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W.P(MD)No.800 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2022
Pronounced on : 14.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.800 of 2020
and
W.M.P(MD)No.578 of 2020

S.Jeevalakshmi ... Petitioner

Vs

1.The Principal Accountant General (A&E),
Office of the Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

2.The Senior Accounts Officer,
Office of the Principal Accountant General,
(Accountant & Entitlements), Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

3.The Treasury Officer,
District Treasury,
Pudukottai - 622 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the second respondent vide proceedings No.PEN13/II/PT.16330/G.O.325/2017-18/1037- 128115 dated 27.02.2018 and



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consequential impugned order of the thrid respondent in his proceedings L.Dis.No.352/2018/M1 dated 03.04.2018 and quash the same as illegal and consequently direct the respondents to grant family pension to the petitioner arising out of the same State Government civil service of petitioner's deceased mother, in addition to the Freedom Fighter Pension being received by the petitioner, within the period that may be stipulated by the Court.

For Petitioner : Mr.Mohammed Imran,

for M/s.Ajmal Associates

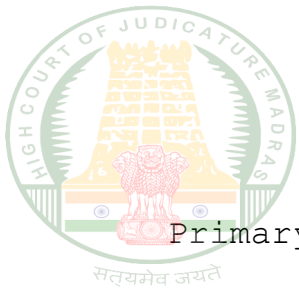
For Respondent : Mr.P.Gunasekaran
Nos.1 and 2

For Respondent : Mr.S.Saji Bino,
No.3 Special Government Pleader

ORDER

This writ petition is filed challenging the proceedings of the second and third respondents, in and by which, the family pension granted to the petitioner was cancelled.

2.The petitioner is an unmarried woman. She is the daughter of a Freedom Fighter, viz., Late S.T.Sivasamy. He was granted with Freedom Fighter's Family Pension. Her mother was working as a School Assistant in the Municipal

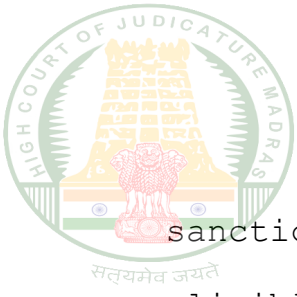


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Primary School, Pudukottai and after her mother's death on 15.08.1979, the father was receiving the family pension, in addition to the Freedom Fighter's Pension and he passed away on 04.04.2001. Subsequently the petitioner being the legal heir, was granted with Freedom Fighter's Pension. However after his death, the family pension of her mother's employment was not drawn by the petitioner or by her siblings. While so, the Government of Tamil Nadu vide government order in G.O(Ms)No.327, Finance (Pension) Department dated 30.08.2001 and G.O(Ms)No.325 Finance (Pension) Department dated 28.11.2001 ordered for family pension to the unmarried daughters above 25 years on condition that their income should not exceed Rs.2,550/- month and it was subsequently enhanced to Rs.7,850/- per months vide G.O(Ms)No.337 Finance (Pension) Department dated 14.11.2017.

3.While so, the petitioner made application for family pension and she was granted with family pension vide proceedings dated 04.12.2017 by the first respondent. However the second respondent vide proceedings dated 27.12.2018 directed the third respondent to cancel the

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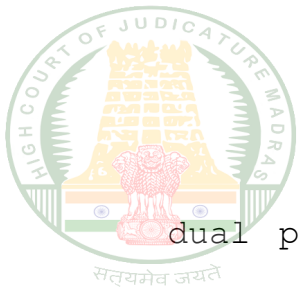
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sanction of family pension that the petitioner is not eligible for drawing family pension since she is already in receipt of Freedom Fighter's Pension and the third respondent vide impugned proceedings dated 03.04.2018 returned the PPO for cancelation. Unfortunately, this order was passed without even issuing notice to the petitioner.

