

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 32427 of 2017

Between:

Smt L.Vijayalaxmi

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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< Gist:

> Head Note:

! Counsel for the Petitioner : MrM.Bharat Shah

^ Counsel for the Respondent: G.P for Services I

? Cases Referred:

1. 1985 SC 356

2. 1999 (2) SCT 347 SC

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No. 32427 of 2017****ORDER:**

Heard the learned counsel for the petitioner, learned Government Pleader for Co-operation and learned Government Pleader for Services-I.

2. This writ petition is filed to issue a writ, order or direction more in the nature of writ of Mandamus to declare the impugned Proceedings Lr.No.Pen(1)2193/13, dated 03.09.2016 of the 2nd respondent as void, illegal, arbitrary and unconstitutional and also contrary to A.P. Government Servants (Family Pension) Rules, 1964 and consequently direct the respondents to fix and pay the family pension due to the petitioner with interest on arrears of family pension with all consequential benefits.

3. The case of the petitioner, in brief, is as follows:

a) The petitioner's husband was selected and appointed as Agriculture Extension Officer in the year 1967 and joined on 11.01.1967. While he was working in the said post, he expired while in service on 22.01.1969, after completing two years of service and that he has satisfactorily completed his

probationary period. The petitioner made representation on 25.02.1969 requesting for payment of family pension and death benefits.

b) On repeated requests made by the petitioner, the 3rd respondent vide Memo No.Estt(1)981/09, dated 04.11.2009 requested the Assistant Director of Agriculture (r), Nizamabad and others to send remarks. The 4th respondent submitted remarks on 28.03.2011 and that the 3rd respondent sought directions from the 2nd respondent for settlement of family pension of the petitioner.

c) The petitioner understood that the reason for not granting family pension is only on the ground that the records are not available pertaining to the petitioner's husband in their office, for which the petitioner cannot be deprived of legitimate right for getting family pension.

d) The Government issued Circular Memo dated 22.03.1994 to sanction the family pension to the dependants though the records are not available and are destroyed not on account of their fault but on account of floods, fire etc. The Government also issued amendment to the A.P. Revised Pension Rules, 1980 vide G.O.Ms.No.224, dated 28.08.1982.

e) When the respondents had not granted the family pension, the petitioner filed O.A.No.3058 of 2013 before A.P.A.T., Hyderabad and the Tribunal passed interim orders on 29.04.2013 directing the respondents to consider the case of the petitioner.

f) The 2nd respondent vide Memo No.A5(1)453/2009, dated 06.07.2013 directed the 3rd respondent to take action as per the instructions.

g) When the 2nd respondent issued the impugned proceedings dated 03.09.2016 rejecting the claim of the petitioner that the service register is not traceable, the petitioner filed this writ petition, aggrieved by the same.

4. The relevant portion i.e. last para of the counter affidavit filed by the 2nd respondent, reads as under:

“It is to state that as per the provision under Rule 50, Family pension is entitled to those employees medically examined and found fit for appointment under Government prior to his appointment. Generally the medical fitness is obtained for regular & permanent employment. since his appointment was temporary and his medical fitness might not have been obtained, after considering the fact the Accountant General, A.P. Hyderabad has rejected the pension proposals

submitted, while observing that the services of the deceased were neither confirmed nor regularized the family of the deceased is not entitled to the family pension or DCRG the same was informed to the petitioner herein well in 1970 i.e., vide Lr.No 11/88/69 Dt 9-6-1970 by the then Block Development Officer, Panchayat Sameti block, Armoor. Now after a lapse of about 43 years of above intimation to her, she has filled O.A. 3058/2015 in A.P.A.T again claiming for the family pension. Since, the petitioner was informed of the Accountant General's. rejection for the family pension during 1970 itself, and there was no claim by her since then, the records connected to the case might have been treated as not required after lapse of 10 years, and might have been destroyed thus no particular records are available in this case. After such an afflux of 43 years period, such claim cannot be entertained wherein the matter necessary proposals for family pension was sent by the Dept. Immediately within an year, and the Accountant General, A.P, Hyderabad rejected it."

