



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.18018 of 2016

K.Nandhini

... Petitioner

vs.

1)The Principal Accountant General,
Office of the Principal Accountant General,
(Accounts and Entitlements) Tamilnadu,
361, Anna Salai, Chennai-18.

2)The Additional Assistant Educational Officer,
Virudhunagar, Virudhunagar District. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to proceedings in Na.Ka.No.1366/A1/15 dated 29.09.2015 of the 2nd respondent herein and quash the same and consequently direct the 2nd respondents herein to forward the petitioner's family pension proposal to the 2nd respondent herein and direct the 1st respondent herein to disburse the death cum terminal benefits of the deceased Mrs.Packiyalakshmi, family pension from the date of death namely 20.02.2010 with all other attended benefits to the petitioner herein.

For Petitioner	: Mr.T.Pon Ramkumar
For Respondents	: Mr.M.Alagadevan, Special Government Pleader

ORDER

This Writ of Certiorarified Mandamus has been filed, calling for the records relating to proceedings in Na.Ka.No.1366/A1/15 dated 29.09.2015 of the 2nd respondent herein and quash the same and consequently direct the 2nd respondent to forward the petitioner's family pension proposal to the 1st respondent herein with a further direction to the 1st respondent herein to disburse the death cum terminal benefits of the deceased Mrs.Packiyalakshmi, and family pension from the date of death namely, 20.02.2010 with all other attendant benefits to the petitioner herein.



2. On 05.11.1965, one Mrs. Packialakshmi was appointed as Secondary Grade Teacher in Panchayat Union Primary School; later, she was promoted as Primary School Headmaster. She adopted minor Nandhini/petitioner herein as her daughter as per the Hindu rites and customs; the adoption was duly registered on 11.04.2002; at the time of adoption, Nandhini was aged about 3 years and in the Service Register, minor Nandhini has been nominated as the adopted daughter of the employee Mrs. Packialakshmi. Packialakshmi died on 20.02.2010.

3. Minor Nandhini in the year 2010 applied before the 1st respondent through the 2nd respondent for pension and other benefits payable to the deceased Packialakshmi; she also filed a suit in O.S.No.247 of 2012 in the Civil Court, seeking for a declaration that she is the legal heir of the deceased Packialakshmi and entitled to receive all the terminal benefits payable to the deceased Packialakshmi including pension; the suit in O.S.No.247 of 2012 came to be decreed in favour of Minor Nandhini as legal heir of the deceased Packialakshmi and so far as the prayer relating to family pension is concerned, the District Munsif Court, which dealt with the matter, gave a finding that the claim for pension is not maintainable under Section 4 of the Pension Act, 1871. Misunderstanding the judgment of the Civil Court, which confers exclusive jurisdiction upon the authorities to consider the pension proposal, the pension proposal submitted by the 2nd respondent to the 1st respondent, has been returned not to the authority, who sent the proposal, but to one S.Kannan, who is the father and natural guardian of the petitioner, which is under challenge in this writ petition.

4. When the Civil Court gave a finding that it has no jurisdiction to entertain the request of the petitioner for grant of family pension, the jurisdictional issue only touches upon the subject matter of the civil litigation namely, pension. The petitioner has been declared as a legal heir of the deceased Packialakshmi by the Civil Court and it is equally relevant to point out that she is the nominee as nominated by the deceased Packialakshmi herself.

5. The Civil Court did not entertain the claim of the petitioner for pension on account of statutory bar under the provisions of the Pension Act, 1871. Even though there is a bar for the Civil Court to adhere to such claim, it does not bar the jurisdiction of the concerned authorities. In other words, the dismissal of the claim for pension by the Civil Court does not mean that the claim of the petitioner for pension cannot be entertained at all by any authority whomsoever is authorized under the Act. The Act only indicates that Civil Court alone has no jurisdiction to deal with the subject of pension and the competent

authority is prescribed under Section 5 of the Pension Act, 1871, which is extracted for the ready reference of the respondents:

5. Claims to be made to Collector or other authorized Officer.—Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the appropriate Government and such Collector, Deputy Commissioner or other Officer shall dispose of such claim in accordance with such rules as the Chief Revenue authority may, subject to the general control of the appropriate Government, from time to time, prescribe in this behalf.

6. Under such circumstances, there is no scope at all for the authorities concerned, to return the pension proposal. It is a total non application of mind as well as misunderstanding of the law on this point and therefore, the impugned order is set aside and the 1st respondent is directed to get the pension proposal from the 2nd respondent and to pass appropriate orders thereon, within a period of eight weeks from the date of receipt of a copy of this order.

Accordingly, this Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1) The Principal Accountant General,
Office of the Principal Accountant General,
(Accounts and Entitlements) Tamilnadu,
361, Anna Salai, Chennai-18.

2) The Additional Assistant Educational Officer,
Virudhunagar, Virudhunagar District.

+1 cc to MR.T.PON RAMKUMAR, Advocate SR.No.54652

W.P (MD) No.18018 of 2016
22.09.2016

SMA/GSV-PM/03.11.2016:3P/4C