4.The learned Counsel for the petitioner submits that the petitioner being the unmarried daughter of the pensioner aged above 25 years, she is entitled for family pension also, in addition to the Freedom Fighter's Pension of Rs.13,390/-, which she is presently drawing. The impugned order is passed based on G.O(Ms)No.337 Finance (Pension) Department dated 14.11.2017 that the petitioner is having more income than the fixed amount of Rs.7,850/- and also on the ground that the petitioner is not entitled for dual pension as per G.O.(Ms)No.290 Public (Ex-Servicemen) Department dated 05.04.2017.

5.The learned Counsel further submits that it is incorrect to state that G.O.(Ms)No.290 Public (Ex-Servicemen) Department dated 05.04.2017 does not permit

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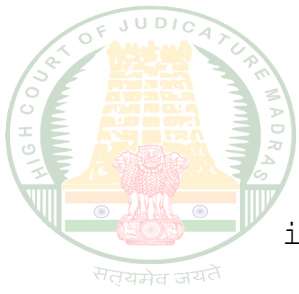


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dual pension. Moreover, the government order is in favour of the petitioner, which allows dual pension and orders for sanction of dual family pension to those families of Ex-Servicemen, who are re-employed in civil service and earned pension out of the re-employment prior to 01.04.2003, in addition to the Military Family Pension already drawn by them.

6.The learned Counsel further submits that insofar as the limitation of Rs.7,850/- should be the income for grant of family pension is concerned, the petitioner is receiving a sum of Rs.13,390/- as Freedom Fighter's Pension. The Hon'ble Supreme Court has held that the pension of the freedom fighter cannot be termed as income and as such the freedom fighter pension would not disentitle the petitioner receiving the other family pension arising out of the service of the petitioner's mother.

7.The learned Counsel further has relied on the following decisions in support of his contention:

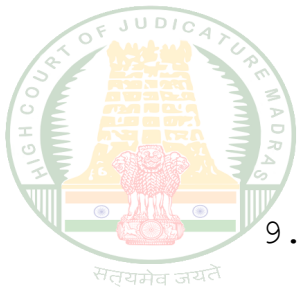


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- i. **Mukund Lal Bhandari and Others Vs Union of India and Ors** [1993 Supp (3) SCC 2];
- ii. **Under Secretary to the Government of India Vs Noorjahan** [2014 SCC Online Mad 638]
- iii. **Under Secretary to the Government of India Vs P.Selvaraj and others** [W.A(MD)No.771 of 2018, dated 21.06.2018]
- iv. **Amalorpavam @ Amalorpava Mary Vs The Secretary, Transport Department Chennai** [W.P(MD)No.6284 of 2017 12.01.2018]

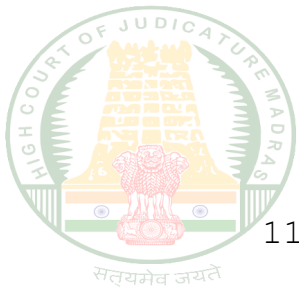
8.The learned Counsel appearing for the respondents 1 and 2 submits that the petitioner's father was getting Freedom Fighters Pension and he was also getting the family pension, arising out the employment of her wife. After the death of the petitioner's father, the petitioner is now getting Rs.13,390/- arising out of the Freedom Fighters Pension. She has also applied for family pension arising out the employment of her mother.



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9.The learned Counsel by referring G.O(Ms)No.325 Finance (Pension) Department dated 28.11.2011 and G.O(Ms)No.337 Finance (PM Cell) Department dated 14.11.2017 submits that the unmarried daughter of a pensioner is entitled for family pension provided that her monthly income should not exceed Rs.7,850/-. Further it is also clarified by the Government in Letter No.43105, dated 02.12.2013 in clarification No.6 that monthly income includes all the incomes.

10.The learned Counsel further submits that all the income means including the family pension. Since the petitioner is already receiving a sum of Rs.13,390/- as Freedom Fighter's Pension, the petitioner is not eligible for family pension arising out of her mother's employment as per the above government orders. Therefore the respondents after coming to know that the petitioner's income exceeded the limit fixed in the government order, has passed the impugned proceedings cancelling the order passed in favour of the petitioner. Therefore, this writ petition is liable to be dismissed.



