*** <u>THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO</u>**

<u>+ WRIT PETITION No.11154 OF 2012</u>

% 24.03.2015

Thotla Odamma and another.

….Petitioners

v.

$ Singareni Collieries Company Limited,
Rep. by Chairman and Managing Director
Kothagudem, Karimnagar District and others

…. Respondents

! Counsel for the Petitioners**:** Sri K.Vasudeva Reddy

Counsel for Respondent Nos. 1 and 2**:** Sri Nandigam Krishna Rao

Counsel for Respondent No.4: Sri B.Papa Rao Goud.

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>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.11154 OF 2012

ORDER:

This writ petition is instituted by two individuals by name Smt.Thotla Odamma and Thotla Mahesh, the 1st respondent is Singareni Collieries Company Limited, while respondent Nos.2 and 3 are the General Manager and Superintendent of Mines thereof. The 4th respondent was one Thotla Lavanya, w/o late Sri Thotla Sampath. The two petitioners sought for Writ of Mandamus for declaring the action of the respondent Nos.1 to 3 in seeking to pay the total terminal benefits of late T.Sampath to the 4th respondent ignoring the case of the petitioners as illegal. They also sought for consequential direction to the respondent Nos.1 to 3 to pay the terminal benefits of late Sri T.Sampath in terms of Section 32 and 36 of Indian Succession Act.

Heard learned counsel Sri K.Vasudeva Reddy for the petitioners, Sri Nandigam Krishna Rao for the respondent Nos.1 to 3 and B.Papa Rao Goud for the 4th respondent. I also appreciate the concern exhibited by the learned counsel for the petitioners and the learned counsel for the 4th respondent. Smt.Thotla Odamma, the first petitioner was present in the Court yesterday. Smt.Thotla Lavanya, the 4th respondent was also present. I had interacted with both of them for considerable period of time.

One Sri T.Sampath was employed with Singareni Collieries Company Limited as Badili Coal Filler and he could secure such employment because his father, who was employed with Singareni Collieries Company Limited, died in harness. The 1st petitioner Smt.Thotla Odamma was the mother of T.Sampath, the 4th respondent herein was the wife of the deceased T.Sampath. There appears to be some discard between the two in properly sharing the quantum of terminal benefits liable to be paid by the Singareni Collieries Company Limited for the untimely death of Sri T.Sampath. Because they are not able to amicably settle the disputes, the present writ petition came to be instituted.

After hearing learned counsel for considerable length of time Sri K.Vasudeva Reddy and Sri B.Papa Rao Goud would agree in principle that the parties in this case are governed by the Hindu Succession Act, but not by the Indian Succession Act as Sri T.Sampath, the deceased individual was a Hindu. Section 2 of the Hindu Succession Act, 1956 makes it clear that it applies to any person, who is a Hindu by religion and hence there is no difficulty with regard to applicability of the Hindu Succession Act to the parties. Section 8 of the Hindu Succession Act dealt with the general rules of succession in case of male Hindu dying intestate. It has set out clearly that the property of a male Hindu dying intestate shall devolve as per the provisions of this chapter, firstly, upon the heirs being the relatives specified in Class I of the Schedule and only in the event there is no heir of Class I, then upon the heirs being relatives specified in Class II of the schedule. The schedule appended to this enactment included a daughter, widow, mother as Class I heirs of a male Hindu, whereas brother and sister are included as Class II heirs. It is therefore crystal clear that for the property of a male Hindu dying intestate, a brother or a sister can only succeed in the absence of Class I heirs but not otherwise.

In the instant case, the 2nd petitioner is stated to be the adopted son of the 1st petitioner Smt.Thotla Odamma. I do not wish to go into the controversy raised by the learned counsel for the 4th respondent that such an adoption is illegal and does not bind the 4th respondent. But at the highest, the 2nd petitioner can only be characterized as a brother of the deceased Thotla Sampath and in that capacity he can be, at best, described as Class II heir. Similarly, there was one daughter to Smt.Thotla Odamma, who is already married. She can be, at best, described as Class II heir of the deceased. Hence, it is safe to assume that the 1st petitioner herein and the 4th respondent being the mother and widow of the deceased respectively are Class I heirs. Sri B.Papa Rao Goud has also informed that the deceased has left behind a young daughter Lasya, aged about 4 years. Therefore, the daughter of the 4th respondent and that of the deceased T.Sampath is also a Class I heir. Hence, the estate of the deceased T.Sampath can be succeeded to by the 1st petitioner, 4th respondent – Widow and the daughter of the deceased Lasya.

In all other circumstances, rights of succession have got to be worked out by the parties in an appropriate Court of competent jurisdiction. But however, taking in to account and consideration the extraordinary circumstances, in which the parties are leading their lives in near penury conditions, I consider it appropriate to resolve this controversy at the stage. I direct the 1st respondent – company and the other respondent Nos.2 and 3 to immediately settle the terminal benefits and additional amount in lieu of dependent employment payable due to the death of Sri T.Sampath, Badli Coal Filler, who died in a motor accident outside the work place. The terminal benefits payable to Sri T.Sampath will be apportioned into 3 equal portions. The 1^{st} petitioner will be entitled to $1/3^{rd}$, while the 4^{th} respondent is entitled to other $1/3^{rd}$. The remaining $1/3^{rd}$ amount shall be confined by the 1^{st} respondent – company to an interest bearing Fixed Deposit in any of the Nationalized Bank/Post Office wherever the 4^{th} respondent was residing, for the next 14 years period. As and when the minor child Lasya attains the age of majority or otherwise, the said money is liable to be released to her or the 4^{th} respondent. The interest accrued on the deposit, shall be made over to the 4^{th} respondent once in every year before the end of April. So that the same will be utilized by the 4^{th} respondent for the purpose of up keep, studies and maintenance of the daughter Lasya. Let this exercise be completed by respondent Nos.1 to 3 latest by 30.04.2015. The 1^{st} petitioner and 4^{th} respondent shall open an S.B.A/c in any of the Nationalized bank/post office, wherever they are residing and leave the said information with the 1^{st} respondent under registered post acknowledgment due. The proceeds payable to the 1^{st} petitioner and the 4^{th} respondent will accordingly be paid, directly to that account.

It is needless to mention that the family pension becomes payable only the widow of the deceased T.Sampath so long as she remains un-married.

With this, the writ petition stands disposed of. No order as to costs.

All the miscellaneous petitions pending in this writ petition shall stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

24.03.2015

<u>Note</u>:
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