamozhi, Thoothukudi District. While he was alive, the petitioner's son got married one Swarnalatha. Due to misunderstanding between them, they got separated and the petitioner's son filed divorce petition in H.M.O.P.No.117 of 2004 and the same was decreed by the judgment and decree dated 22.03.2006 on the file of the I Additional Subordinate Court, Tirunelveli. Thereafter, the petitioner's son cancelled the

nomination which was already entered in favour of his wife and after divorce he nominated the petitioner as his nominee on 14.09.2006 in Form-B in his service book in order to receive family pension and other terminal benefits.

3. In the meanwhile, as against the judgment and decree, the petitioner's daugher-in-law filed appeal in C.M.A.No.54 of 2006 on the file of the learned I Additional Subordinate Judge, Tirunelveli and same was allowed by an order dated 05.02.2010 and set aside the judgment and decree of divorce. Aggrieved by the same, the petitioner's son preferred a second appeal before the Madurai Bench of this Court in C.M.S.A(MD).No.42 of 2010. Unfortunately, while pending the said appeal, the petitioner's son died and as such the appeal was dismissed as abated.

4. While the petitioner's son was alive, he was afflicted with blood cancer and the petitioner being his mother, had taken care of his son and had spent her entire savings for his medical expenses. Though the petitioner's name was nominated by her son, she was not settled with

any benefits of her deceased son. Therefore, the petitioner was constrained to file special original petition in S.O.P.No.185 of 2015, on the file of the learned III Additional District Judge, Tirunelveli, for succession certificate. It was duly contested by her daugher-in-law, grandson and two daughters of the petitioner. In fact, her son executed Will in favour of the petitioner dated 21.10.2013, in order to receive retirement benefits including family pension. The petitioner succeeded in that petition and she was granted succession certificate, thereby the petitioner is entitled to receive all terminal benefits available to her son including family pension.

5. Accordingly, the petitioner submitted an application for sanction of family pension and other benefits. However, the petitioner was settled with all benefits except the family pension. Her claim for family pension was denied by the impugned order dated 02.11.2021, on the ground that succession certificate does not part take the character of estate and the mother of the deceased employee should furnish dependency certificate. Hence, the petitioner filed this writ petition with the above said prayer.

6. On perusal of the counter filed by the first respondent revealed that in S.O.P.No.185 of 2015, no positive direction issued while granting succession certificate in respect of family pension. As per the order, the petitioner is entitled to receive LIC policy matured amount and the death-cum-retiring gratuity pension amount. Therefore, the succession certificate issued in favour of the petitioner is no longer res integra and stood determined authoritatively by the Hon'ble Supreme Court of India which held that family pension granted to a widow in her capacity as widow, after death of an employee, could never form part of the estate of the deceased which could be disposed of by testamentary disposition.

7. The rules under Tamil Nadu Pension Rules and the General Provident Fund (Tamil Nadu) Rules provide for filing of nomination by an employee during his lifetime to receive the death-cum-retiring gratuity/general provident fund, in the event of his death, there is no such provision under Tamil Nadu Pension Rules to nominate a person to receive family pension. The rule has designated the persons to receive

family pension in respect of a deceased employee, in a prescribed order, as to their survival or fulfilment of the stipulated conditions. Thus an employee cannot nominate any person to receive family pension as there is no rule provision for the same under Tamil Nadu Pension Rules. Any such nomination made is not valid.

8. As per the provisions of Rule 49(13)(b) of the Tamil Nadu Pension Rules, family in relation to a government servant means, inter alia, father and mother in the case of unmarried government servants. As per G.O.Ms.No.327 Finance (Pension) Department dated 30.08.2001, family pension shall be sanctioned to the parents of a deceased government servant, subject to the conditions that the parents were wholly dependent on the government servant when he/she was alive, the government servant has not left behind a widow, eligible son or daughter or a widowed/divorced daughter and the income criteria in respect of the parents will be Rs.2550/- per month and enhanced to Rs.7850/- per month subsequently in G.O.337 Finance (pay cell) Department dated 14.11.2017. Therefore, the petitioner is being the mother of the deceased son is not entitled for the family pension.

9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

10. Admittedly, the petitioner is taking care of his son while he was alive. She has no other income. In fact, when his son was in death bed, the petitioner was taken care of her son and also spent huge money. It is evident from the order dated 24.11.2020, in S.O.P.No.185 of 2015 passed by the learned III Additional District Judge, Thirunelveli. Except the petitioner, no other family members are allowed to claim family pension from the deceased son of the petitioner herein. The petitioner also has a grand son and he attained majority and he is also earning.

