



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHANW.P.(MD) No.18304 of 2015andMP Nos.1 & 2 OF 215

A.Rajeswari

... Petitioner

-vs-

1. The District Collector,
Virudhunagar District,
Virudhunagar.

2. The Accountant General (A&E),
341, Anna Salai, Chennai.

3. The Tahsildar,
Tambaram,
Chennai.

4. Jeyalakshmi

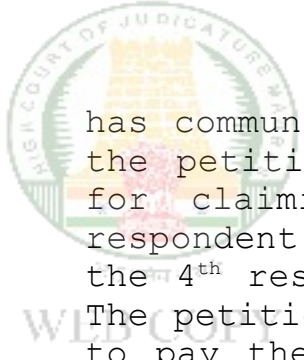
... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders issued by the 3rd respondent in Pa.Mu.5093/2012/A4 dated 05.09.2012 and the consequential order issued by the 1st respondent in Na.Ka.K1/8276/2013 dated 11.12.2014, quash the same and consequentially direct the respondents 1 and 2 to pay the family pension to the petitioner due to the death of her husband late Ramasubbu, Deputy Tahsildar, Virudhunagar District.

For Petitioner : Mrs.A.Rajeswari
Party-in-person
For R1 & R3 : Mr.M.Rajarajan
Govt. Advocate
For R2 : Mr.P.Gunasekaran
For R4 : No Appearance

ORDER

This writ petition has been filed, seeking to quash the order of the 3rd respondent passed in Pa.Mu.5093/2012/A4 dated 05.09.2012 and the consequential order issued by the 1st respondent in Na.Ka.K1/8276/2013 dated 11.12.2014, by which the 1st respondent



has communicated to the 4th respondent that the parties, including the petitioner herein have to approach the competent civil Court for claiming any rights as Wife. In the meanwhile, the 3rd respondent issued a legal heirship certificate dated 05.09.2012 to the 4th respondent, which is also impugned in this writ petition. The petitioner also sought a direction to the respondents 1 and 2 to pay the family pension to the petitioner due to the death of her husband late Ramasubbu, Deputy Tahsildar, Virudhunagar District.

2. The case of the petitioner is as follows:

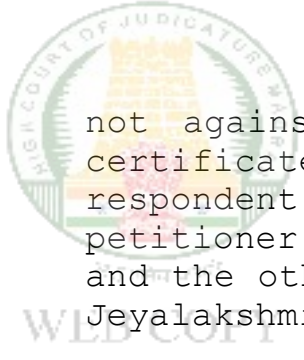
i) Her deceased husband was a retired Deputy Tahsildar and retired from service on 30.04.1993; that he was drawing pension and passed away on 07.03.2012; that the petitioner submitted that she is the legally wedded wife and she is entitled to the family pension due to her after the demise of her husband; that in the service record, her husband has mentioned his son, Kumaravel, born through the petitioner as nominee and that originally, her name was also in the record.

3. The 2nd respondent would contend that the petitioner's husband at the time of retirement, has mentioned his son's name Kumaravel as nominee apart from stating that he is a divorcee in the application dated 01.03.1993. He would further contend that pursuant to the order of this Court 50% of the amount is being disbursed to the petitioner and the District Collector has also passed a detailed order stating that there is a dispute between two ladies, claiming themselves as wives of Ramasubbu, even though there is no evidence to show that there is any judgment and decree of the Trial Court to prove the factum of Ramasubbu obtaining divorce from the petitioner herein.

4. Though Jeyalakshmi / 4th respondent herein has been duly served with substituted service by effecting paper publication and the said service is also complete, she has not entered her appearance either in person or by counsel. It is seen that Jeyalakshmi has also filed a Writ Petition in W.P.(MD) No.3680 of 2013 claiming that she is alone the legally wedded wife of Ramasubbu and that she is entitled to the pensionary benefits of Ramasubbu.

5. The petitioner, who appeared in Court as party-in-person, appears to be partially blind and therefore, her daughter, by name Karapagam, was allowed to make submission on her behalf. She has submitted that no order has been produced by 4th respondent either before this Court or before the authority to show that divorce was already granted to the petitioner.

