(2011) 08 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No. 7564 of 2007

Marimuthammal APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Citation : (2011) 7 MLJ 1158

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : P.N. Prakash, for the Appellant; S. Gunsekaran, G.A., for the Respondent

Judgement

D. Hariparanthaman, J.—The Petitioner is a widow whose husband had served in the Indian Army between 11.3.1954 and 28.2.1975 and he was in receipt Defence military pension. While he was in receipt of Military Pension, he joined as Watchman in the Health and Family Welfare Department, Government of Tamil Nadu, under Ex-Serviceman quota. While he was in service, he died on 19.6.1983, leaving behind the Petitioner herein as his legal heir. After the death of the Petitioner''s husband, the Petitioner was paid Defence Family Pension at the rate of Rs. 424/-and also Civil Family Pension at the rate of Rs. 125/-. Subsequently, the Government of Tamil Nadu stopped the Family Pension given by them on the ground that one person could not get two family pension.

2. Aggrieved over the same, the Petitioner filed O.A. No. 4281 of 1992, questioning the order refusing to pay family pension by the Government of Tamil Nadu. The Tamil Nadu Administrative Tribunal allowed the said Original Application on 23.9.1994. Pursuant to the order of the Tribunal, the Civil Family Pension was restored by the Tamil Nadu Government and the Petitioner was paid accordingly. Again the family pension was stopped from 31.3.2001, based on letter No. 6333/Pension/98-1 dt. 5.3.1998 of the Government of Tamil Nadu, addressed to the Director of Pension, Chennai, stating that the family pensioners are eligible to draw both civil family pension and family pension under any other

pension rules for the period from 21.8.1996 to 5.1.1996 and from 6.1.1996 only either civil family pension or Defence family pension alone is payable subject to the option obtained from the family pensioner. This letter is based on G.O. Ms. No. 22, Finance (Pension) Department dated 6.1.1996. Hence, the Petitioner has filed O.A. No. 4403 of 2002 for a declaration that G.O. Ms. No. 22 dated 6.1.1996 will have only prospective effect and will not affect the case of the Petitioner as it has already reached the finality and to direct the Respondents to continue to pay Civil Family Pension without any deduction.

3. The Respondents filed counter affidavit refuting the allegations. It is stated that G.O. Ms. No. 22, Finance (Pension), dated 6.1.1996 will have retrospective effect and hence, the Petitioner is not entitled to civil family pension from Tamil Nadu Government after 6.1.1996, if the Petitioner has chosen to receive Defence Family Pension. It is stated that the Petitioner should decide as to whether she is willing to receive Family Pension from Tamil Nadu Government or from the Defence Ministry.

4. Heard both sides.

5. The learned Counsel for the Petitioner submits that the Petitioner''s husband died on 19.6.1983 and after his demise, the Petitioner has been in receipt of family pension from Tamil Nadu Government and also Defence Family Pension up to to 1989. When the Tamil Nadu Government stopped Family Pension, the same was interdicted by the Tamil Nadu Administrative Tribunal by an order dated 23.9.1994, and the family pension was restored. But, the payment of family pension was once again stopped based on G.O. Ms. No. 22 Finance (Pension) dated 6.1.1996.

6. It is submitted that in the said circumstances, the aforesaid Government Order could not be applied retrospectively taking away the rights which accrued to the Petitioner with effect from 19.6.1993. In this regard, the learned Counsel for the Petitioner has relied on the following Judgments:

1. T.N. ARASU POKKUVARATHU MADURAI THOZHILALAR SANGAM v. GOVT. of TAMIL NADU reported in (2010) 8 MLJ 42; 2. Secretary (Estt.) Railway Board and another Vs. D. Francis Paul, etc., ;

3. Union of India (UOI) and Others Vs. V.D. Dubey (dead) by Lrs.,

7. On the other hand, the learned Government Advocate has strenuously contended for dismissal of the Writ Petition and he has relied on the counter affidavit filed by the Respondents.