PERUSED THE RECORD

5. Rule 4 of the Government Servants Family Pension Rules, 1964 reads as under:

"4. Family Pension:- (1) Subject to the provisions herein after contained, where a Government Servant, having put in service for a total period of

not less than one year, dies, while in service or after retirement, on or after the 1st January, 1964, a family pension according to the scale specified in sub-rule (3) shall be granted to the family of the Government Servant."

6. The order impugned dated 03.09.2016 vide Lr.No.Pen(1)2193/13 passed by the 2nd respondent, reads as under:

"You are informed that, with reference to the Hon'ble Andhra Pradesh Administrative Tribunal, Hyderabad order dated. 01-12-2015 vide reference 2nd cited, in O.A.No.3058 of 2013 filed by Smt. L.Vijayalakshmi w/o Late L.Mohan Reddy, Ex. Agriculture Extension Officer (Re-designated as Agril. Officer) for sanction of family pension, it was vigorously tried to trace out the original records pertaining to the service of the deceased L.Mohan Reddy, Ex. A.E.O. (Re-designated as Agril. Officer), as informed by the ADA, Armoor to JDA, Nizamabad vide Lr.No.Esst/264/2016, Dt. 19-7-2016

In this context vide reference 1st cited, the Joint Director of Agriculture, (FAC) Nizamabad district in letter No.Esst.(1)981/2009, dated. 27-10-2014 forwarded the family pension proposals in respect of Late L.Mohan Reddy, Ex.A.E.O. (Re designated as Agril. Officer) Balkonda O/o B.D.O. Panchayath Sameti, Armoor who is expired while in service on 22-01-1969 and the same was returned to the Joint Director of

Agriculture, Nizamabad for further clarification.

Accordingly the Joint Director of Agriculture, Nizamabad vide their letter dated 02-01-2015 resubmitted the pension proposals to this office. Thereupon this office has sought further clarification from the J.D.A. Nizamabad on the following vide reference 4th cited.

1. The reasons i.e., why the family of the said deceased employee has not immediately approached the concerned office for family pension after the rejection of pension by the Accountant General, Andhra Pradesh, Hyderabad

2. The date of regularization of services of Sri.K.Venkateshwarlu, Asst. Direct of Agriculture (Retired) and the copy of Proceedings (As he is the contemporary employee of the deceased).

3. The copies of the references mentioned by Sri.K.Venkateshwarlu, A.D (Retired) in the Affidavit may be furnished.

4. The details of avilment of all kinds leave and non regularized period / Dies Non if any during his Government Service with copies of sanction proceedings /Orders of the said deceased employee should be informed.

Accordingly the Joint Director of Agriculture, Nizamabad has submitted a report dated 20-07-2016 stating that there is no Service Register in respect of Late L.Mohan Reddy available due to reorganization of Panchayath Raj Department and shifting of record from

one office to other office. In this connection, it is established that no records were available at this afflux of time of 45 years.

Vide Lr.Roc.No A1/88/69, dated 09-06-1970 of Block Development Officer, Panchayat Samethi Block, Armoor addressed to Smt. L.Vijayalakshmi w/o Late L.Mohan Reddy, Ex.A.E.O, wherein it was noted that "the Accountant General, AP., Hyderabad has already returned the Family Pension proposals of Late L.Mohan Reddy, Ex. A.E.O. and has observed that the services of the deceased were neither confirmed nor regularized, the family of the deceased is not entitled to Family Pension or Death Cum Retirement Gratuity" and the above position was informed to Smt L.Vijayalaxmi w/o Late L.Mohan Reddy, A.E.O. Therefore it is not feasible to forward again the Family pension proposals to the Accountant General, Andhra Pradesh, Hyderabad

In view of the above, Smt. L.Vijayalaxmi w/o Late L.Mohan Reddy is informed that at present the Service Register of Late L.Mohan Reddy is not traceable in spite of sincere efforts and hence there is no clarity on whether he has served in the dept for a continuous period of one year.

In view of the above the case cannot be considered as per Rule 4 of Andhra Pradesh Family Pension Rules 1964.

