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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.10.2016

Pronounced on : 03 .11.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Petition(MD) No.1962 of 2013

and

M.P(MD)No.1 of 2013

Rajammal

...Petitioner

Vs.

1.The State of Tamil Nadu

rep. by its Secretary / Commissioner,
Survey and Settlement Department,
Survey House, Cheapuk,
Chennai - 05.

2.The Assistant Director of Survey and Settlement,
Korampallam,
Tuticorin District.

3.The Accountant General,
Teynampet,
Chennai.

4.S.Muniyandi

... Respondents

Prayer : Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents to withheld the fourth respondent's retirement benefits till the legal heirs names will be entered in the service records and other connected pension papers of the fourth respondent and consequently direct the respondents 1 to 3 to deduct the petitioner's share from the fourth respondent's retirement benefits.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.K.Guru A.G.P
for R1 and R2
Mr.P.Gunasekaran
G.A., for R3

No representation for R4

**ORDER**

This writ petition has been filed by the petitioner seeking the issuance of a Writ of Mandamus directing the respondents to withhold the fourth respondent's retirement benefits till the legal heirs names will be entered in the service records and other connected pension papers of the fourth respondent and consequently directing the respondents 1 to 3 to deduct the petitioner's share from the fourth respondent's retirement benefits.

2.The case of the petitioner is that the marriage between the petitioner and the fourth respondent was arranged by the elders from the kins of the both sides of the parties. After the marriage, the fourth respondent and the petitioner lead a happy matrimonial life and out of their wedlock one male child, namely, Chandrasekar, and two female child, namely, Jeyanthi and Sailaja was born and females are got married and they are living with their husband and now the petitioner is living with her aged parents and her son. The fourth respondent is employed as Field Assistant in Survey and Settlement Department, Tuticorin District more particularly under the control of the second respondent. To her shock and surprise, the fourth respondent had developed illegal intimacy with a lady and never turned the petitioner side and not takes care of their children also. Therefore, the petitioner made a police complaint on 29.02.2012, before the Sub-Inspector of Police, All Women Police Station, Kovilpatti. On receipt of the complaint, the police authority also called for enquiry. In the enquiry, the fourth respondent had promised to live along with the petitioner and also requested the police authorities to release him from criminal offence. But the fourth respondent changed his mind and deserted the petitioner and her children and left the matrimonial home on 15.03.2012. The police authorities advised the fourth respondent to mend his ways, but that was not accepted by the fourth respondent.

3.It is the further case of the petitioner that in the abovesaid circumstances, she filed a maintenance case before the Judicial Magistrate No.I, Kovilpatti in M.C.No.9 of 2012 against the fourth respondent and on 12.10.2012, the learned Judicial Magistrate No.I, Kovilpatti, has passed an order directing the fourth respondent to pay a sum of Rs.3,000/- as monthly maintenance. The copy of the judgment was communicated to the second respondent to deduct the maintenance amount from the fourth respondent's monthly salary. But the second respondent has not passed any order and make the petitioner to run pillar to post. The petitioner further stated that she is ready to live with the fourth respondent. But the fourth respondent wantonly evaded the petitioner and her children with an intention to develop his illegal intimacy. The petitioner also stated that the fourth respondent came to the petitioner's house and warned and told her that he is going to retire from service on Voluntary Retirement



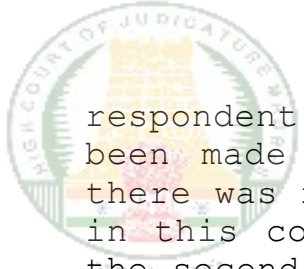
Scheme and going to marry the said lady and after that the petitioner would not get maintenance from the fourth respondent. Therefore, immediately, the petitioner made a detailed representation to the respondents 1 and 2 and specifically requested the authorities to enter her name and her children's name in the fourth respondent's Service Register as his legal heir. But to her shock and surprise the second respondent orally stated that there is no provision to exist for division of pension or other retirement benefits of service pensioner between pensioner and his wife/others as claimed by her. But as on date, the petitioner is the legally wedded wife of the fourth respondent and therefore, the second respondent ought to have entered the petitioner's name and her children's name in the Service Register of the fourth respondent. The petitioner also come forward by saying that when the competent Court, namely, Judicial Magistrate No.I, Kovilpatti, has passed an order of maintenance in M.C.No.9 of 2012 dated 12.10.2012, it is the bounden the duty of the second respondent to deduct the said amount from the service benefits of the fourth respondent, since the second respondent is the employer of the fourth respondent. Without doing so, the second respondent arranged to pay the said service benefits to the fourth respondent. Therefore, the petitioner has come before this Court with the relief as stated supra.

