

(2006) 04 MAD CK 0159

In the Madras High Court

Case No : Writ Petition No's. 511 to 516, 2365, 3786, 5546, 35879, 35906, 35907 and 36160 of 2003, 9403 of 2004 and 580, 1285, 22893 and 22894 of 2005 and W.P.M.P. No's. 43608, 43632 and 43633 of 2003 and 678 of 2005

A. Mary

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Tamil Nadu Payment of Pensions to Tamil Scholars and Miscellaneous Provisions Act, 1983 — Section 3(1)

Citation : (2006) 4 MLJ 300

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : K. Ravichandrababu, for the Appellant; S. Gomathynayagam, Special Govt. Pleader, for the Respondent

Judgement

P.K. Misra, J.—All these writ petitions raise common questions of fact and law and therefore disposed of by this common judgment.

2. The petitioners in different writ petitions are either participants in the movement relating to merger of Tamil areas within the State of Tamil Nadu,

who had undergone imprisonment in connection with such movement, or widows of such participants. The agitations relating to merger of

Kanyakumari District and Sengottai Taluk had been launched during the year 1954. Similarly, the agitation for the merger of Tiruttani and Pallipattu

had been launched in the year 1953. With a view to compensate the sufferings undergone by such agitators as well as to recognise their

contributions towards merger of such areas and for development of Tamil language, the State Government had enacted Tamil Nadu Payment of

Pension to Tamil Scholars and Miscellaneous Provisions Act, 1983 (hereinafter referred to as "the Act"). Under the Rule making power envisaged

under such Act, the Government had also framed statutory rules known as Tamil Nadu Payment of Pension to Tamil Scholars and Miscellaneous

Provisions Rules, 1984, hereinafter referred to as "the Rules".

Initially u/s 3(1) of the Act, a person was eligible to receive monthly pension of Rs. 150/- or a grant not exceeding Rs. 10,000/- or both. However,

subsequently by amendment, the quantum of pension has been increased from time to time and ultimately such pension has been fixed at Rs.

3,000/- per month with Rs. 15/- per month as medical allowance. Similarly, the amount payable towards family pension to the legal heirs of such

participants has been correspondingly increased. However, there is no change effected in the grant of lumpsum amount not exceeding Rs. 10,000/-

. The Government has been sanctioning payment of such amount from time to time to various participants as evident from G.O.Ms. No. 72 dated

3.3.1988, when monthly pension was sanctioned at the rate of Rs. 250/- per month to the applicants. Subsequently, under G.O.Ms. No. 412

dated 15.12.1989, the Government had sanctioned monthly pension to another 952 persons with effect from 1.10.19 89. While the matter stood

thus, some of the claimants, who had participated in connection with some of the agitations were denied payment on the ground that they were not

able to produce certificate from jail authorities. The dispute was taken to the High Court and ultimately in the judgment reported in 1997 WL.R.

639 (K. Arumugham Nadar v. Govt. of Tamil Nadu and two Ors.), a learned single Judge of this Court laid down various principles relating to

consideration of such application. In one such writ petition, namely, W.P. No. 14718 of 1993, in the counter the State Government had indicated

that under the provisions of the Act and the Rules, payment of pension is not only contemplated to the Tamil Scholars but also to those who had

fought for merger of Tamil areas within the State of Tamil Nadu. The relevant portion of such counter affidavit is in fact extracted in the judgment of

the High Court reported in 1999 III MLJ 728 (C. Natarajan and Thers v. The Government of Tamil Nadu and Ors.). Such decision related to

many of the petitioners. Under such decision, the learned single Judge had ultimately issued the following directions :-

20. Under these circumstances, I pass the following Orders :

(1) The impugned orders of the first respondent in W.P. Nos. 20799, 21924, 21925, 21927 and 22587 of 1993 are quashed and the matter is

remitted to the first respondent Government for passing appropriate fresh orders.

(2) The first respondent-Government is directed to consider the claim of the petitioners in W.P. Nos. 14718, 15899, 19645, 19646 of 1993 and

1788 of 1994 and pass appropriate orders on the basis of the materials placed by them.

(3) The first respondent is directed to take note of the observations made above while passing fresh orders.

(4) If any additional information/material is required, it is open to the first respondent to get the same from the respective petitioners.

(5) The order shall be passed within a period of three months from the date of receipt of a copy of this order.

3. Even though a specific time limit was indicated, no order was passed by the Government and, at that stage, the present petitioners had filed

Contempt Petitions. After receipt of notice in those contempt petitions, the Government passed orders on 13.11.2002 sanctioning Rs. 10,000/- as

lumpsum payment to those of the petitioners who were participants in the movement and a sum of Rs. 5000/- to those of the petitioners who are

widows of the participants. The contempt petitions were subsequently closed on 13.12.2002 leaving it open to the petitioners to challenge such

order passed by the Government and observing that it would be open to the petitioners to receive such amount which has been granted by the

Government. Thereafter the present writ petitions have been filed challenging the validity of the provisions contained in the Act and the Rules to the

extent it provides for grant of Rs. 10,000/- as lumpsum. It is claimed that either monthly pension should be paid or the lumpsum amount be

increased.

