BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.4043 of 2017
and
W.M.P(MD)No.3211 of 2017

T.Rathikala : Petitioner

vs.

1. The Chief Engineer,
   PWD Water Resources Organisation,
   Chepauk,
   Chennai.

2. The Superintending Engineer,
   PWD Water Resources Organisation,
   Chepauk,
   Chennai.

3. The Executive Engineer,
   PWD Water Resources Organisation,
   Mel Vaiparu Basin Region,
   Rajapalayam,
   Virudhunagar District. : Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents herein to disburse the death, gratuity, family pension, PF and all other monetary benefits of the petitioner's husband Late.Thirupathy Venkadachalam to the petitioner and her children within the time stipulated by this Court.

For Petitioner : Ms.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The petitioner is the wife of the deceased employee Late.R.Thirupathy Venkadachalam, who was working as a Junior Assistant in the office of the Executive Engineer, PWD Water Resources Organisation, Rajapalayam, 3rd respondent herein and died on 23.08.2016. Immediately after the death of her husband, the petitioner obtained the death certificate and legal heirship certificate and approached the 3rd respondent, seeking payment of monetary benefits of her husband including death and gratuity of her husband along with necessary documents. Since the petitioner's husband who obtained loan of Rs.1,00,000/- from TAICO Bank, Sivakasi, during his services, failed to pay the same even after notice, the TAIKO Bank had filed a compliant under Section 138 of the Negotiable Instruments Act against him for his forged cheque amount and the same was also registered in C.C.No.696 of 2006. However, the said criminal case was dismissed by the learned Judicial Magistrate, Sivakasi, on 03.03.2014, after conducting a full-fledged trial. The petitioner has made a representation dated 21.02.2017, to disburse the monetary benefits namely, Gratuity, Provident Fund etc., of her deceased husband and the same was orally refused. Hence, the petitioner has come to this Court, seeking issuance of a Writ of Mandamus, directing the respondents herein to disburse the death, gratuity, family pension, PF and all other monetary benefits of her husband within a time frame.

2.The learned counsel appearing for the petitioner drew the attention of this Court to the death certificate of the petitioner's husband which clearly shows that the petitioner's husband Late. R.Thirupathy Venkadachalam while serving as Junior Assistant in the 3rd respondent Office died on 23.08.2016 due to sudden heart problem, therefore, as per the ratio laid down by this Court in ***Sathiyabama and others vs. M.Palanisamy and others*** *reported in* ***2004-1-L.W.125,*** wherein, it has been held that the Provident Fund, Leave Salary, Gratuity etc., to the deceased employee cannot be attached in the hands of the employer, the respondents should be directed to return the aforementioned retiral benefits as other totally immuned from attachment, he pleaded.

3.Referring to Section 60(g) of the Civil Procedure Code, the learned counsel for the petitioner would submit that stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension are exempted from attachment.

4.The counsel for the petitioner also relied upon a judgment of the Hon'ble Apex Court in the case of ***Union of India vs. Wing Commander*** reported in ***(1987) 1 SCC 551 = (1987) 100 L.W.624,*** wherein, it is held that Section 11 of the Pensions Act protects from attachment, seizure or sequestration, pension or money or money to become due on account of any such pension and this would include the commuted pension also.

5.So far as the gratuity is concerned, the judgment of the

Apex Court in the case of ***Calcutta Dock Labour Board Vs.Sandhya Mitra*** reported in ***(1985) 2 SCC 1,*** is also relied upon, wherein the Apex Court has held that the gratuity payable to an employee is entitled to immunity under Section 13 of the Payment of Gratuity Act. Thus, the learned counsel for the petitioner submitted that in the present case on hand, the benefits namely, death, gratuity, family pension, PF are immuned from attachment.

6.A detailed counter affidavit has been filed on behalf of the respondents. The learned Additional Government Pleader appearing for the respondents would submit that so far as the gratuity is concerned, Rule 70(1) of the Tamil Nadu Pension Rules clearly shows that it shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement. As per Rule 70(2)(b), where a retiring Government servant does not clear the Government dues and such dues as ascertainable, out of the gratuity payable to him an amount equal to that recoverable on account of ascertainable Government dues shall be deducted therefrom.

