



W.P.(MD)No.23619 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.23619 of 2023
and
W.M.P.(MD).No.19798 of 2023

Gopalakrishnan

... Petitioner

Vs.

- 1.The Additional Chief Secretary to Government,
Finance (Pension) Department,
Chennai – 600 009.
- 2.The Accountant General,
(Accounts and Entitlements),
Office of the Accountant General,
(Accounts and Entitlements),
Chennai – 18.
- 3.The Commissioner for Welfare of the Differently Abled/
State Commissioner for Persons with Disabilities,
No.5, KamarajarSalai,
Lady Willington College,
Chennai – 600 005.
- 4.The District Educational Officer,
Department of Secondary Education,
Melur,
Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the impugned order in P25/PT No.9185/PPO NO T85271 dated 23.02.2023 passed by the second Respondent and quash the same and consequently to direct the second Respondent to pay family pension for the Petitioner within the time limit as fixed by this Court.

For Petitioner : Mr.I.Romeo Roy Alfred

For R-1, R-3 : Mr.J.Ashok
and R-4 Additional Government Pleader

For R-2 : Ms.S.Mahalakshmi

ORDER

Heard Mr.I.Romeo Roy Alfred, learned counsel for the petitioner, Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents 1, 3 and 4 and Ms.S.Mahalakshmi, learned counsel for the second respondent.

2. This Writ Petition has been filed seeking to quash the order dated 23.02.2023 passed by the second respondent and with a consequential direction to the second respondent to pay family pension for the petitioner.



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3. The petitioner who is claimed to be the disabled dependent son of his deceased mother viz., Padmavathy, who was working as Clerk at Thiyagarajar Higher Secondary School, Madurai had challenged the rejection order of the family pension requested by him.

4. The relevant portion of the impugned order dated 23.02.2023 passed by the second respondent is extracted hereunder:

For authorising the family pension in respect of the disabled son Shri.Gopalakrishnan.L you are required as per G.O.158 Fin (pen) dated 15.03.88, to furnish a medical certificate in original/Attested issued by a Medical Officer not below the rank of a Senior Civil Surgeon specialized in the same discipline as that of disability, stating the

- 1) Nature of disability,*
- 2) Period of manifestation of Handicap and*
- 3) Status to earn livelihood*

The above mentioned Medical Certificate has to be duly countersigned by the departmental authority and forwarded to our office for further action.

Income certificate from the revenue authority not below the rank of Tahsildar including income from all



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sources like agricultural, rental income etc., may also be furnished.

In the medical certificate issued by the Chairman of the Regional Medical Board, Govt Rajaji Hospital, Madurai is stated that 'Patient can ambulate independently wearing a caliper for left lower limb, hence cannot be considered as incapacitated'. Hence only on receipt of the Medical certificate in the prescribed form incorporating all the conditions specified above along with the income certificate, this office could ascertain the eligibility of the applicant to receive the family pension.

5. As per the Tamil Nadu Pension Rules 49(6)(4), the sanctioning authority has to satisfy himself that the physically disabled person is suffering from disability of such a nature which prevents him from earning his/her own livelihood and his disability be evidenced by the certificate from Medical Officer not below the rank of a Civil Surgeon. The medical opinion as referred in the impugned order would only state that the petitioner can ambulate independently wearing a caliper for left lower limb. So in the opinion of the prescribed medical authority, the petitioner's case cannot be considered as eligible for family pension. However, the learned counsel for the petitioner claims that the sanctioning authority has to satisfy himself not only with regard



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to the incapacity, but also with regard to the inability of the petitioner to earn for his livelihood. He would further submit that in the certificate issued by the Deputy Tahsildar, the Tahsildar has stated that the petitioner is suffering without any income due to his disability.

6. But this cannot be presumed from the said certificate whether the petitioner was incapable of making any earning due to his disability or the petitioner did not opt to make out any income. So these ground realities has to be re-checked by the second respondent and in order to make it a part of the order for either allowing or not allowing pension as claimed by the petitioner. Though the impugned order has stated that the petitioner cannot be considered as an incapacitated person, it does not state whether the present disablement would make him unfit to make out any earning. Only on this limited aspect, I feel the impugned order has to be set aside.

7. In the result, the Writ Petition is allowed and the impugned order dated 23.02.2023 is set aside and second respondent is directed to reconsider the request of the petitioner in the light of the above observation and pass order afresh within a period of eight weeks from the date of receipt of a copy of this order.



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Consequently, connected miscellaneous petition is closed.

02.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

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R.N.MANJULA, J.

Nsr

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