BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.04.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.1142 of 2018

S.A.Saran (Minor)
S/o.M.Suresh ... Appellant/Petitioner

[Minor appellant represented by his grandfather Mr.T.Nellakanta Pillai]

Vs.

1.The Secretary to the Government of Tamil Nadu,
Transport Department,
Fort St. George, Chennai.

2.The Assistant General Manager,
Tamil Nadu State Transport Corporation (TNSTC)
(Madurai Division), Ranithottam Depot,
Nagercoil. ... Respondents 1 & 2/
Respondents

3.The Administrator,
Tamil Nadu State Transport Corporation,

Pension Fund Trust,
Pallavan Salai, Chennai. ... 3rd Respondent

[3rd respondent – suo motu impleaded vide Court order dated 30.11.2021 made in W.A.(MD) No.1142 of 2018]

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 09.01.2018 passed in W.P.(MD) No.12141 of 2010.

For Appellant	:	Mr.C.K.M.Appaji
For R1	:	Mr.V.Muthuvijayan Special Government Pleader
For R2	:	Mr.R.Rajamohan Standing Counsel
For R3	:	Mr.S.C.Herold Singh Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

The short issue involved in this case is whether the appellant is entitled to claim family pension. The learned Single Judge has accepted the interpretation of the Department, which says that a minor child is not entitled to family pension when once the mother or father re-marries.

2. The brief facts which are relevant for the purpose are that the petitioner's father Suresh was an employee of the State Transport Corporation and he died. In terms of Rule 20(1) of the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, the widow is entitled to family pension. In the instant case, the widow of Suresh (mother of the appellant) has re-married. The issue is whether the child is entitled to family pension.

3. This issue had come up before this Court earlier in ***Managing Director Vs Minor R.Soundara Raman*** [W.A.(MD) No.384 of 2016, dated 29.04.2016] and in ***Minor R.Neha Vs Administrator, TNSTC Employees Pension Fund Trust*** [W.A.(MD) No.695 of 2010, dated 02.09.2010]. In ***Soundara Raman's*** case, a Division Bench of this Court has held that the minor, indeed, would be entitled to family pension and its line of reasoning was built on Article 14 and Article 21 of the Constitution. However, this judgment of the Division Bench delivered on 29.04.2016, does not appeared to have been placed before the other Division Bench in ***Neha's*** case. In ***Neha's*** case, the Court would make a strict construction of the relevant Pension Rules and decide in favour of the Department.

4. The relevant Rule reads as below:

> ***“20. Benefits to the Family***
>
> *(1) In the event of death of an employee while in service after having rendered continuous service of 7 years or more, the rate of family pension payable shall be equal to 50% of the last pay drawn from the date of following the date of death of the employee for a period of 7 years or period up to the date on which deceased employee would have attained the age of 65 years, had he survived, whichever is less. For the balance period, the widow/ widower is eligible for pension at the rate of 30% of basic pay last drawn till the lifetime of the spouse or her remarriage, whichever is earlier.”*
>
> *2. Family Pension*
>
> *a) Family pension shall be admissible to the family of the member, who has rendered less than 7 years but not less than one year of service from the date following the date of death of the member while in service at the rate of 30% of basic pay last drawn and the contribution for the period has been paid into the Fund, till the lifetime of the spouse (widow/widower)*

Exception: In respect of employees who has rendered less than one year of service, the family pension may also be allowed to the family of a member who die in harness, provided that the deceased employee immediately prior to his appointment was examined and declared fit for employment.

b) After the death of the spouse, the first child is eligible for family pension at the rate of 30% up to the period till he or she attains the age of 25; in the case of male child, family pension is admissible till he attains the age of 25 years or getting employment, whichever is earlier; and in the case of female child, family pension is eligible till she attains the age of 25 or the date of her marriage whichever is earlier.

c) if the first child becomes ineligible for family pension, the next child will become eligible for family pension and the subsequent children are eligible for family pension in the chronological order, as indicated in clause 20(2)(b), but the Family Pension is eligible only for one child at a time.

d) if the eligible child is mentally retarded or physically handicapped, he or she is eligible for family pension till death.

e) the minimum family pension payable shall be Rs.1275/- or the amount that may be revised from time to time.

f) If a member is not married, he can nominate his father / mother to receive family pension, as in the case of spouse, and they are eligible for family pension till their lifetime. If a member who is not having a family at the time of death can nominate a person to receive the family pension."

5. If this Rule is carefully scanned and analysed, it deals with two principal situations, which emerge as below:

(a) Under Rule 20(1), widow or widower of a Transport Corporation employee is eligible for pension at the rate of basic pay last drawn by the deceased employee during his or her life time or till his or her re-marriage, whichever is earlier.

(b) Rule 20(2)(b) states that on the death of the widow or widower as indicated above, the first child is eligible to family pension. At the same time, if the child is a male, he will be entitled to receive family pension till he attains the age of 25 or obtaining an employment, whichever is earlier; and if the child is a female, till she attains the age of 25 or till her marriage, whichever is earlier.

6. If the scheme of Pension Rules is scanned for greater detail, as per Rule 2(s), '*family*' is defined to mean *inter alia* wife in the case of a male member of the Employees' Pension Fund; husband in the case of a female member of the Employee's Pension Fund; sons and daughters of a member of the Employees' Pension Fund: And by definition, an adopted child is also equated to a biological child of the deceased employee. This implies, a child, be a male or female of a deceased employee, is very much recognised as an integral to the family of the employee. The family pension is therefore, given to the mother, since a minor child is not expected to take care of his or her interest. Could it be derived from the scheme of the Pension Rules that on the re-marriage of a widow or widower, as the case may be, the child should necessarily be denied the family pension? On this, the Pension Rules are silent.

7. Now, if the line of reasoning based on the interpretation of the Pension Rules as seen in ***Neha's*** case is to be accepted, then it would imply that to get family pension, a widow or widower of a deceased employee must first forego his or her right to re-marry. Right to re-marry is a personal right and hence, there is a logic in declaring that the spouse of the deceased government servant who chooses to remarry will be ineligible to receive family pension. However, what does those poor children of the employee do?

8. As already indicated, a son or a daughter of a deceased employee is not alien to the scheme of Pension Rules, and necessarily they cannot be driven to destitution merely because their mother or father chose to exercise their personal right to re-marry, more so, when there is nothing explicit in the provision hereinabove extracted to indicate that the children should be denied of their succour to meet their essential necessities. Being a beneficial provision, it is imperative that this Court constructs the Rules in a manner which advances the objective behind the grant of family pension. It must be underscored that it is not a charity that the employer is giving, but it is part of

conditions of service which gives every employee a degree of comfort and security that his family will not be in the streets, if he or she dies untimely.

9. For the reasons stated above, this Writ Appeal is allowed, and the order of the learned Single Judge dated 09.01.2018 in W.P.(MD) No.12141 of 2010 is set aside. No costs.

(N.S.S., J.) **(P.V.M., J.)**
23.04.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR

To

The Secretary to Government,
State of Tamil Nadu,
Transport Department,
Fort St. George, Chennai.

N. SESHASAYEE, J.
and
P.VADAMALAI, J.

ABR

W.A.(MD) No.1142 of 2018

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