7. Para 2 and 3 of Circular Memo No.02663-A/37/A1/Pension.I/94, dated 22.03.1994 issued by the Special Secretary to Government, Finance and Planning (FW.PEN.I) Department, reads as under:

"2. After careful examination of the matter and to avoid hardship to the survivors of Pensioners it is hereby clarified that it would be sufficient, if an applicant produces collateral evidence about the deceased employees service or if the number of the P.P.O. of the deceased pensioner is mentioned in the application, in respect of cases where no service documents are available for entertaining applications for sanction of Family Pension. In such cases, Family Pension has to be sanctioned from the date of issue of the order based on the affidavit filed by a contemporary or Co-pensioner before the Notary Public. It is further clarified that in case the number of P.P.O. is indicated there may not be any need to verify the particulars, since it can be taken after due verification of P.P.O. number that the claim is bonafide one and if no such particulars are available either in the application furnished by the applicant or with the concerned Department for verification, the claim may be rejected, straight away.

3. The above instructions shall be applicable in case of Pensioners and Family Pensioners and employees who retired/died before 1964 and also in case of employees

whose service records are destroyed not on account of their fault but on account of floods, fire etc even subsequent to 1964."

8. G.O.Ms.No.224, dated 28.08.1982 issued by the Joint Secretary to the Government, Finance and Planning (FW.PEN.I) Department, Clause (d) (AMENDMENT), reads as under:

"The following notification will be published in the Andhra Pradesh Gazette.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Andhra Pradesh hereby makes the following Amendment to the Andhra Pradesh Revised Pension Rules, 1980.

AMENDMENT

After Sub-para C of para 3 of Appendix I to the said rules, the following shall be added, namely:

"d) In cases where the service register itself is lost or is not traceable, once the date of appointment is established with reference to direct independent evidence, and affidavit given by the employee in respect of his service duly supported by collateral evidence of contemporary employees, shall be accepted.

9. Letter NO.Estt.(1)981/2009, dated 27.10.2014 of the Joint Director of Agriculture (FAC), Nizamabad addressed to the Commissioner and Director of Agriculture, Telangana, Hyderabad, reads as under:

"I am to forward herewith the Family Pension papers of late Sri L.Mohan Reddy, Ex. AEO (Resignated as A.O.) Balkonda O/o BDO, Panchayat Sameti, Armoor, who is expired while in service on 22.01.1969. The following documents are forwarded herewith for authorizing Pensionary Benefits:

1. Part I : Information furnished by the Govt.Servant/Family Pension Beneficiary
2. Part II A : Information filled in by the Pension Sanctioning Authority.
3. Part – IIB : Sanction order of Pensionary benefits
4. Annexure I : Descriptive Roll
5. Annexure II: Nomination
6. Copy of Annexure III:
7. L.P.C. (Final)
8. N.D.C. (Final)
9. Form of application of Family Pension – (Form – D)
10. Form of sanctioning family pension (Form – E)
11. Application of Smt L.Vijayalaxmi W/o late Sri L.Mohan Reddy

Submitted for favour of kind information."

10. Operative portion i.e. Para 5 of the Order dated 01.12.2015 passed in O.A.No.3058 of 2013, reads as under:

"5. In view of the above, the 2nd respondent is directed to pass orders on the letter No. Estt.(1)981/2009, dated 27.10.2014 of the Joint Director of Agriculture (FAC), Nizamabad by fixing

the pension of the applicant as per Rule-4 of A.P.Family Pension Rules,1964 and for making the payment along with arrears. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

DISCUSSION AND CONCLUSION

11. A bare perusal of the order impugned vide Lr.No.Pen(1)2193/13 dated 03.09.2016 passed by the 2nd respondent indicates that on receipt of the pension proposals pertaining to the petitioner herein re-submitted by the 3rd respondent herein vide letter dated 13.01.2015, the 2nd respondent office sought clarification on certain issues from the 3rd respondent vide memo dated 04.07.2016. The 3rd respondent in response thereto submitted a report dated 20.07.2016 stating that there is no service register in respect of late L.Mohan Reddy available due to re-organisation of Panchayat Raj Department and shifting of records from one office to other office and that it was established that no records were available at the afflux of time of 45 years.