<https://hcservices.courts.gov.in/hcservices/> 6. While the submission cannot be accepted, as it is for the petitioner to produce the judgment, because divorce is said to have been obtained by Ramasubbu against this petitioner only and



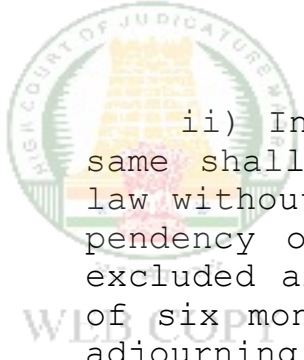
not against Jeyalakshmi. In any event, separate legal heirship certificates were produced by the petitioner as well as by the 4th respondent. The legal heirship certificate produced by the petitioner contains names of the petitioner, her son and daughter and the other one issued by the 3rd respondent contains the name of Jeyalakshmi alone.

7. Admittedly, the petitioner has been residing with her daughter in Aruppukkottai, whereas late Ramasubbu was residing at Kolathur, Chennai, as it is stated that his son Kumaravel was employed at SRM College. Even though it was vehemently contended by the petitioner that her husband was residing with his son Kumaravel, there is no evidence to show that the said Kumaravel was residing at Chennai. It is not in dispute that Ramasubbu died in Chennai and burial had also taken place at Chennai and that the said Ramasubbu, before his death, embraced Christianity. The petitioner in the midst of her argument drew the attention of this Court to the judgments passed by this Court in W.P.(MD) Nos.13584 of 2012 and 3680 of 2013, but however, on perusal of those judgments, it is obvious that it has not been mentioned therein that the petitioner herein alone would be entitled to family pension and that the case of the petitioner was directed to be considered on merits. In W.P.(MD) No.3680 of 2013, this Court directed the respondent therein to pass a speaking order after conducting thorough enquiry, whereas this Court, in W.P.(MD) No.13584 of 2012 directed the 2nd respondent therein to send the proposal to the 3rd respondent therein within three weeks for passing appropriate orders thereon within four weeks thereafter. It is seen that the 4th respondent herein was not a party to the writ petition in W.P.(MD) No.13584 of 2012 and it is not known as to whether any averment was brought to the attention of this Court at that time with regard to Jeyalakshmi, as admittedly Jeyalakshmi filed W.P.(MD) No.3680 of 2013 after disposal of W.P.(MD) No.13584 of 2012.

8. A cursory look at the order of the District Collector is very clear that there is existence of dispute between the petitioner and Jeyalakshmi. The 2nd respondent has already passed an order granting 50% of the pension to the petitioner, pursuant to the order of this Court in W.P.(MD) No.13584 of 2012 dated 27.06.2014, which is evident from the counter of the 1st respondent and the respondents cannot grant the entire pension to one person without ascertaining the factual position, as the same has got to be established before the appropriate forum, namely Civil Court.

9. Therefore, this writ petition is disposed of with the following directions:

i) The petitioner is at liberty to file a civil suit to establish her legal heirship and also her relationship with her husband late Ramasubbu till the date of his demise;



ii) In the event of the petitioner filing any civil suit, the same shall be tried by the appropriate Court in accordance with law without reference to the issue of limitation, as the period of pendency of litigations before this Court has to be necessarily excluded and appropriate orders be passed thereon within a period of six months from the date of presentation of the suit without adjourning the matter beyond one week at any point of time and the 4th respondent / Jeyalakshmi should be added as a party in it;

iii) It is needless to say that the respondents shall continue to pay 50% of the pension to the petitioner till the issue is resolved in one way or the other. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To:

1. The District Collector,
Virudhunagar District,
Virudhunagar.
2. The Accountant General (A&E),
341, Anna Salai, Chennai.
3. The Tahsildar,
Tambaram,
Chennai.

+1cc to M/s. P.GUNASEKARAN Advocate in SR. No.8480

AR/

JS/RSK/SAR.3/28.02.2017/4P-5C

W.P. (MD) No.18304 of 2015

1/2

13/02/2017