

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2010

CORAM:

THE HON'BLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.1825 of 2010 &
M.P.No.1 of 2010

Smt.G.Prasannalatha

... Petitioner

Versus

1. The Commissioner of Commercial Taxes,
IV Floor, Ezhilagam, Chepauk,
Chennai -600 005.
2. Joint Commissioner for Commercial Taxes,
North Zone, Greams Road,
Chennai - 600 006.
3. Assistant Commissioner for Commercial Taxes,
Assessment Circle, Sowcarpet III,
191, NSE Bose Road,
Chennai -600 001.
4. Secretary to Government,
Commercial Taxes Department,
Secretariat, Chennai - 9. ... Respondents
(R-4 impleaded as per order dated
28.06.2010 made in M.P.No.2 of 2010
in W.P.No.1825 of 2010)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents to sanction to the petitioner monthly family pension with effect from 07.05.2005 under Rule 49 of the Tamil Nadu Pension Rules, 1978 within a specified period.

For Petitioner : Mr.S.Vadivelu

For Respondents : Mr.R.Tholkappian
Government Advocate (Tax)

O R D E R

The petitioner's husband was employed as an Office Assistant in the Commercial Taxes Department from 20.10.1982. He died on 07.05.2005, while he was in service. Had he been alive, he could serve up to 31.10.2015. The petitioner is the legally wedded wife and there are two sons to the petitioner born through the deceased government servant. On his death, the respondent-Department paid

Rs.5,000/- to the petitioner towards funeral expenses. Thereafter the petitioner was granted Rs.95,000/- towards DCRG on 30.09.2005. She was also granted G.P.F. amount of Rs.23,781/- on 02.02.2006.

2. On 22.08.2006, the petitioner applied for family pension and also for compassionate appointment for her elder son. It is stated that she went to Commercial Taxes Department in person on many occasions and requested for sanction of monthly family pension and also for compassionate appointment for her elder son. She also made a representation on 24.09.2009 to the first respondent, in this regard for sanction of family pension. On 13.10.2009, she received a letter stating that her representation was forwarded to the Assistant Commissioner for Commercial Taxes, Sowcarpet-III, the third respondent herein.

3. Though five years have lapsed, she is not paid monthly family pension and no compassionate appointment was also given.

4. The petitioner filed the present writ petition praying for a direction to the respondents to sanction the petitioner monthly family pension with effect from 07.05.2005 under Rule 49 of the Tamil Nadu Pension Rules, 1978 within a specified period.

5. Notice of motion was ordered on 03.02.2010.

6. Heard Mr.S.Vadivelu, learned counsel for the petitioner and Mr.R.Tholkappian, learned Government Advocate for the respondents.

7. The learned counsel for the petitioner states that as soon as the Government servant dies, the respondents are bound to pay family pension immediately under Rule 49 of the Tamil Nadu Pension Rules. Even in the case of a temporary Government servant, family pension should be paid under Rule 49 without loss of time. The learned counsel also relies on Rules 74 that provides for provisional family pension. According to him, neither provisional family pension nor family pension is paid to the petitioner, though five years got lapsed, after the death of the petitioner's husband. Therefore, the petitioner seeks for a direction for payment of family pension along with interest.

8. On the other hand, the learned Government Advocate strenuously opposes the claim made by the petitioner. The learned counsel made his submissions based on the instructions. It is submitted that 49 persons were sponsored by the District Collector, Madras for appointment as basic servant to the Commercial Taxes Department. Pursuant to this order by the Collector, 49 persons including the petitioner's husband were appointed as Office Assistant in the year 1982. The petitioner's husband was appointed on 20.10.1982. It is stated that, later it was found that all the 49 persons gave bogus documents and that therefore the matter was

investigated by the Vigilance Department. The Assistant Commissioner of Commercial Taxes Department, Assessment Circle, Sowcarpet - III, 191, NSE Bose Road, Chennai issued a memo dated 18.12.1992 to the petitioner's husband asking him to produce the documents that were furnished by him to the District Collector seeking employment. Since no reply was given by the petitioner's husband, another memo dated 22.07.1994 repeating the earlier demand was made by the concerned official. Here again, there was no response from the petitioner's husband. Hence, a charge memo dated 12.05.1995 under Rule 17 (b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules was issued against the petitioner alleging that he produced bogus documents to get appointment. It is stated that again another charge memo dated 05.11.1999 under Rule 17 (b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules was issued repeating the same charges. The petitioner's husband submitted explanation dated 08.12.1999 and requested to drop the charges.

9. It is fairly stated by the learned Government Advocate that the matter stands at that stage and there was no further progress. It is also stated that the petitioner's husband was not placed under suspension. The learned Government Advocate submits that in view of the pendency of the charges, the petitioner's husband was not regularised in the service, pending the Departmental action, hence the petitioner is not entitled to family pension.

10. I have considered the submissions made on either side.

11. It is fairly admitted that none was dismissed from service so far and it is also stated that after reply from the husband of the petitioner on 08.12.1999, the Department did not take any further action against the petitioner's husband.

12. Therefore, the pendency of the Disciplinary action could not be cited as a ground for denying family pension. In fact, as rightly contended by the learned counsel for the petitioner, the Disciplinary action got terminated on the death of the person, even if the person is under suspension, as per F.R.54-B-(2). F.R.54-B-(2) is extracted here-under:-

"Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or the court proceedings instituted against him are concluded, the period between the date of suspension and the date of death, shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid."