8. It is to be seen that the Petitioner''s husband served in the Indian Army from 11.3.1954 to 28.2.1975, while he was receiving defence family Pension, he joined as Watchman in the Health Department of Government of Tamil Nadu. Hence, he was in receipt of both Defence Family Pension and salary for the service rendered by him to the Tamil Nadu Government. He died on 19.6.1983 while he was in service. Thereafter, the Petitioner was granted family pension by

the Government of Tamil Nadu, while she was also receiving Defence Family pension. She was paid Rs. 424/-as Defence Family Pension and Rs. 125/-as Civil Family Pension. But the same was stopped during 1988 and hence, the Petitioner approached the Tamil Nadu Administrative Tribunal and the Tribunal set aside the order stopping the Civil family pension, vide order dated 23.9.1994 in O.A. No. 4281 of 1992. Thereafter, the payment of civil family pension was continued. Subsequently, the same was denied after 31.3.2001, based on G.O. Ms. No. 22 Finance (Pension), dated 6.1.1996. It is also stated that civil family pension paid after 6.1.1996 up to 31.3.2001 was ordered to be recovered. In this regard, it would be useful to refer paragraph Nos. 6 and 9 of the counter affidavit, which is to the following effect:

6. Regarding para 7 of the application, it is admitted that in the petition it was stated that the Tribunal has already decided and ordered to pay both the family pension to the Petitioner and the pension was stopped now as per G.O. Ms. No. 22, Finance (P) dt. 6.1.1996, giving retrospective effect. As ordered by the Tribunal in O.A. No. 4281/92 the Petitioner was paid both pension up to March 2001. The pension was stopped as per orders of the Treasury Officer, Virudhunagar as clarified in Government Letter 6333/98-1 Finance (pension) dept. dt 5.3.1998 and Amendment issued in G.O. Ms. No. 22 Finance (Pension) dt 6.1.1996 which was passed on a later date. The implementation of G.O. Ms. No. 22, Finance (Pension) dated 6.1.96 and clarification issued in Government No. 6333/Pen/98-1 dt 5.3.98 clearly states that the Double pension already sanctioned and paid for the period from 21.8.86 to 5.1.96 and to pay only one Family Pension either Civil or Military Family Pension from 6.1.96. It does not mean any retrospective effect. From the date of G.O. the new order is implemented. 9. As per Honourable Tribunal previous order issued in O.A. No. 4281/92, the Petitioner was paid both the Family Pension up to March2001. As per G.O. Ms. No. 22 Finance (Pension) dated 6.1.96 (copy enclosed) and clarification issued in Government Letter No. 6333/Pen/98-1 dt 5.3.98, in which it is stated that family pension and eligible to draw both Civil side/Defence side from 21.8.1986 to 5.1.96 and from 6.1.1996 only either Civil Family Pension or Defence Family Pension alone is payable subject to the option obtained from the family pensioner. Hence the pension stopped for want of option obtained from the family pensioner. Further payment of family pension will be regulated and the overpayment in one family pension from 6.1.96 onwards has also to be recovered from the pensioner.

9. G.O. Ms. No. 22, was incorporated as Rule 13A of the Tamil Nadu Pension Rules and the denial of civil family pension to the Petitioner is solely based on Rule 13-A of the Tamil Nadu Pension Rules. For better appreciation, the same is extracted hereunder:

13-A. A military pensioner, who on retirement from military service on retiring pension, Service pension, or invalid pension is governed for the grant of ordinary family pension under military rules and is re-employed in a civil service or civil post before attaining the age of superannuation, shall for the purpose of eligibility for the family pension under this rule or the family pension already authorised under military rules be governed as follows: (a) If he dies while holding a civil post, his family be allowed family pension under this rule, or the family pension authorised at the time of retirement or discharge from the military service, whichever is more advantageous to the family.

(b) If he has an appointment to a civil service or post, opted to retain military pension for the pot of military service,

(i) and retires from the civil re-employment without earning any pension therefore his family shall be entitled for family pension as authorised at the time of his retirement or discharge from the military service;

(ii) retires from the re-employment after becoming eligible for pension therefore, he shall exercise an option at the time of applying for pension for the civil service either to be governed by family pension under this rule or to avail of family pension benefits, as authorised at the time of his retirement or discharge from the military service and such option once exercise shall be final.

(c) If an appointment to a civil service or post, he has opted to surrender military pension and count the military service for civil pension, his family shall be entitled to family pension under this Rule

10. The issue that arises for consideration is as to whether the said Government Order in G.O. Ms. No. 22, could be applied retrospectively.

