(2009) 10 MAD CK 0204

In the Madras High Court

Case No : Writ Petition No. 14302 of 2007

R. Tamilselvan — APPELLANT

Vs

The Divisional Fire Officer, Salem-Dharmapuri Division and The Principal Accountant-General (A. and E.) Tamil Nadu — RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:
Constitution of India, 1950 — Article 14, 19, 21

Citation : (2009) 10 MAD CK 0204

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; Vijay Shankar, for R2 and K. Muthukumar, for R1 and R3, for the Respondent

Judgement

D. Hariparanthaman, J.—The petitioners father, Mr. K. Rajagopal, was working as a driver in the Fire Services Department, Salem Division, and he retired from service on 30.11.1974 and was receiving monthly pension till his death on 30.06.1986. It is unfortunate, that the wife of late Mr. K. Rajagopal, who is the mother of the petitioner, was not paid family pension from 01.07.1986 onwards.

2. It is a pathetic case that the mother of the petitioner also died on 13.08.2000, having struggled for more than 14 years for Family Pension and without receiving the same. The grievance of the petitioner in this writ petition is to disburse him the arrears of the Family Pension from the date of death of his father i.e., 01.07.1986 to the date of the death of his mother on 13.08.2000, within a time frame with 18% interest for the delayed payment.

3. Heard Mr. M. Ravi, learned Counsel for the petitioner and Mr. Vijay Shankar for the second respondent and Mr. K. Muthukumar for first respondent and for the third respondent.

4. The first respondent filed reply affidavit stating in para 11 that the second respondent sanctioned the Family Pension in 1993. Para 11 of the reply affidavit

is extracted hereunder:

Copy of the A.G. Letter No. Pen.8/IV/R, 71-592-RG-93/94/ADK/2694, dated 10.12.1993 is enclosed herewith. In which the family pensioner was advised to contact the treasury officer, Salem and the matter was intimated to the Sub Treasury Officer, Salem and the concerned family pensioner in this office R.C. No. 22278/B1/92, dated 29.03.1994. Hence the matter is pending with treasury and A.G. Only.

5. Though the second respondent sanctioned the Family Pension by an order dated 10.12.1993, which is enclosed at page 54 of the type set, the third respondent, The Treasury Officer, passed an order dated 15.03.2001 putting the blame on the second respondent for not sanctioning of the family pension.

6. The learned Counsel representing the second respondent submits that the second respondent sanctioned the Family Pension and that the disbursing officer, the third respondent, is to be blamed for non-payment. In these circumstances, it is clear that the third respondent is not correct and the order dated 15.03.2001 putting blame on the second respondent for not paying the Family pension to the mother of the petitioner, is an erroneous one.

7. It is well settled that the petition is not a bounty and the Government Employee is entitled for payment of pension as a matter of right. If the Government Employee is not paid pension arbitrarily, it offends Article 21 of the Constitution of India. Here is a classical case, where the wife was not paid the Family pension for 14 years while she was alive, after the death of her husband. In fact the following sentence found in the order dated 15.03.2001 of the second respondent would speak itself about the frustration of the mother of the petitioner, who died without enjoying the benefit of family pension;

The claimant has frequently called on this office and started blaming the staff with very harsh words inspired by her frustration.

8. A Division Bench of this Court in Government of Tamil Nadu, represented by the Secretary to Government v. M. Deivasigamani reported in 2009 (3) MLJ 1, ordered 10% interest on the belated payment of pension following the decision of the Hon''ble Apex Court in S.K. Dua Vs. State of Haryana and Another, . The para 7 of the said judgment is extracted hereunder;

In view of the judgment of the Supreme Court, it is now well settled that an employee is entitled to interest on belated payment of pension and other retiral benefits, even in the absence of statutory rules/administrative instructions or guidelines and he can make his claim for interest, under Part III of the Construction, relying on Article 14, 19 and 21 of the Constitution.

This judgment squarely applies to the fact of this case.

9. Therefore the third respondent is directed to pay the Family Pension payable to the mother of the petitioner from the date of the death of the father of

petitioner until the date of the death of mother of the petitioner, with 10% interest within a period of 4 weeks from today. The writ petition is disposed of in the above terms. No costs.