



W.P.(MD).No.3636 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.3636 of 2024

and

W.M.P(MD) No.3576 of 2024

Malarvizhi

... Petitioner

Vs.

1. The Accountant General of Tamil Nadu,
Office of the Accountant General,
No.361, Anna Salai,
Teynampet,
Chennai – 600 018.

2. The District Educational Officer,
Madurai, Tallakulam – 625 002,
Madurai District.

3. The Secretary,
Sethupathi Higher Secondary School,
Madurai – 625 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent bearing Na.Ka.No.4624/A3/2023, dated 10.11.2023 and quash the same with a



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consequential direction directing the second respondent to consider the petitioner as a destitute women who is eligible to the family pension of the deceased father late V.A.Subramanian as per G.O.(Ms) No.325, Finance (Pension) Department, dated 28.11.2011 and sanction family pension to the petitioner.

For Petitioner : Mr.K.Porkodi
for M/s.Polax Legal Solutions

For R1 : Mr.P.Gunasekaran

For R2 : Mr.J.Ashok
Additional Government Pleader

For R3 : Mr.V.Vijay Sethupathy

ORDER

The instant Writ Petition has been filed by a divorced daughter of the pensioner seeking to quash the order of the second respondent herein, wherein her request for payment of family pension has been rejected on the ground that the petitioner has not got divorce through Court.

2. According to the learned counsel appearing for the writ petitioner, the writ petitioner is a 100% physically challenged person. She was given in marriage to her maternal uncle on 27.06.1988 and through the said wedlock, she is having two sons. In the year 1994, the petitioner was deserted by her



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husband and she was forced to file M.C.No.21 of 2003 before the Family Court, Madurai and she was receiving maintenance of Rs.1,000/- per month for herself and Rs.250/- for their two minor children.

3. It is the further contention on the side of the petitioner that her husband has completely deserted her in the year 1994 and she was under the care and custody of her father.

4. Her father, who was working as a Physical Education Teacher in the third respondent School attained superannuation on 01.09.1993 and he was receiving pension till his death on 31.03.2021. The petitioner's mother had predeceased her father on 17.07.2013 itself. So, according to the petitioner, she was wholly depending upon the pension received by her father during his life time. The petitioner relies upon G.O(Ms) No.325, Finance (Pension) Department, dated 28.11.2011 and under the category of “divorced daughter”, she is eligible to receive family pension.

5. Seeking family pension, the petitioner has sent a representation on 24.08.2022 and the present impugned order has been passed by the second



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respondent directing the petitioner to submit a legal divorce order as per G.O(Ms) No.325, Finance (Pension) Department, dated 28.11.2011 and No Remarried Certificate from the concerned Tahsildar. Challenging the said order, the present writ petition has been filed.

6. According to the learned counsel appearing for the writ petitioner, she is 100% physically challenged person and her husband has completely deserted her from the year 1994 onwards. Therefore, deserted women should be treated on par with a divorced women. The learned counsel appearing for the writ petitioner has also relied upon judgment of this Court in W.P(MD) No.21964 of 2023, dated 02.11.2023 in support of her contention. She prayed for quashing the order passed by the authorities and to confer the family pension upon her.

7. Per contra, the learned counsel appearing for the respondents contended that the petitioner has so far not obtained any divorce through Court and not established the customary divorce. That apart, though the petitioner is a physically challenged person, she has been married to her maternal uncle and her sons are also major. In such circumstances, the



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petitioner cannot rely upon G.O.(Ms)No.325, Finance (Pension) Department, dated 28.11.2011.

8. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

9. A perusal of G.O.(Ms)No.325, Finance (Pension) Department, dated 28.11.2011, reveals that the spouse or a divorced daughter is eligible to receive family pension until her remarriage. It could also be seen from the records that the petitioner has not obtained any divorce through Court or has established her customary divorce through Court. As per Rule 49 (6) (iii) of Tamil Nadu Pension Rules, 1978, physically challenged person is also eligible to receive family pension, provided they are depending upon the Government servant. However, the present petitioner is married and she has not got divorced and her two sons are also major. The order of this Court in W.P.(MD)No.21964 of 2023, dated 02.11.2023 has been stayed by the Hon'ble Division Bench.



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10. In such circumstances, this Court is of the considered opinion that when the petitioner has not established her divorce or her dependency during the life time of the pensioner, the question of considering the request of the petitioner for payment of family pension is not in accordance with the Tamil Nadu Pension Rule, 1978.

11. In view of the above said facts, there are no merits in the writ petition. Accordingly this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

28.08.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR,J.

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