BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2024
(Reserved on 26.09.2024)

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.A(MD)Nos.250 and 65 of 2023
and
CMP(MD)Nos.3056 and 749 of 2023

W.A(MD)No.250 of 2023
The Treasury Officer,
District Treasury,
Pudukottai-622001. ... Appellant

vs.

1. S.Jeevalakshmi

2. The Principal Accountant General (A&E),
Office of the Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018.

3.The Senior Accounts Officer,
Office of the Principal Accountant General (A&E),
(Accountants & Entitlements), Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018. ... Respondents

Prayer : Appeal filed under Clause 15 of Letters Patent, against the order made in W.P(MD)No.800 of 2020 dated 14.07.2022.

For Appellant : Mr.S.R.A.Ramachandran
Additional Government Pleader
For R1 : Mr.H.Mohammed Imran for
M/s.Ajmal Associates
For R2 & R3 : Mr.P.Gunasekaran

W.A(MD)No.65 of 2023

1. The Principal Accountant General (A&E),
O/o The Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai-600 018.

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For Appellants : Mr.P.Gunasekaran
For R1 : Mr.H.Mohammed Imran for
M/s.Ajmal Associates
For R2 : Mr.S.R.A.Ramachandran
Additional Government Pleader

COMMON JUDGMENT

(Judgment of the Court was made by **R.SUBRAMANIAN, J.)**

These two appeals by the respondent Nos.3 and 1 & 2 respectively in W.P(MD)No.800 of 2020. The said writ petition was filed by the 1st respondent herein seeking a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent therein vide proceedings No.PEN13/II/PT.16330/G.O.325/2017-18/1037-128115 dated 27.02.2018 and the consequential impugned order of the 3rd respondent therein in his proceedings L.Dis.No.352/2018/M1 dated 03.04.2018 and quash the same with a consequential direction to the respondents therein to grant family pension to the petitioner arising out of the State Government Civil Service of the petitioner's deceased mother, in addition to freedom fighters pension being received by the petitioner within a time frame.

2. The brief facts that led to the filing of the writ petition are as follows:

The petitioner is an unmarried woman. She is the daughter of the freedom fighter Late S.T.Sivasamy who was granted freedom fighters' pension. The mother of the petitioner was working as an Assistant in the Municipal Primary School at Pudukottai. After her death on 15.08.1979, her father was receiving family pension in addition to freedom fighters' pension and he passed away on 04.04.2001. After the death of her father, the petitioner was granted family pension as a daughter of a freedom fighter. The Government issued G.O(Ms)No.327, Finance (Pension) Department, dated 30.08.2001 and G.O(Ms)No.325, Finance (Pension) Department, dated 28.11.2001, directing payment of family pension to unmarried daughters who are aged above 25 years if their monthly income does not exceed Rs.2,550/- which was subsequently enhanced to Rs.7,850/-. The petitioner applied under the said Government Orders for family pension as a daughter of her mother and the same was granted to her vide proceedings dated 04.12.2017. The said grant was cancelled by the 2nd respondent on 27.12.2018 on the ground that she is not eligible to family pension in her capacity as the daughter of the Government servant since she is drawing more than Rs.7,850/- per month by way of family pension as a daughter of her father who was a freedom fighter. This cancellation was subject matter of challenge before the Writ Court. The Writ Court found that freedom fighters pension is an honour and the income therefrom cannot be taken as income so as to debar the recipient from receiving any other pension from the State or Central Government. The Writ Court also relied upon the judgments of the Hon'ble Supreme Court in ***Mukund Lal Bhandari and others vs. Union of India and others*** reported in ***1993 Supp (3) SCC 2*** and ***State of Orissa vs. Choudhuri Nayak*** reported in ***2010 8 SCC 796,*** wherein, it was held that freedom fighters pension cannot be treated as income since it's object is to honour the freedom fighters and, wherever it was necessary, also to mitigate the sufferings. Reference was also made to a decision of this Court in ***K.Arumugam vs. The Secretary to Government [W.P.No.37896 of 2005, decided on 27.03.2006]***, wherein, it was held that freedom fighters pension cannot be treated as income for the purpose of rejecting employment on compassionate grounds. On the said conclusion, the Writ Court struck down the order of cancellation and directed the family pension to be continued. Aggrieved, these appeals have been filed by the respondents 3 and 1 & 2 respectively in the writ petition.

3. We have heard Mr.S.R.A.Ramachandran, learned Additional Government Pleader appearing for the appellant in W.A(MD)No.250 of 2023, Mr.P.Gunasekaran, learned counsel appearing for the appellants in W.A(MD)No.65 of 2023, Mr.H.Mohammed Imran for M/s.Ajmal Associates, learned counsel appearing for the 1st respondent in both the appeals, Mr.P.Gunasekaran, learned counsel appearing for the respondents 2 and 3 in W.A(MD)No.250 of 2023 and Mr.S.R.A.Ramachandran, learned Additional Government Pleader appearing for the 2nd respondent in W.A(MD)No.65 of 2023.