Hence, the pendency of the Disciplinary action could not be cited by the respondent-department for denying family pension.

13. The only contention of the learned Government Advocate is that the petitioner's husband is not regularised in service and therefore the petitioner is not entitled to family pension. This contention also deserves to be rejected, in view of Rule 49 of the Tamil Nadu Pension Rules. The Rule 49 of the Tamil Nadu Pension Rules, makes it very clear that the family pension is payable even to the widow of temporary Government servant. In this case, the petitioner's husband was appointed in the year 1982 and he served in the department for 23 years. The respondent-Department could not say that the petitioner's husband is a temporary Government servant for 23 years. The mere service for 23 years would make it very clear that he could not be treated as a temporary Government servant. Even assuming that the petitioner's husband is a temporary Government servant, Rule 49 makes it very clear that the petitioner is entitled to family pension.

Rule 49(1), (2), (2-A), (3)(a) is extracted here under:-

"49(1). Family pension.- The provision of this rule shall apply to a Government servant entering service in a pensionable establishment whether temporary or permanent on or after the 1st April 1964, or who was in service on the 31st March 1964 and came to be governed by the Tamil Nadu Government Servants' Family Pension Rules, 1964.

49(2).(.....) Without prejudice to the provisions contained in sub-rule (3) where a Government servant dies,-

(a) after completion of not less than one year continuous service or at any time during his service.

(b) after retirement from service and was in receipt of pension on the date of death, the family of the deceased shall be entitled to a 3[.....] family pension (hereinafter in this rule referred to as family pension), the amount of which shall be determined as follows:

1	Below Rs.200	30 per cent of pay	Minimum of Rs.50
2	Rs.2000 and above but below Rs.800	15 per cent of pay	Minimum of Rs.60
3	Rs.800 and above	12 per cent of pay	Maximum of Rs.300, and Minimum of Rs.150

[Provided that family pension shall be payable to the family of a Government servant who dies before the completion of one

year continuous service, if he was declared fit for Government service by the appropriate medical authority prescribed under the relevant rules immediately prior to his appointment]

49(2-A). The family pension payable to a family of the Government servant or a retired Government servant who died on or after the 1st April 1979, shall be regulated as under, provided he has completed continuous qualifying service for a period of not less than [two years]-

(i) The amount of monthly family pension shall be calculated at the uniform rate of 30 per cent of pay drawn, subject to a minimum of [Rs.245] per mensem and maximum of [Rs.1000] per mensem.

(ii) In the case of death after retirement, the quantum of family pension as calculated above shall not exceed the uncommuted value of super-annuation pension. A flat rate of family pension [x x x x] shall be sanctioned to the eligible member of the family of the Government servant who died in service after retirement and who were hitherto not eligible for family pension.

49(3)(a). In the event of death of a Government servant while in service after having rendered not less than seven years continuous service, the rate of family pension payable shall be equal to 50 per cent of the pay last drawn or twice the family pension admissible under sub-rule (2) or (2-A) as the case may be or [Rs.1000] whichever is less and the amount admissible shall be payable from the date following the date of death of the Government servant for a period of seven years or for a period up to the date on which the deceased Government servant would have attained the age of 65 years had he survived whichever is less."

14. Rule 49 makes it very clear that a widow of the temporary Government Servant is also entitled to family pension. Rule 49(2-A) and Rule 49(3)(a) makes it very clear that even person put in very meager year of service are entitled to family pension. Here is a case that the petitioner's husband put in 23 years of service. Furthermore, the petitioner was paid funeral expenses, DCRG and GPF. Particularly, when DCRG was paid under Rule 49 of the Tamil Nadu Pension Rules, the respondent-Department shall not refuse to family pension under Rule 49 of the same Rules.

15. Once DCRG was paid under Rule 49, the respondents are not justified in refusing to pay family pension on the ground that the petitioner's husband was not a regular employee. As stated above, Rule 49 makes it very clear, it would apply even to temporary Government servants.

16. The family pension is payable on the death of the petitioner's husband on 07.05.2005. She has also made repeated requests for family pension and more than five years have lapsed. Therefore, the respondent has to settle the family pension payable to the petitioner along with interest at the rate of 10% for the belated payment, as per the Judgment of the Division Bench of this Court in Govt. of Tamil Nadu rep. by the Secretary to Government, Revenue Department, Chennai and another Vs. M.Deivasigamani reported in (2009) 3 MLJ 1.

17. In these circumstances, the writ petition is disposed of directing the fourth respondent to settle the family pension to petitioner with arrears within a period of six weeks from the date of receipt of a copy of this order along with interest at the rate of 10% per annum. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

r n s
To

1. The Commissioner of Commercial Taxes,
IV Floor, Ezhilagam, Chepauk,
Chennai -600 005.
2. The Joint Commissioner for Commercial Taxes,
North Zone, Greams Road,
Chennai - 600 006.
3. The Assistant Commissioner for Commercial Taxes,
Assessment Circle, Sowcarpet III,
191, NSE Bose Road,
Chennai -600 001.
4. The Secretary to Government,
Commercial Taxes Department,
Secretariat, Chennai - 9.

1 cc To Mr.S.Vadivelu, Advocate, SR.46676
1 cc To The Spl.Government Pleader, SR.46762

W.P.No.1825 of 2010 &
M.P.No.1 of 2010

tam(co)
pmk.5.2.2010.