3.1. The main contention of the petitioners is to the effect that almost all the participants who had filed applications earlier had been paid monthly

pension, which was being increased from time to time, whereas the Government, in the present case, has granted merely a payment of Rs.

10,000/- / Rs. 5,000/- as the case may be without any rhyme or reason, even though the petitioners had prayed for payment of monthly pension. It

is submitted that no guidelines have been fixed either in the Act or in the Rules as to whether a participant should be paid monthly pension or a

participant should be paid lumpsum not exceeding Rs. 10,000/-. It is also contended that grant of family pension to other persons who had applied

and refusal to grant family pension to the present petitioners and instead granting them a lumpsum amount as one time grant is factually

discriminatory and at any rate no reason has been given in such orders passed by the Government. The petitioners have prayed that the

Government should be directed to grant monthly pension to the petitioners. It has been submitted that the amount already paid as one time grant

can be adjusted towards such pension.

4. In the counter affidavit filed on behalf of the Government the history of the movement and the G.Os issued from time to time were indicated and

it was further indicated that there has been some administrative delay and subsequently the Government had sanctioned lumpsum payment of Rs.

10,000/- / Rs. 5,000/- as the case may be.

5. From the materials on record, it is apparent that on earlier occasions when the Government had passed orders sanctioning payment, the

Government had sanctioned monthly pension which was being increased from time to time as per the different G.Os issued by the Government. In

the impugned G.O.Ms. No. 255 dated 13.11.2002, (W.P. No. 511 of 2003) sanctioning lumpsum amount to these petitioners, no reason has

been indicated. Obviously all the petitioners had applied for grant of monthly pension. No reason whatsoever has been indicated in the present

impugned orders as to why the present petitioners are only granted lumpsum amount of Rs. 10,000/- or Rs. 5,000/- as the case may be. There is

nothing on record to indicate as to how the cases of the present petitioners are in any way different from the other grantees who had been

sanctioned monthly pension under different G.Os., namely, G.O.Ms. No. 412 dated 15.12.1989 and G.O.Ms. No. 123 dated 20.7.1993. For

example, in the matter relating to grant in respect of the petitioners in W.P. Nos. 512, 35906, 511, 513 of 2003 and one G. Srinivasan, nothing

has been indicated, save and except the narration relating to previous litigation and the order passed by the Court on earlier occasion. Since such

orders do not indicate any reason and in the counter affidavit also except

narrating different facts, nothing has been explained as to what is the basis for granting such lumpsum and not monthly pension, such orders are liable to be quashed.

6. Learned counsel appearing for the petitioners has submitted that in the provisions of the Act and the Rules, no guidelines have been given as to when a person should be granted monthly pension and when such person should be granted lumpsum.

7. Under the Rules, a Form has been prescribed indicating in what format the application should be made. One such column relates to income of the applicant. Similarly one other column relates to the period of imprisonment undergone by the applicant. Similarly, in the Form, the applicant is

also required to indicate whether he is seeking for monthly pension or lumpsum grant. Initially when the provisions had been made, the lumpsum

grant envisaged was Rs. 10,000/-, whereas monthly pension envisaged was Rs. 150/-. Keeping in view the rate of interest in those years, it may

be inferred that payment of Rs. 150/- per month, i.e., Rs. 1,800/- per year, was considered as almost equivalent to lumpsum payment of Rs.

10,000/-. Obviously, at that stage, the difference was not perceptible. It is therefore evident that during those days grant of lumpsum amount or

monthly pension was obviously more or less dependent upon the option given by the applicant. In course of time, however, the amount of monthly

pension has steadily increased, whereas the amount payable as lumpsum grant has not at all been increased. Therefore, even though initially there

was no further necessity to indicate the guidelines when lumpsum amount should be granted and when monthly pension should be granted as such

course was dependent upon the option given by the applicant, the difference in the amount of benefit as it stands now is markedly visible and

therefore guidelines should be indicated.

8. Nowhere in the guidelines it is indicated under what circumstances grant of monthly pension should be permitted and under what circumstances

one time lumpsum payment not exceeding Rs. 10,000/- should be permitted. The question is whether in the absence of any such guideline, the

provisions contained in the Act and the Rules delegating such power to the Executive authority can be said to be hit by the vice of excessive

delegation.