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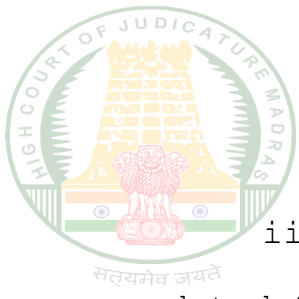
11.Heard the learned Counsel on either side and perused the material placed on record.

12.The petitioner is the unmarried daughter of a freedom fighter, namely, Shri.S.T.Sivasamy and he was getting freedom fighters pension. Her mother was a government servant and a pensioner too. After the death of the petitioner's mother, her father was drawing the family pension also, arising out of her employment. The petitioner started getting freedom fighter's pension, after the death of the petitioner's father and at present she is getting a sum of Rs.13,390/- as pension. She has also been sanctioned with family pension arising out of her mother's employment and it was subsequently cancelled on the following three reasons:

i.The Government Letter No.43105/Pen/2013 dated 02.12.2013, clarifies that all incomes are to be considered as income for fixation of the ceiling limit of Rs.7,850/-.

ii.The petitioner is drawing pension, which is exceeding the income limit fixed vide the G.O.Ms.No.327 Finance Department dated 30.08.2001 and G.O.Ms.No.337 Finance Department dated 14.11.2017.

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iii.G.O.Ms.No.290 Public (Ex-Servicemen) Department

dated 05.04.2017 does not permit granting of dual pension.

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13.The Government Letter No.43105/Pen/2013 dated 02.12.2013 states that monthly income includes all the income. The petitioner is at present drawing a sum of Rs.13,390/- as Freedom Fighters Pension. It has to be decided as to whether the Freedom Fighters' Pension can be treated as income. In this regard, it is relevant to refer to the following judgments in this regard:

(i)**Mukund Lal Bhandari and Others Vs Union of India and Ors** [1993 Supp (3) SCC 2], wherein the Hon'ble Supreme Court has held as follows:

"The object was to honour and where it was necessary. also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of' patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme is to assistant



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Honour the needy and acknowledge the valuable sacrifices made."

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(ii) State of Orissa Vs. Choudhuri Nayak (2010) 8 SCC 796, the Hon'ble Supreme Court has held as follows:

"This Court in Mukund Lal Bhandari v. Union of India [1993 Supp (3) SCC 2], Gurdial Singh v. Union of India [2001 (8) SCC 8] and State of M.P. v. Devkinandan Maheshwari [2003 (3) SCC 183] considered the object of the Freedom Fighters Pension scheme and indicated what should be the approach of the authorities in dealing with the applications for pension under the scheme. We may summarize them as under:

"The object of the scheme was to honour, and where necessary, to mitigate the sufferings of those who had struggled to achieve independence for the country. Many freedom fighters, even though they did not have sufficient income to maintain themselves, would even be reluctant to receive the Pension under the Scheme, as they would consider it as putting a price on their patriotism. The spirit



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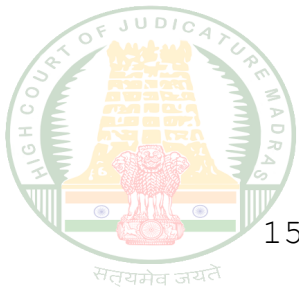


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of the Scheme being both to assist and honour the freedom fighters and acknowledge the valuable sacrifices made by them, the authorities should treat the applicants with respect and courtesy. The scheme should not be converted into some kind of routine scheme for payment of compensation.”

14.This Court in K.Arumugam Vs the Secretary to Government [W.P.No.37896 of 2005, dated 27.03.2006] has held that freedom fighters pension cannot be termed as income and the relevant portion reads as follows:

“The Freedom Fighter's Pension received by the petitioner's mother is due to the death of the petitioner's father, who was a freedom fighter, cannot be taken as an income for the purpose of considering the request of the petitioner to give a compassionate appointment, since it is an honour given to the freedom fighters and the same cannot be considered as an income.