12. This Court opines that non availability of records pertaining to the petitioner's husband in the respondents office cannot be the ground for depriving the petitioner's legitimate right for getting Family Pension. A bare perusal of the material documents filed by the petitioner in support of the present writ petition i.e Circular Memo No.02663-A/37/A1/Pension.I/94, dated 22.03.1994 issued by the Special Secretary to Government, Finance and Planning (FW.PEN.I) Department (referred to and extracted above), in particular, paras 2 and 3, clearly indicates the procedure for sanction of the family pension to the dependant though the records are not available and are destroyed not on account of their fault, but on account flood, fire etc. even subsequent to 1964 on the basis of collateral evidence produced by the applicant about the deceased employees service or if the number of the P.P.O. of the deceased petitioner is mentioned in the application in respect of cases where no service documents are available for entertaining applications for sanction of Family Pension. A bare perusal of the

copy of G.O.Ms.No.224, dated 28.08.1982 issued by the Joint Secretary to the Government, Finance and Planning (FW.PEN.I) Department, Clause (d) (AMENDMENT) (referred to and extracted above) indicates that in cases where the service register itself is lost or is not traceable, once the date of appointment is established, with reference to direct independent evidence, and affidavit given by the employee in respect of his service duly supported by collateral evidence of contemporary employees shall be accepted.

13. A bare perusal of the contents of the letter i.e. Letter NO.Estt.(1)981/2009, dated 27.10.2014 of the Joint Director of Agriculture (FAC), Nizamabad addressed to the Commissioner and Director of Agriculture, Telangana, Hyderabad of the 3rd respondent clearly indicates that the proposals had been submitted by the 3rd respondent to the 2nd respondent way back on 27.10.2014 and the petitioner also had the benefit of the order dated 01.12.2015 in O.A.No.3058 of 2013 whereunder the 2nd respondent herein is directed to pass orders on the letter dated

27.10.2014 of the 3rd respondent by fixing the pension of the petitioner as per Rule 4 of A.P. Family Pension Rules, 1964 and for making the payment along with arrears. The Tribunal further directed that the said exercise to be completed within a period of three months from the date of receipt of copy of the order. This Court opines that the order impugned dated 03.09.2016 vide Lr.No.Pen(1)2193/13 has been passed by the 2nd respondent mechanically without application of mind, hastily, without examining the contents and the documents enclosed along with the letter No.Estt.(1)981/2009, dated 27.10.2014 of the Joint Director of Agriculture (FAC), Nizamabad i.e. the 3rd respondent herein without even applying the relevant G.Os to the case of the petitioner, contrary to the true spirit of the orders passed in O.A.No.3058 of 2013 dated 01.12.2015 on the ground that the service register of L.Mohan Reddy is not traceable inspite of sincere efforts.

14. In State of Kerala Vs. M. Padmanabham Nair AIR 1985 Supreme Court 356, the Hon'ble Supreme Court

observed that pension and gratuity are no longer any bounty to be disbursed by the Government to its employees on their retirement but are valuable rights and property, in their hands. The aforesaid authoritative law was thereafter reiterated by the Hon'ble Supreme Court in "Dr. Umar Agarwal Vs. State of U.P. and another", reported in 1999 (2) SCT 347 (SC).

15. This Court opines that the family pension due to the petitioner cannot be denied to the petitioner irrationally, illegally on the ground that the service records of the deceased employee are not traceable. Taking into consideration the aforesaid facts and circumstances of the case, and the law laid down by the Apex Court in Dr. Umar Agarwal Vs. State of U.P. and another", reported in 1999 (2) SCT 347 (SC) and also Rule 4 of A.P. Government Servant (Family Pension) Rules, 1964 (referred to and extracted above), the writ petition is allowed as prayed for and the impugned Proceedings Lr.No.Pen(1)2193/13, dated 03.09.2016 of the 2nd respondent is hereby set aside and the respondents

are directed to reconsider the case of the petitioner for fixation and payment of family pension, duly releasing all the arrears of family pension with consequential benefits with interest from the date of death of the petitioner's husband till the actual payment is made within a period of two weeks from the date of receipt of the copy of this order, and pass appropriate orders duly communicating the decision to the petitioner. However, there shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R.Copy to be marked.
b/o
kvrn