(2011) 07 MAD CK 0484

In the Madras High Court

Case No : Writ Petition (MD) No. 2773 of 2009

Silampayee APPELLANT

Vs

Principal Accountant General (A and E), Office of the Accountant General (A and E), Chennai - 600 018 and Others RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Tamil Nadu Pension Act, 1871 — Section 12
Tamil Nadu Pension Rules, 1978 — Rule 49

Citation : (2011) 7 MLJ 356

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : S.A. Ajmal Khan, for the Appellant; P. Gunasekaran and Alagu Thevan, Special Government Pleader, for the Respondent

Judgement

S. Manikumar, J.—Seeking for payment of full family pension of the deceased Government servant viz., S. Sundararajan, the petitioner-third wife has filed the present writ petition. According to the petitioner her husband was an Assistant Agricultural Officer in Vinayagapuram, Melur and died on 28.5.2007 and his two wives predeceased, prior to solemnizing the marriage with her. His first wife viz., Sundarammal died in 1994 and through her, three children viz., Jeyajothi, Jeyasudha and Jeyaraman were born. Thereafter, the deceased Government servant, married one Sulochana in 1996 as his second wife. Through her, one child viz., Vijaya was born and she was a minor at the time of death of the Government servant. Unfortunately, the second wife also died in the year 1997. As the Government servant was a widower with four children, he made a request to the petitioner to marry him in the interest of the children. The marriage between the petitioner and deceased Government servant was solemnized in 1997.

2. According to the petitioner, she has no, issues and was taking care of all the four children during, the, lifetime of her husband and continues to do so. It is her further contention that during the life time of her husband, on 6.12.1999, he,

nominated the petitioner to receive family pension and that the same was accepted. He died on 28.5.2007. As per his desire, the petitioner solemnized the marriage of his elder daughter, Jeyajothi. According to the petitioner, after the demise of her husband, in the absence of any other source of income other than family pension, she is put to financial hardship. The portion of family pension, given to her, is also insufficient. In these circumstances, the petitioner''s mother-in-law and all the four children born through the two wives of her husband have given consent for disbursement of DCRG, family Pension, in entirety to the writ petitioner. Pursuant to the requisition made to the respondents, in this regard the Joint Director of Agriculture, Tallakulam, the third respondent herein, vide his order, dated 20.6.2008, directed the petitioner to appear in person, along with the children on 25.8.2008. Accordingly, the petitioner appeared before the third respondent and also submitted a statement. The children born through the first wife also appeared in person and gave their consent letter for disbursement of full family pension to the petitioner. A report has also been forwarded by the third respondent on 23.10.2008, recommending disbursement of full family pension to the petitioner, to the Principal Accountant General (A & E), the first respondent herein. The first respondent herein. The first respondent, without considering the request of the petitioner in proper perspective and the voluntary consent given by the children born through two wives and also of the report of the Joint Director of Agriculture, Tallakulam, dated 23.10.2008, directed to disburse the family pension in the following manner;

a) one share to the petitioner

b) two shares to the children born through the two wives of the petitioner''s husband.

3. In the earlier order, dated 15.4.2008, the remaining two shares allotted to the children born through the two wives, have been withheld for want of certain required documents. In the abovesaid circumstances, the petitioner has submitted that as the third wife and widow, she is the only natural guardian to the children and manager of the family and since all the family members have given consent for disbursement of family pension in entirety to her, there cannot be any restriction or prohibition in disbursement of the family pension in full to her. As there is a failure to exercise the duty on the part of the first respondent, she has approached this Court for a writ of mandamus.

4. On instructions from the Principal Accountant General (A & E), Chennai and referring to Section 12 of the Tamil Nadu Pension Act, 1871, Mr. P. Gunasekaran, learned counsel for the first respondent submitted that there cannot be any agreement between the legal heirs of the deceased Government servant, and the petitioner enabling the latter to receive the entire family pension. It is the further submission of the learned counsel that the first respondent is ready and willing to disburse 2/3rd share of the family pension to the children born through the first and second wife respectively, if the Assistant Director of Agriculture, Melur, Madurai District forwards necessary documents, such as application for family