11. It is stated by the Respondents in the counter affidavit that G.O. Ms. No. 22, Finance (Pension), dated 6.1.1996 could be applied retrospectively. But, the case of the Petitioner is that the said Government Order could not be applied retrospectively. The Petitioner''s husband died on 19.6.1993, which is the crucial date to consider as to whether the Petitioner is entitled to both Defence Family Pension and Civil Family Pension and the right to receive both the pensions has attained finality, in view of the order of the Tribunal dated 23.9.1994 passed in O.A. No. 4281 of 1992. Hence, I have No. hesitation to hold that G.O. Ms. No. 22 could not be applied retrospectively, otherwise it would take away the right accrued in favour of the Petitioner from 19.6.1983 to receive the family pension from the Government of Tamil Nadu. Furthermore, as rightly contended by the learned Counsel for the Petitioner, the Judgments relied on by the learned Counsel for the Petitioner squarely apply to the facts of this case.

12. In T.N. ARASU POKKUVARATHU MADURAI THOZHILALAR SANGAM v. GOVT. of TAMIL NADU reported in (2010) 8 MLJ 42, this Court in paragraph Nos. 26 and 27 has held as follows:

26. Bearing the above said principles and payment of family pension to the widows of the pensioners being not a charity, and the pensioners were paid both military pension and service pension during their lifetime, the Respondents are bound to pay family pension to the Petitioners herein, even though they are

receiving military family pension after the demise of the pensioners. However, the family pensioners are eligible to get Dearness Allowance only for one pension (either for Military Family Pension or for Transport Corporation Pension) in terms of the Supreme Court Judgments in Union of India v. G. Vasudevan Pillay (1995) 2 SCC 32 and in H.S.E.B. and Others Vs. Azad Kaur, . 27. In fine, the impugned orders are set aside and these writ petitions are allowed. The Respondents are directed to sanction and pay family pension to the widows of the retired employees of the Transport corporations as well as to the eligible persons. The concerned Respondent is directed to release the family pension payable to the eligible family pensioners with arrears, within a period of eight weeks from the date of receipt of a copy of this order and continue to pay family pension so long as they are eligible to get family pension. No. costs. Consequently, connected Miscellaneous Petitions are closed.

13. In Secretary (Estt.) Railway Board and another Vs. D. Francis Paul, etc., , the Hon''ble Supreme Court in paragraph No. 4 has observed as follows:

4. Relying upon this proviso by later amendment, it is contended that since No. specific provision was made in the conditions of service at the time of appointment, the Respondents are not entitled to the benefit of the rule. It is not in dispute that the rule came to be amended on 15.11.1976 long after their appointment. Under these circumstances, the amendment would be prospective. It is not in dispute that this amendment came to be made pursuant to recommendation made by the III Pay Commission and on acceptance thereof the rule came to be amended. Under these circumstances, the amendment cannot have retrospective effect in respect of the persons already in service but would be prospective; it would be applicable only to those candidates appointed after the date of amendment introducing the provisio.

14. Further, in Union of India (UOI) and Others Vs. V.D. Dubey (dead) by Lrs., , the Hon''ble Supreme Court in paragraph No. 13 has held as follows:

13. The scope of proviso to Rule 2423-A of Railway Establishment Manual, Vol. II came up for consideration before this Court in Ramiway Board v. D. Francis paul and this Court held that amendment cannot have retrospective effect in respect of a person already in service but would be applicable only to those candidates appointed after the date of amendment introducing the proviso. Therefore, the provision which states that the concession be admissible only if the recruitment rule provided so, would operate only prospectively. We fully endorse this view.

15. For the aforesaid reasons, the writ Petitioner is entitled to succeed. Accordingly, the Writ Petition is allowed and it is declared that G.O. Ms. No. 22, Finance (Pension) Department dated 6.1.1996 would operate only prospectively and would not affect the double family pension received by the Petitioner and the Respondents are directed to continue to pay civil family pension even while she is in

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16. receipt of defence family pension. The Respondents are also directed to pay the arrears of family pension from 1.4.2001, as they have admitted in paragraph Nos. 4 and 6 of the counter affidavit that family pension was paid only up to March 2001, within a period of eight weeks from the date of receipt of a copy of this order. No. costs.