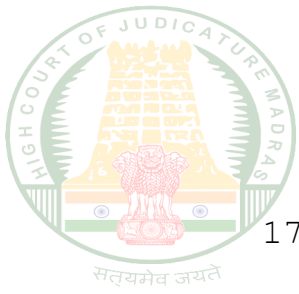


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15.This Court in Vellithyammal Vs the Secretary to Government [W.P(MD)No.1457 of 2008, dated 27.04.2009] has held that the Freedom Fighters' pension is not a charity and it is a recognition for their service the nation and the relevant portion reads as follows:

"The payment of Freedom Fighter's Pension was not charity. It was only a recognition of the great service rendered by the freedom fighters to the nation. It was only on account of the self-less and dedicated service rendered by the freedom fighters that we are enjoying the freedom today."

16.The main objective of Freedom Fighters Pension Scheme (Swatantrata Sainik Samman Yojana) is to honour the contribution and the sacrifices of the freedom fighters to the nation. Through this scheme monthly pension is provided to pensioners so that they can lead their life with respect. This scheme is basically a token of respect for the contribution of freedom fighters in the national freedom struggle.

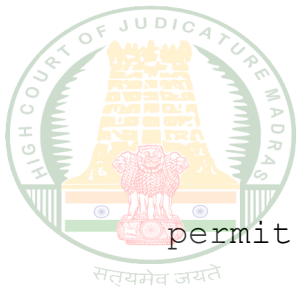


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17.The Hon'ble Supreme Court and this Court in several such cases have held that Freedom Fighters Pension is given only to honour the services and the sacrifices rendered by the freedom fighters for the nation in the freedom struggle and also in recognition of the services and sacrifices and it is not a charity. Therefore the pension received by the petitioner in respect of the freedom fighters pension cannot be brought under the meaning of income, as it has been held to be in honour for and in recognition of the services and the sacrifices of the freedom fighters. As such the pension received by the petitioner arising out of the Freedom Fighters Pension, cannot be taken as an income for grant of family pension, as mentioned vide G.O.Ms.No.327 Finance Department dated 30.08.2001 and G.O.Ms.No.337 Finance Department dated 14.11.2017 and in the clarificatory letter No.43105/(Pension)2013, dated 02.12.2013. Under such circumstances the first and second reasons cited by the respondents for denying the family pension cannot be sustained in the eye of law.

18.Insofar as the third reason that G.O.Ms.No.290 Public (Ex-Servicemen) Department dated 05.04.2017 does not

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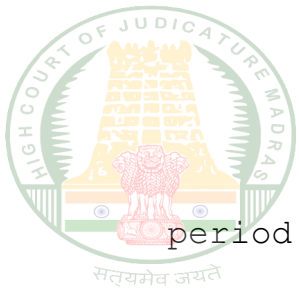


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permit granting of dual pension is concerned, there is no any such denial of grant of dual pension to the pensioner in the said government order. Moreover vide this government order, the government ordered for sanction of dual family pension to those families of Ex-Servicemen, who have been re-employed in civil (i.e.) State Government Service and earned a pension out of the re-employment prior to 01.04.2003 (i.e) before the introduction of Contributory Pension Scheme, in addition to Military Family Pension already drawn by them. This Court is of the view that citing this government order can have no relevance to deny the family pension arising out the employment of the petitioner's mother.

19.To sum up, all the three reasons assigned by the respondents to deny family pension to the petitioner are unsustainable and as such, this writ petition stands allowed. The impugned order passed by the respondents are set aside. The respondents are directed to grant family pension to the petitioner arising out of the state government civil service of the petitioner's deceased mother in addition to the freedom fighters pension within a

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period of eight weeks from the date receipt of a copy of this order. No costs. Consequently connected miscellaneous petition stands closed.

14.07.2022

dsk

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Principal Accountant General (A&E),
Office of the Principal Accountant General (A&E),
Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.
- 2.The Senior Accounts Officer,
Office of the Principal Accountant General,
(Accountant & Entitlements), Tamil Nadu,
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B. PUGALENDHI, J.

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