pension, photograph, specimen signature, already called for from him. According to him, as per Rule 49 of the Tamil Nadu Pension Rules, 1978, the children born through the first wife. viz., Jeyajothi, Jeyasudha and Jeyaraman would be entitled to 1/3rd of family pension in the order of their birth, subject to fulfillment-of the conditions specified in G.O. 327, dated 30.8.2001. That, apart, the minor daughter born through the second wife would be eligible to 1/3rd share of pension through her guardian. So the balance l/3rd share alone would be payable to the writ petitioner. Learned counsel for the first respondent further submitted that in view of the statutory provisions stated supra, there is no duty cast on the first respondent to release the entire family pension to the writ petitioner. All the legal heirs are entitled to their respective shares and hence, he prayed for dismissal of the writ petition.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. Before adverting to the facts of this case, this Court it (sic) deems fit to refer the statutory provisions pointed out by the learned counsel for the first respondent, on the power of the Principal Accountant General (A & E), Chennai, to release the family pension to the writ petitioner and others. Section 12 of the Pension Act, 1871 states that all assignments, agreements, orders sales and securities of every kind made by the person entitled to any pension, pay or allowance mentioned in Section II, in respect of any money not payable at or before the making thereof, on account of any such pension, pay or allowance, or for giving or assigning any future interest therein, are null and void. As per Rule 49 of the Tamil Nadu Pension Rules, 1978, family pension is payable to (i) legally wedded wife and (ii) to the children born through her/them and to the children born through the illegitimate wife, if any in equal shares. If no eligible person exists in one/other category/categories, Family Pension shall be payable to the other eligible person/persons in equal shares.

7. Admittedly, the deceased Government servant had initially married one Sundarammal and through her, he had begotten two daughters viz., Jeyajothi and Jeyasudha and one son, viz., Jeyaraman and after her demise on 2.4.1994, he had married, one Sulochana as second wife and through her, begotten a minor daughter viz., Vijaya. The second wife died on 16.9.1997 and thereafter, he had warned the writ petitioner as the third wife on 3.9.1998. It is also an admitted fact that there are no issues through the writ petitioner. As per pension rules, the petitioner, who is the legally wedded wife and guardian to the children born through the two predeceased wives of the Government servant is entitled to receive pension. The other children, if they are majors, are also entitled to share. Perusal of the material on record shows that all the legal representatives viz., four children and the mother-in-law of the petitioner (mother of the deceased Government servant) have given consent for disbursement of full pension to the writ petitioner, third wife. As per the directions vide proceeding in A5/8533/08, dated 20.6.2008, the petitioner has appeared in person on 25.8.2008 along with

children born through the two wives. The Joint Director of Agriculture, Madurai, the third respondent herein, has conducted an enquiry with the children born through the first two wives, and after considering the voluntary consent letter of the legal representatives, vide proceedings dated. A4/8587/08 dated 23.10.2008 has forwarded a proposal to the Principal Accountant General (A & D), Chennai, the first respondent herein to disburse the entire family pension to the writ petitioner, as there was no objection for the same. Necessary certificates have also been enclosed.

8. While that be the position, the only objection of the learned counsel for the first respondent that the consent letter/no objection given by the legal heirs of the deceased Government servant cannot be acted upon and that they are null and void in view of the statutory restrictions in Section 12 of the Pension Act, 1978, is untenable, for the reason that what is intended in the enactment is that the persons entitled to any pension, pay or allowance mentioned in Section (ii) in respect of any money payable at or before the making thereof and on account of any such pension, pay or allowances cannot make any assignments, agreements, orders, sales and make any securities of every kind in made by the person entitled to pension, pay or allowance. Pension is not a property which can be assigned or agreed, to be part with or sold or even offered as a security to a third party or can be bequeathed by way of a Will, contrary to the line of succession, depending upon the personal law which governs the parties. But, as between the legal heirs of deceased Government Servant, who are entitled to receive the pension, pay or allowance, there cannot be any impediment to make their own adjustments for receipt of pension or other retiral benefits. Judicial notice can also be taken note of that in certain cases, one of the legal heirs would take the entire retiral benefits such as DCRG, etc. and other would take the family pension. In the case of employment assistance, the consent/no objection is also required to avoid rival claims.

9. Reverting back to the facts of the case, this Court is of the view that the objection of the first respondent in treating the consent/no objection letter as an agreement or assignment is not a proper interpretation of a statutory pro-vision and such interpretation would only cause hardship to the writ petitioner, who is the only person taking care of the children all along. Even as per the instructions of the Senior Accounts Officer/Legal Cell, the minor daughter, Vijaya born through the second wife would be eligible to receive 1/3 rd of the family pension through her guardian, viz., the petitioner, whose claim as guardian is not disputed. Rule 49 of the Tamil Nadu Pension Rules, 1978 enables the payment of family pension to both the legally wedded wife and children born through the other wives and when there is a consent/no objection given by the legal heir as stated supra, this Court is of the view that there is a failure on the part of the first respondent, to disburse the family pension in entirety to the writ petitioner.

10. For the reasons stated supra, this Court is of the view that the petitioner has made out a case of mandamus and accordingly, a direction is issued to the first

respondent to pay the entire family pension to the writ petitioner within a period of two months from the date of receipt of a copy of this order. The respondents 2 and 3 are also directed to forward necessary documents, service registerorany required for the purpose of complying with the order stated supra.

11. The writ petition is disposed of accordingly. No. costs.

