

In the High Court of Judicature at Madras

Dated : 04.7.2017

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOHANA RAO

and

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.7748 of 2017 and WMP.No.8474 of 2017

N.Usha ...Petitioner

Vs

1. The Principal District Judge,
Vellore District, Vellore.

2. The Registrar General,
High Court, Madras.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to pay the petitioner all retirement benefit amounts including pension, payable on the death of the petitioner's husband K.Venkatraman, Junior Assistant in the Court of the District Munsif-cum-Judicial Magistrate, Vaniyambadi.

For Petitioner : Mr.R.Gururaj

For Respondents : Mr.M.Baskar

ORDER

(Order of the Court was made by NOOTY.RAMAMOHANA RAO,J)

This writ petition is instituted by the widow of a Junior Assistant working in the District Munsif-cum-Judicial Magistrate Court at Vaniyambadi, Vellore District. He died while in service on 21.2.2007. The terminal benefits payable have not been settled in spite of submission of necessary papers by the writ petitioner.

2. In those circumstances, she approached this Court on the previous occasion by instituting W.P.No.23861 of 2015. That writ petition was disposed of after hearing the learned counsel for

the respondents, who informed the Court that the writ petitioner was directed by the Authority concerned on 18.6.2015 to produce all the relevant documents and to appear in person, so that a decision can be taken with regard to the settlement of the terminal benefits payable to the claimants. It was also the case of the respondents that the writ petitioner has not responded to that communication. In those circumstances, W.P.No.23861 of 2015 was disposed of on 05.8.2015 directing the respondents to take a decision on the merits of the matter and in accordance with law at the earliest and communicate the same to the petitioner.

3. On 14.9.2015, while inviting the attention of the respondents to the order dated 05.8.2015 made in W.P.No.23861 of 2015, the learned counsel, acting on behalf of the writ petitioner, has also furnished one more set of papers of the documents relied upon by the writ petitioner for claiming the terminal benefits and family pension. Since there was no further action in the matter, the present writ petition is filed.

4. This Court admitted the writ petition on 11.4.2017 and issued notice. Pursuant thereto, the learned Principal District Judge, Vellore, filed the counter affidavit. She would submit in paragraph 4 of the counter affidavit that there is a parallel claim from one R.Mownica Devi, claiming herself to be the adopted daughter of the deceased K.Venkatraman. It was also pointed out that the minor Mownica Devi represented by her biological father Dr.V.C. Rajaram produced a registered deed of adoption bearing doc.No.17 of 2007 dated 09.2.2007. It was also pointed out in the counter affidavit that the biological father of Mownica Devi - the alleged adopted daughter of the deceased K.Venkatraman has also produced a Will said to have been executed by Sri.K.Venkatraman and who got registered the Will bearing doc.No.17 of 2007 dated 09.2.2007 as such in the office of the Sub-Registrar, Vaniyambadi. It was stated that the deceased Venkatraman preferred the said minor daughter Mownica Devi to succeed to his estate.

5. From a perusal of the counter affidavit, it is more than clear that there are at least two claims for payment of the terminal benefits of the deceased Venkatraman, one from the writ petitioner, who is recorded in the service register of the deceased Venkatraman as his wife and another from the alleged minor daughter Mownica Devi. Paragraph 3 of the counter affidavit filed by the learned Principal District Judge in this writ petition has categorically adverted to the fact that the deceased Venkatraman declared the writ petitioner and their daughter Aarthi as his wife and daughter respectively and those entries were made fairly long back in the service register of the individual.

6. In the face of an existing daughter, according to the learned counsel for the writ petitioner, the deceased Venkatraman adopting another daughter is an unnatural event/factor. One can understand the deceased Venkatraman seeking to adopt a son, because he did not have a son of his own. But, adopting a daughter, when he has a biological daughter already, is an unnatural factor, giving room to suspect the genuineness of the claim, in that respect.

