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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

and

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.P. (MD) No. 5372 of 2013

and

M.P. (MD) No. 1 of 2013

B. Senthil Kumar

.. Petitioner

Vs.

The District and Sessions Judge,
III Additional District Court,
District Court Premises,
Madurai-625 020.

... Respondent

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the respondent in D.No.1562 dated 03.12.2012 and quash the same as illegal and consequently direct the respondent to forward the representation of the petitioner dated 21.12.2011 for the retirement benefits of his sister by name B. Nagalakshmi to the office of Accountant General, Chennai.

For Petitioner : Mr. R. Pandi Murugan

For Respondent : Mr. D. Venkatesh

ORDER

(Order of this Court was delivered by M. SATHYANARAYANAN, J.)

The petitioner would claim that he is the brother of the deceased sister Nagalakshmi, who was employed as Grade I Bench Clerk in Tamil Nadu Judicial Ministerial Services and on account of her ill-health, she got voluntary retirement on 03.05.2011 and prior to that, she had rendered 26 years of qualifying service. The petitioner would further state that his sister got married to one Sundaramoorthy, who deserted her for more than 15 years prior to her death and no child was born to her out of wedlock also and she lived along with her parents as well as with the petitioner and on 27.04.2007, the petitioner was nominated by her sister as ~~Legal heir~~ in respect of Special Provident Fund, Death-cum-Retirement gratuity, General Provident Fund and the said



nomination was recorded in her service register. The petitioner would further claim that apart from the said nomination, her sister had also executed a registered will dated 10.10.2011 by appointing him to succeed her estate in respect of the receipt of the said service benefits. Subsequently she died on 16.12.2011, unable to recover from illness. The petitioner has submitted a representation to the respondent on 21.12.2011 praying for disbursement of pensionary benefits by virtue of nomination and it was returned by stating that in view of Rule 48(8) of the Tamil Nadu Pension Rules, the petitioner cannot be construed as family members, even otherwise he has crossed the age of 18 years. The petitioner, challenging the legality of the said written endorsement dated 03.12.2012 passed by the respondent, came forward by filing this writ petition.

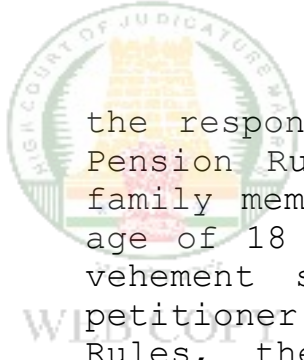
2. The learned Counsel appearing for the petitioner has drawn the attention of this Court to Rule 48 of the Tamil Nadu Pension Rules, 1978 and would submit that sub Rule (3) of Rule 48 speaks about the specified nominee and since the petitioner along with his brother-in-law viz., Sundaramoorthy were nominated and the further fact that the said Sundaramoorthy has also died on 25.02.2013 vide Registration No.7/2013/02 and a certificate to that effect issued by the Registrar of Births and Deaths, Virudhunagar Municipality, dated 12.03.2013, there may not be any impediment on the part of the respondent to disburse the pensionary benefits of the petitioner's sister in his favour by virtue of nomination and prays for allowing this writ petition.

3. The learned Standing Counsel appearing for the respondent would draw the attention of this Court to the counter affidavit and also invited the attention of this Court to the Rule 45(5) of the Tamil Nadu Pension Rules and would submit that as per the said sub-rule, the family in relation to the Government Servants means brothers below the age of 18 years including the step brothers and admittedly the petitioner, even at the time of nomination, has crossed that age and as such, he cannot be given pensionary benefits and prays for dismissal of the writ petition.

4. In response to the said submission, the learned Counsel appearing for the petitioner would submit that admittedly, some benefits have been conferred on the father and mother of the deceased and therefore, liberty may be given to the parents of the deceased to apply for the same and an attempt was earlier made and it was unjustly rejected and hence prays for leave to apply afresh.

5. This Court heard the rival submissions made by the learned Counsel appearing on either side and also perused the materials presented before this Court.

6. As rightly pointed out by the learned Counsel appearing for



the respondent, as per sub rule 5 of Rule 45 of the Tamil Nadu Pension Rules, the petitioner herein cannot be considered as a family member unless at the time of nomination he was below the age of 18 years and admittedly it was not so. Though it is the vehement submission of the learned Counsel appearing for the petitioner that in terms of Rule 48 of the Tamil Nadu Pension Rules, the petitioner falls under the category of specified nominee, in the considered opinion of this Court, the said stand lacks merits and substance for the reasons that the proviso should be read inconsonance with the main provision and it cannot fall on exception and in the light of the definition of family members as per Rule 45(5), Rule 48 should be read in consonance with Rule 45 and therefore, the petitioner herein cannot be construed as a family member, though he was nominated along with his brother-in-law Sundaramoorthy, who according to the petitioner is no more.

7. In the light of the factual submission and legal position, this Court is of the view that the impugned endorsement passed by the respondent warrants no interference and therefore, the writ petition is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed. The petitioner, if so advised and if the remedy is available under law, is always at liberty to approach before the competent civil forum and avail the same.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

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To
The District and Sessions Judge,
III Additional District Court,
District Court Premises,
Madurai-625 020.

+1cc to Mr.S.Radhakrishnan, Advocate Sr.No. **69399**

+1cc to Mr.D.Venkatesh, Advocate Sr.No. **69246**

JAM/02.12.16/SKS-RR/3p-4c

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