4. Both Mr.S.R.A.Ramachandran, learned Additional Government Pleader and Mr.P.Gunasekaran would vehemently contend that once the Government Order providing for payment of pension makes it clear that the benefit would be available only to persons whose monthly income from any source is less than Rs.7,850/-, the 1st respondent who is receiving a sum of Rs. 13,390/- as freedom fighters pension, is not entitled to claim family pension in her capacity as daughter of her deceased mother. Particular reliance was placed by the counsel on the Government Orders and clarificatory letters issued by the Government where, it was stated that the monthly income of Rs.2,550/- would include all income. The said portion of the Government Letter No. 43105/Pension/2013, dated 02.12.2013 in vernacular reads as follows:

வ எண்.	தெளிவுரை கோரும் இனங்கள்	தெளிவுரை
6	**மாத வருமானம் ரூ.2,550/- என்பது ஊதியம் / வேறு குடும்ப ஓய்வூதியத்தில் பெறப்படும் வருமானம் மட்டுமே கணக்கில் எடுத்துக் கொள்ளப்பட வேண்டுமா அல்லது வீட்டு வாடகை, ஜீவனாம்சம், வங்கி கணக்குகள், வட்டித்தொகை போன்ற வருமானங்களும் சேர்ந்த வருமானமா?**	**மாத வருமானம் ரூ. 2,550/- என்பது அனைத்து வகையான வருமானங்களின் உள்ளடக்கம்.**

5. Contending contra, Mr.Mohammed Imran, learned counsel appearing for the 1st respondent in both the appeals would submit that the Hon'ble Supreme Court and this Court have specifically held that freedom

fighters pension cannot be treated as income. Therefore, the family pension that is paid to the 1st respondent in her capacity as daughter of the freedom fighter, cannot be taken into account so as to disqualify her from drawing family pension as the daughter of her mother who was a Government servant. He would also draw our attention to the judgments referred to by the Hon'ble Single Judge. He would also invite our attention to the judgment in ***K.Arumugam vs. The Secretary to Government [W.P.No.37896 of 2005, decided on 27.03.2006]***, where, this Court held that freedom fighters pension cannot be treated as income for the purpose of considering grant of compassionate appointment. In ***Vellithayammal vs. Secretary to Government (W.P(MD)No.1457 of 2008, dated 27.04.2009)*** this Court considered the scope of Rule 13(B) of the Tamilnadu Pension Rules, 1978, which states that a person who is already in receipt of family pension under any other pension rules, will not be eligible for family pension under Rule 13. This Court held that the rejection of freedom fighters pension on the ground that the petitioner therein was receiving family pension as heir of a Government servant cannot be sustained. In ***Tamil Nadu Arasu Pokkuvarathu Madurai Thozhilalar Sangam vs. Government of Tamil Nadu*** reported in ***2010 (2) CWC 555,*** the question of entitlement of family pension for two pensionable services to the widows of employees of the transport corporation was considered by this Court and this Court held that if a widow is entitled to two pensions under two different pension rules, they would be entitled to two family pensions under two different pension rules and the same cannot be rejected and they would be entitled to both the pensions.

6. In ***Mukund Lal Bhandari and others vs. Union of India and others*** reported in ***1993 Supp (3) SCC 2,*** the Hon'ble Supreme Court had held that freedom fighters pension is not an income and it is an honour that is conferred on a freedom fighter.

7. In the light of the above pronouncements, it is clear that freedom fighters pension cannot be treated as income in the hands of the freedom fighters and the Government has chosen to extend it to dependents of freedom fighters also. We are of the view that the character of the pension namely, freedom fighters pension will not change just because it is given to the dependents of freedom fighters. If it is not to be treated as income in the hands of the freedom fighters, it shall not be treated as income in the hands of the dependents also.

8. The Government Orders conferring the benefit of family pension to dependent daughters fix an income ceiling which was Rs.2,550/- at the inception and the same was enhanced to Rs.7,850/-. Admittedly, the petitioner

is not drawing any income apart from the freedom fighters family pension that is paid to her. We have already concluded that it cannot be treated as income. Once we find that it cannot be treated as income, cancellation of the grant made to the petitioner cannot be sustained. The Writ Appeals, therefore, fail and they are accordingly dismissed. No costs. The appellants will pay the pension arrears, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petitions are closed.

(R.S.M, J.) (L.V.G, J.)
02.12.2024

Index : Yes / No
Neutral Citation : Yes / No
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R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

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PRE-DELIVERY COMMON JUDGMENT
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