4.A counter affidavit has been filed by the second respondent, wherein, it is stated that originally the petitioner was appointed as Field Assistant on consolidated pay of Rs.320/- per month with effect from 07.04.1983 and also appointed as Field Assistant in time scale of pay as per Ref.Rc.A1/40688/83-1 dated 25.02.1985, as per order of Assistant Director of Survey and Land Records, Tirunelveli and joined duty on the forenoon of 01.03.1985. Subsequently, the services of the fourth respondent had been regularized in the category of Field Assistant with effect from 01.03.1985 as per G.O.Ms.No.1171, Revenue Department, dated 26.08.1991. The second respondent also stated that the fourth respondent had already nominated the petitioner's name as nominee for all the following retirement benefits.

- 1) DCRG
- 2) Family Pension
- 3) G.P.F
- 4) Special P.F.
- 5) Family Benefit Fund

The nomination of the above items have already been attached with the Service Register of the fourth respondent and necessary entries have also been made in the Service Register in page 34 of Volume-I. Therefore, there is no necessity to reentry in the Service Register.

5.The second respondent also stated that no request was made by the petitioner to deduct the maintenance amount from the fourth

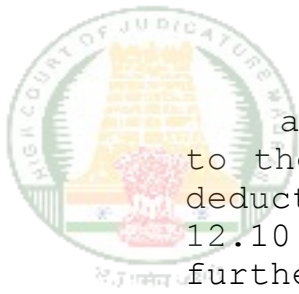


respondent's monthly salary and necessary entries have already been made in the Service Register of the fourth respondent and there was no oral statement was expressed by the second respondent in this connection as stated in the affidavit. Apart from this, the second respondent also stated that no information was received by the second respondent about the illegal contact of the fourth respondent with another woman. Therefore, the entries have already been made in connection with nominations for pensionary benefits and the petitioner's name had already been entered and nomination were also attached with Service Register of the fourth respondent. The said counter affidavit has been filed on 27.03.2013 and stated that the fourth respondent will be retired on 30.09.2013 and at that time there was no pension papers were filed by the fourth respondent to the second respondent. Therefore, the second respondent sought for dismissal of this writ petition.

6. After issuing notice to the respondents, while considering the case of the petitioner, this Court, by an order dated 24.11.2014 made in M.P(MD)No.1 of 2013, directed the respondents, more particularly, the third respondent to withhold the sum calculated at the rate of Rs.3000/- per month from 12.10.2012 to till date from the amount payable to the fourth respondent towards his retirement benefits, until further orders.

7. Heard Mr.M.Saravanakumar, learned counsel for the petitioner, Mr.K.Guru, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.P.Gunasekaran, learned counsel appearing for the third respondent.

8. Admittedly, the petitioner is the legally wedded wife of the fourth respondent. When the fourth respondent failed to give maintenance, the petitioner approached the Judicial Magistrate No.I, Kovilpatti for maintenance and considering the case of the petitioner, the learned Judicial Magistrate No.I, Kovilpatti has passed an order in M.C.No.9 of 2012 dated 12.10.2012 directing the fourth respondent to pay the monthly maintenance of Rs.3000/-. But the fourth respondent failed to pay the said amount. Therefore, the petitioner is entitled for the said amount of Rs.3000/- per month from the date of passing the order, namely, 12.10.2012, till the amount payable to the fourth respondent towards retirement benefits. During the course of arguments, the learned counsel for the petitioner has produced a letter received under Right to Information Act, wherein, it is stated that as per the direction of this Court dated 24.11.2014 a sum calculated at the rate of Rs.3,000/- p.m commencing from 12.10.2012 to 06.10.2015 amounting to Rs.1,07,516/- has been withheld from the entitled DCRG payable to Sri.P.Muniyandi, and the same is lying in the office of the second respondent. Therefore, I am inclined to pass the following orders:-



a) The Writ petition is disposed of with a direction to the respondents 1 to 3 to withhold the amount already deducted at Rs.3,000/- per month commencing from 12.10.2012 to 06.10.2015 amounting to Rs.1,07,516/- and further direction to the respondents 1 to 3 to pay the said amount to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

b) a further direction is issued to the respondents 1 to 3 that if any pensionary benefits has not been disbursed to the fourth respondent, the respondents 1 to 3 shall calculate the arrears of maintenance till the disbursement of the said service benefits to the fourth respondent as per the direction made in M.C.No.9 of 2012 dated 12.10.2012 passed by the Judicial Magistrate No.I, Kovilpatti and deduct the above amounts of Rs.1,07,516/- and to pay the same to the petitioner.

The Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary / Commissioner,
Survey and Settlement Department,
Survey House, Cheapuk,
Chennai - 05.

2.The Assistant Director of Survey and Settlement,
Korampallam,
Tuticorin District.

3.The Accountant General,
Teynampet,
Chennai.

+2 cc to MR.M.SARAVANAKUMAR, Advocate SR.No.65390

Order made in
Writ Petition(MD) No.1962 of 2013
03.11.2016