7. Further, if at all it is true that the deceased Venkatraman has adopted a daughter on 09.2.2007, the writ petitioner should have been consulted and consented for such adoption. In the absence of any such consent, an adoption, when the petitioner is alive, could not have been an unilateral act, is the other facet of the contention.

8. It is further contended that if the deceased Venkatraman did really adopt a daughter on 09.2.2007, on the same day he would not have also executed a Will making the so called adopted daughter to succeed to his estate upon his death. One would normally expect to live longer enough and take care of the welfare and well-being of the minor daughter, whom he takes in adoption on that day. He will not be anticipating or looking up for his death on the same day of adoption. Therefore, the registered Will dated 09.2.2007 is an artificial one.

9. We are afraid that the above said controversial questions of fact cannot be addressed/resolved in this writ petition. They require collection of evidence from both sides. Therefore, it would be appropriate for the writ petitioner to have taken recourse to a competent Civil Court and then, in the presence of all parties concerned, ought to have sorted out the issues. In that view of the matter, we refrain from expressing any opinion in this matter and we leave it to the writ petitioner to work out her remedies by approaching the competent Civil Court.

10. With this, the writ petition stands disposed of. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

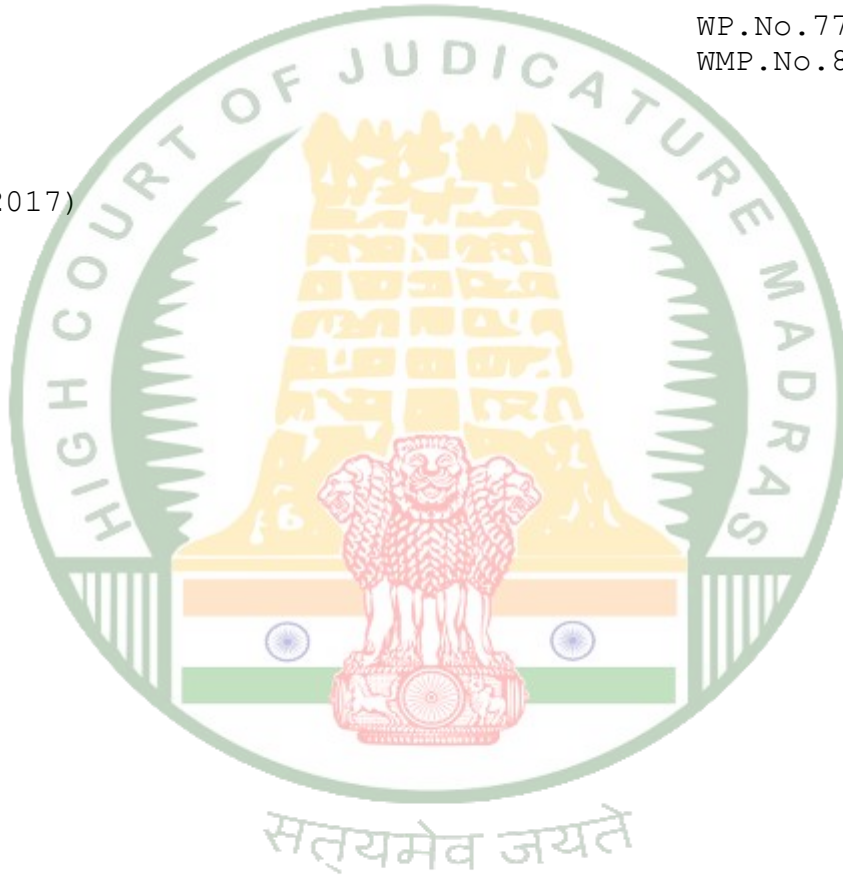
RS

To

- 1.The Principal District Judge, Vellore District, Vellore.
 - 2.The Registrar General, High Court, Madras.
 - 3.The District Munsif-cum-Judicial Magistrate, Vaniyambadi.
- +1cc to M/s.R.Gururaj, Advocate, S.R.No.46368

WP.No.7748 of 2017&
WMP.No.8474 of 2017

NRJK (CO)
CU (20/07/2017)



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