9. There is a definite line of judicial thinking to the effect that even in the absence of specific guideline, the authority can take into consideration the object of the legislation, the mischief which is sought to be cured by the legislation and other surrounding circumstances. In this context it is also well accepted that when such authority is conferred on high ranking functionary so that the vice of excessive delegation can be said to be diluted to a large extent. In the present case, the High Level Committee has been conferred with such authority. While such Committee deciding the matter can always be guided on the object of the legislation, which is to recognise and reward the efforts of the persons who have suffered on account of such movement. Apart from the above, the statutory Form in which the application is required to be made contains queries regarding the income of the applicant and the period of imprisonment. From such information, required to be given in the application, it can be reasonably concluded that it is the intention of the Legislature to come to the financial aid of those persons who have sacrificed for the cause of the development of the Tamil language/State. While identifying such persons, if the Committee comes to a conclusion that the applicant is financially very well-off, there may not be any necessity of granting monthly pension to such person and instead such person can be honoured with grant of lumpsum amount.

10. As already indicated, initially the two types of benefit were almost similar and, therefore, the applicant himself would be praying for payment of monthly pension or lumpsum grant depending upon his own age and other circumstances. In view of the gross disparity in the benefit now available, obviously, the applicants would always prefer to get the benefit of monthly pension rather than the lumpsum grant. Obviously, the prayer made by such applicants is entitled to serious consideration and the Committee should ordinarily accept the method of benefit claimed by the applicants.

However, even though for the aforesaid reasons and keeping in view the presumption regarding validity of an Act or Rule, the provisions need be granted, it would be better for the Government to prescribe by Rules the method and norms for identifying as to whether the applicant should be given monthly pension or lumpsum payment. Moreover, even though the amount of monthly pension has been steadily increased, there has not been any corresponding increase in the amount payable as lumpsum grant. The State Government should do well to look into this aspect and

appropriately increase the lumpsum payable.

11. Even though the provisions of the statute and the Rules are being upheld, albeit reluctantly, the validity of the orders passed by the Respondent

No. 1 in the facts and circumstances of the case are required to be considered. It is obvious from the materials on record that all the applicants had

applied for grant of monthly pension. From the materials on the record it is apparent that many similar applications considered earlier time were

decided in favour of those applicants by granting the monthly pension. As a matter of fact all the applicants who had been conferred the benefit

hitherto apart from the present petitioners appear to have been given the benefit of monthly pension rather than any lumpsum payment, obviously

because such applicants had prayed for grant of monthly pension. In the impugned orders passed by the Government, no reason has been given as

to why instead of granting monthly pension lumpsum payment has been granted. In the counter affidavit also nothing has been indicated as to why

the applicants were not given the benefit of monthly pension and were merely granted lumpsum. The only excuse seems to be indicated in the

counter is in the following words :-

... The court had directed to pass orders in accordance with law within a period of four months. Due to the financial crisis of the State, the

Government had decided to sanction a sum of Rs. 10,000/- to the petitioner as an one time Grant and issued G.O.Ms. No. 255 Tamil

Development and Culture Department dated 13.7.2002 and sanctioned a sum of Rs. 10,000/- to the petitioners as one time grant.

12. In my considered opinion, the so called financial crisis cannot be considered as a sufficient justification for mechanically granting lumpsum grant

instead of granting monthly pension, more particularly when other applicants had been given the benefit of monthly pension. A reading of the

counter affidavit makes it clear that as if the respondents were merely going through the formality of complying with the previous direction of the

High Court possibly because of the pendency of Contempt proceeding. As a matter of fact, even though there was no specific direction in the

earlier decision as to whether monthly pension should be given or lumpsum grant should be given, it is obvious from the tenor of the judgment that

the learned Judge at that stage intended that these applicants should be treated

at par with the applicants whose applications had been allowed and who had been given the monthly pension.

13. A contention has been raised by the respondents that the petitioners have already accepted the benefit of grant of Rs. 10,000/- and therefore their prayer for grant of monthly pension should not be considered. From the materials on record, it is apparent that the applicants have accepted such benefit of Rs. 10,000/- without prejudice to their right to claim monthly pension and, therefore, it cannot be said that such applicants have waived their right to claim monthly pension instead of lumpsum grant.

14. For the aforesaid reasons, the impugned orders cannot be sustained and are liable to be quashed. The respondents are directed to consider the applications and to take appropriate decision regarding payment of monthly pension. Since the applicants have already been found to be eligible by the respondents, the only question now required to be considered is whether such applicants should be paid monthly pension or not. This may be done keeping in view the prayer in the applications made by each individual applicant and also the financial status of such applicants. In the event, it is decided to give monthly pension to any applicant, the sum of Rs. 10,000/- or Rs. 5,000/- already granted can be adjusted towards such monthly pension. This exercise should be completed within a period of twelve weeks from the date of receipt of the order. Accordingly, the writ petitions are allowed to the extent indicated above. No costs.