

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2017

Coram

The Hon'ble Mr.Justice Nooty. Ramamohana Rao  
and  
The Hon'ble Mr.Justice S.M.Subramaniam

W.P.No.16205 of 2016

1. Tmt. N.Akila
2. N.Vignesh

...Petitioners

Vs.

1. The Judicial Magistrate No.I,  
Mayiladuthurai,  
Nagapattinam District.
2. The District Judge,  
Nagapattinam.
3. Tmt.Vijaya

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of a writ of mandamus, directing the first respondent, who is being the head of the Office to forward the pension proposals to the Principal Accountant General (A & E), Chennai to direct payment of pension due to late P.Natarajan in favour of the first petitioner and to direct the second respondent herein to consider the representation, dated 01.08.2014, to appoint the second petitioner on compassionate grounds.

For petitioner : Mr.T.Dhanasekaran  
For Respondents 1 and 2 : Mr.B.Vijay, G.A.  
For Respondent-3 : Left

O R D E R

(Order of the Court was delivered by Nooty Ramamohana Rao, J.,)

Heard Mr.T.Dhanasekaran, the learned counsel for the petitioner and Mr.B.Vijay, learned Government Advocate for respondents 1 and 2.

2. This Writ Petition is instituted by two individuals, claiming to be the children of Shri.P.Natarajan, who died, while in Office on 05.07.1999. It is their claim that, they are the children of first wife of the said P.Natarajan. Upon death of the first wife, it appears that the said P.Natarajan married a second time, viz., the third respondent herein. She was also blessed with two children. It appears that, for securing Succession Certificate, S.O.P.No.260 of 2000 was instituted on the file of the Subordinate Court, Tiruvarur, and the learned Subordinate Judge, after conducting appropriate enquiry, granted Succession Certificate, declaring both the writ petitioners herein, and also four others, born through the first wife, the second wife/third respondent herein and the two daughters born to her, and also the parents of P.Natarajan as legal heirs of the deceased. In all, eleven of them have succeeded to the estate of the deceased/Natarajan. Consequently, the learned Judicial Magistrate No.I, Myladuthurai, who is the Drawing and Disbursing Officer has distributed the family benefit amount of Rs.1,00,000/- equally to all eleven legal heirs of the deceased/Natarajan. Though the Succession Original Petition has recognized and declared the third respondent herein as the wife/widow of the deceased/Natarajan, the petitioners herein, being the children of the first wife, have preferred to describe the third respondent as 'concubine' of their father. We strongly deprecate this attempt of the writ petitioners to discredit her status. Once the competent Court has declared the third respondent as wife of the deceased/Natarajan, the other successors of Natarajan, cannot treat her differently, and disregard the legal relationship between the third respondent and the deceased/Natarajan, in any proceeding. On the ground that the third respondent neglected to take care of the children born to the first wife of the deceased, the petitioners herein have started exploring, as to what benefits, they can secure exclusively for themselves. Unfortunately, the first petitioner, the daughter born through the first wife of the deceased/Natarajan, appears to be a widow, and hence, she has submitted necessary proposal on 24.07.2014, to the Drawing and Disbursing Officer, for the purpose of grant of family pension to her. On the ground that, those papers have not been forwarded to the Principal Accountant General, Chennai, the present Writ Petition is instituted, seeking for appropriate directions in that regard.

3. The second limb of the prayer, sought for, in this Writ Petition, is for consideration of the case of the second petitioner for appointment on compassionate grounds. Since no such appointment was forthcoming, the present Writ Petition is instituted, seeking consideration of the case of the second petitioner for appointment on compassionate grounds.

4. Hence, we are required to deal with both the reliefs sought for in this Writ Petition.

5. Rule 49 of Tamil Nadu Pension Rules, 1978, authorizes the grant of family pension. It clearly brings out that, if eligible Government Servant dies, either before the retirement, or thereafter, after completing the necessary qualifying service to the Government, the family of the deceased shall be entitled to a family pension, the amount of which, is liable to be determined in accordance with formula contained in the said Rule. In fact, as per Rule 72 (4) (a) of the said Rules, first option for sanction of family pension has got to be extended only to the widow/widower. Though the Family Pension Rules do not define the expression "Family", in our opinion, it may not really require any elaboration for one to hold that the widow of a deceased government servant forms part of the family of such a deceased government servant, and therefore, the right of first option to receive family pension was accorded to her. Hence, it is the widow of the deceased government servant, who is entitled to receive the family pension, and only in case, where, the government servant does not leave behind a widow/widower, then, the question of sanction of family pension to the children of the deceased government servant, son or daughter, as the case may be, would arise. But not otherwise.

6. In the instant case, the competent Civil Court has already recognized the third respondent as the widow of the deceased/Natarajan. Therefore, ignoring her claims for receipt of family pension, the claims of the petitioners or for that matter, any other surviving member of the family of the deceased/Natarajan, who may have succeeded to his estate, are not liable to be considered for sanction of family pension. Even though the first petitioner may be a destitute woman, nonetheless, she being only the daughter of the deceased/Natarajan, her claims are not superior enough to supersede the claims of the third respondent herein, who is the widow of the deceased/Natarajan. We have, therefore, no hesitation to reject the first limb of the prayer, sought for in this Writ Petition.

7. Now, turning out to the next aspect of the matter, relating to appointment on compassionate grounds to be made in favour of the second petitioner, it is appropriate to notice that the deceased died on 05.07.1999, and at the time of his death, the second petitioner appears to be a person of young age, a minor, hence, he has submitted an application on 01.08.2014, seeking consideration of his claim for appointment on compassionate grounds. This application has been made 15 years, after the death of Natarajan. As it is making appointments on compassionate grounds is an exceptional measure

to the normal constitutional guarantee of making available opportunities of public employment open to every one, who ever satisfies the eligibility criteria to compete there against. It is a socio-economic and welfare measure, conceived for the purpose of providing immediate succour to the family of the distressed government servants, who die in harness. If the family of the deceased government servant is able to survive on their own for long period, say 10 years and above, a reasonable inference can be drawn that such a family, has necessary wherewithal to fend for themselves and they do not require any special assistance in the form of compassionate appointment. Otherwise, the claims for appointment on compassionate grounds were to be entertained after long lapse of time from the time of departure of the government servants, such a method would turnout to be a hereditary scheme of appointments. Any such scheme is not in accordance with or consonance with the concept of equality, enshrined under Articles 14 and 16 of the Constitution of India. In the instant case, the second petitioner, having staked his claim for appointment on compassionate grounds after 15 years, after the death of Natarajan, howsoever strong, the impeding factors at work might have prevented a prompt response, no such claim becomes entertainable.

8. For the afore said reasons, we see no merit, and hence, we dismiss this Writ Petition, without costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.I,  
Mayiladuthurai,  
Nagapattinam District.
  2. The District Judge,  
Nagapattinam.
- +1 CC to Mr. T. Dhanasekaran, Advocate sr 14209

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MV(CO)  
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