11. That apart, while the petitioner's son was alive, he categorically nominated the petitioner as his nominee to receive death-cum-retiring gratuity, general provident fund and family pension in Form-B. In fact, originally the petitioner's son nominated his wife as nominee to receive all these benefits. However, after obtaining divorce decree, the petitioner was nominated by her son to receive all the benefits.

12. In this regard, it is relevant to extract the Rule 49(13)(b)(iii) of the Tamil Nadu Pension Rules, as follows :-

> *"49. Family Pension :-*
>
> *13 (b) family in relation to a government servant means:-*
>
> *(i)........*
>
> *(ii).....*
>
> *(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."*

Thus it is clear that family pension shall be granted to the mother in case of an unmarried government servant subject to conditions that such person dependent of the deceased government servant. Further, the petitioner name was nominated as nominee and also she was taking care of her son while her son was alive.

13. It is relevant to relay upon the judgment of this Court reported in ***2014 Writ L.R.505*** in the case of ***M.Premavathy Vs. B.Prakash and ors,*** in which this Court held as follows :-

"13. The said nominations to receive the benefits having been made by the deceased Government Servant, who is none other than the petitioner's daughter, and the first respondent having not recognised or accepted the marriage with the deceased S.Kanchana, he has no right to oppose the payment of the said benefits to the petitioner, who was legally nominated to receive the same, in case of demise of the Government Servant viz., S.Kanchana. A husband of a deceased female Government Servant, who was not willing to accept his wife during her lifetime, has no moral right to oppose the payment of terminal benefits to other member of the deceased female Government Servant's family. Legally also the first respondent is not entitled to object the payment to the petitioner, as the deceased S.Kanchana had nominated her mother, the petitioner, and the same was not changed till her death on 25.1.2002.

14. The second respondent ought to have verified the above rule position and decided the matter by rejecting the alleged objection said to have been filed by the first respondent, opposing payment ofterminal benefits to the petitioner. By the said inaction of the second respondent in deciding the issue, petitioner who is a widow and who lost her daughter, was unable to get the terminal benefits such as GPF and Family Benefit Fund from January, 2002. Only a paltry sum of

Rs.5,000/- was paid out of the Family Benefit Fund and the balance of Rs.95,000/- is due from 25.1.2002.

15. Similarly, GPF to the tune of Rs.86,000/- is also payable from 25.1.2002. It is not in dispute that as per Rule 13, GPF amount will fetch interest at the rate fixed by the Government from time to time. Similarly, for the belated payment of Family Benefit Fund to the tune of Rs.95,000/- which was payable on 25.1.2002, the second respondent is bound to pay interest at the rate of 9% per annum. Due to the inaction of the second respondent in sanctioning the amount viz., GPF and Family Benefit Fund, the petitioner was compelled tofile writ petition on 12.12.2011. Even in the writ petition, the second respondent, who alone opposed the writ petition, has chosen to file counter affidavit only on 24.2.2014. Considering the above circumstances, namely for forcing the petitioner to approach this Court and made her to wait for three years, the second respondent is bound to pay cost of this writ petition, which is quantified at Rs.10,000/-.

16. In fine, the writ petition is allowed with the following directions:

(i) The second respondent shall sanction and pay GPF amount of Rs.86,000/- in favour of the petitioner as per the nomination made by her deceased daughter viz., S.Kanchana, with accrued interest as on the date of

payment.

(ii) The second respondent shall also pay the balance Family Benefit Fund of Rs.95,000/- with 9% interest per annum from 25.1.2002.

(iii) Petitioner is entitled to get any other eligible terminal benefits.

(iv) Petitioner is also entitled to get cost of this writ proceeding, which is quantified at Rs.10,000/-, payable by the second respondent.

(v) The above amounts are directed to be paid within a period of two weeks from the date of receipt of copy of this order."

Therefore, the petitioner is the nominee of her deceased son and she is entitled to receive all benefits including family pension. In view of the above discussion, the impugned order cannot be sustained and liable to be quashed.

14. Accordingly, the order dated 02.11.2021 passed by the first respondent in PPO No.F0825432, is hereby quashed. The first respondent is directed to sanction family pension to the petitioner with effect from 11.03.2014 viz., from the date of death of her son viz., Dr.C.Muralidharan and disburse arrears of pension with applicable

interest within a period of eight weeks from the date of receipt of a copy of this order and continue to pay monthly pension till her life time.

15. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no orders as to costs.

19.03.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts

To

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G.K.ILANTHIRAIYAN. J,
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