7.It is further submitted that in the present case, the petitioner has borrowed loan of Rs.1,00,000/- from the TAICO Bank, Sivakasi, and failed to pay the same. Therefore, notice was issued by the said Bank to the petitioner's husband for his default in payment of loan, on 28.10.2013 which virtually proves the fact that the petitioner's husband failed to repay the said loan amount, therefore, the District Registrar of Industrial Co-operative Societies in E.P.No.13/2013-14, dated 22.12.2014, has passed an order directing the 3rd respondent to withhold an amount of Rs.2,07,363/- from the salary of the defaulter Late. R.Thirupathy Venkadachalam (petitioner's husband) in monthly installments at the rate of Rs.3,000/- per month and balance amount from his terminal/pension benefits till realization with 14% interest on principal sum of Rs.85,465/- from 01.12.2012 and to remit the same to the TAICO Bank, Sivakasi. Subsequently, TAICO Bank, Sivakasi, also addressed letters to the District Collector, Virudhunagar on 22.06.2015 and 27.08.2015 respectively, to take action against the petitioner's husband and to recover the amount of loan from his monetary benefits. Hence, recovery was made from the service benefits of the petitioner's husband. While so, the petitioner's husband expired on 23.08.2016. Thereafter, the petitioner made a representation to the respondents on 28.12.2016, not to recover the amount from the terminal benefits of her husband. Therefore, it is submitted that the present writ petition is liable to be dismissed.

8.But this Court is unable to countenance the contention made by the respondents. The reason is, the law is well settled that gratuity, leave salary, family benefit fund are all immuned from attachment. While dealing with a question whether the amount due as provident fund, leave salary, gratuity etc., to the deceased employee can be attached in the hands of the employer pending the suit for recovery of money filed against the legal representatives of such employee for amounts borrowed by him, this Court in ***Sathiyabama and others vs. M.Palanisamy and others*** *reported in* ***2004-1-L.W.125****,* has held as follows:-

> ''*9.It is therefore clear that these amounts which are payable to employees, so that they would not be left resourceless at the time of retirement are exempted for attachment, whether they are payable to the employee or to his legal representatives. The various decisions referred to above also indicate that whether the employee has retired, or has become insolvent or has died the character of these amounts do not change so long as they are in the hands of the employer. The immunity from attachment is complete. The object of the provisions are to see that the employee gets these amounts after his retirement or his heirs get them after the employee's 'death' since the scheme is a beneficial one, the authority viz.: the employer is a trustee for those sums and is bound to object to the attachment. The second respondent has rightly maintained its stand against the attachment. There can be no legal justification for classifying or describing such deposits or amounts differently after the employee's death or retirement, so long as they are with the employees, there is protection from attachments. Provident Fund amounts, pension and other compulsory deposit retain their character until they reach the hands of the employee, any other view cannot be taken considering the conditions in which such exemption provisions operate and the class of persons they were intended to benefit.*"

9.As this Court after referring to various judgments of the Apex Court has held that neither the gratuity nor the leave salary and provident fund can be attached, the 3rd respondent herein cannot recover the aforementioned benefits for non payment of loan borrowed by the petitioner's husband during his life time. Secondly, when the petitioner's husband died on 23.08.2016 while in service, the petitioner/wife and children who are the legal heirs of the deceased employee are entitled to the monetary benefits payable to Late.Thirupathy Venkadachalam.

10.Therefore the 3rd respondent is hereby directed to pay the petitioner gratuity, family pension including arrears of pension and other monetary benefits payable to the petitioner's husband within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. The Chief Engineer,
   PWD Water Resources Organisation,
   Chepak,
   Chennai.

2. The Superintending Engineer,
   PWD Water Resources Organisation,
   Chepak,
   Chennai.

3. The Executive Engineer,
   PWD Water Resources Organisation,
   Mel Vaiparu Basin Region,
   Rajapalayam,
   Virudhunagar District.

+1 cc to M/S.Polax Legal Solutions , Advocate in SR.No. 66183
+1 cc to The Special Government Pleader in SR.No.66255

nbi/tsg
AE/KK/SAR2/08.09.2017/5P/6C

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