IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.09.2018

CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.2171 of 2013

Tmt.P.Amrutha .. Petitioner

vs

1. The Secretary to Government of Tamil Nadu,
   Finance Department,
   Fort St.George,
   Chennai - 600 009.

2. The Director of Treasuries and Accounts,
   Panagal Maligai,
   Saidapet,
   Chennai - 600 015.

3. The District Collector of the Nilgiris,
   Udhagamandalam - 643 001,
   The Nilgiris.

4. The District Treasury Officer,
   Udhagamandalam - 643 001,
   The Nilgiris.

5. B.Thilagavathy,
   Accountant,
   District Treasury,
   Udhagamandalam - 643 001.
   The Nilgiris .. Respondents

(R-5 impleaded vide order dated in 06.02.2013 in MP.No.1/2013)

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandumus, for direction pursuant to the petitioner's representation dated 14.05.2012 and direct the first respondent to consider.

For Petitioner : Mr.Ayyar Andiyer

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader for R1 to R4

R-5 dismissed vide Court order dated 28.09.2018

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to consider the representation submitted by the writ petitioner on 14.05.2012 in respect of the claim of the writ petitioner to settle the pensionery and terminal benefits of her father, who was employed under District Treasury and died in harness.

2. The learned counsel appearing for the writ petitioner states that the petitioner has submitted a representation on 14.05.2012, claiming the terminal/ death benefits share in respect of her father late Thiru K.Balan, who died in harness while working in District Treasury, Udhagamandalam. In support of the representation, the petitioner has submitted the Succession Certificate obtained by the fifth respondent from the competent Court of Law. It is contended that the fifth respondent filed O.P.No.84 of 2003. The District Court, Nilgiris at Udhagamandalam, passed an order on 28.02.2005, stating that the Certificate of Succession is granted to the 5th respondent / Tmt.Thilagavathy and the respondents in O.P.No.84 of 2003 empowering them to collect the terminal and death benefits of the deceased employee. Relying on the said Succession Certificate, the learned counsel for the petitioner states that as per the Succession Certificate, the writ petitioner is entitled to get the terminal/death benefits of the deceased employee.

3. The learned counsel appearing on behalf of the respondents 1 to 4 opposed the contention by stating that the writ petitioner is not entitled to get the terminal/death benefits of the deceased employee. It is contended that legal heir certificate was issued by the Tahsildar, Udhagamandalam on 01.10.2002. In the said legal heir certificate, the name of the fifth respondent has not been incorporated. Contrarily, the name of the writ petitioner, viz., Tmt.P.Amrutha has been incorporated as a legal heir in her capacity as the daughter of the deceased employee. In view of the fact that the name of the fifth respondent has not shown as a legal heir of the deceased employee in the legal heir certificate, the fifth respondent has filed Original Petition before the Subordinate Court, Udhagamandalam. Now it is brought to the notice of the authorities that the fifth respondent is the legally wedded wife of the deceased employee.

4. This being the factum of the case, the writ petitioner being a daughter is not entitled to claim terminal and pensionery benefits of the deceased employee. This Court is of an opinion that as per the Tamil Nadu Pension Rules, 1978, the legally wedded wife of the deceased employee is entitled to

receive all the terminal and pensionery benefits, due to the deceased employees. The daughters cannot claim any death/pensionery benefits of the deceased Government servant during the life time of the legally wedded wife of the deceased employee. In the present case, it is contended that the writ petitioner is the daughter of the first wife of the deceased employee, who got divorce through the competent Court of law. Thus, the fifth respondent is the legally wedded wife of the deceased employee and she is entitled for all the terminal and pensionary benefits due to the deceased employee as per the Tamil Nadu Rules, 1978.

5. This being the principles to be followed, the relief sought for in this writ petition to consider the representation cannot be granted. Even, in respect of the prayer to consider the representation, it is mandatory that the writ petitioner should establish a legal right. In the absence of establishing any such legal right, the relief cannot be granted in the present writ petition. Even as per the order in Original Petition passed by the Competent Court of law, the fifth respondent is the legally wedded wife of the deceased employee and the writ petitioner is the daughter of the deceased employee. This being the factum of the case, the wife of the deceased employee is entitled for all the terminal and pensionary benefits as per the Tamil Nadu Pension Rules in forces.

6. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sk/pns

To

1. The Secretary to Government of Tamil Nadu,
   Finance Department,
   Fort St.George,
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2. The Director of Treasuries and Accounts,
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4. The District Treasury Officer,
   Udhagamandalam - 643 001,
   The Nilgiris.

+1cc to Mr.Ayyar and Iyer, Advocate, S.R.No.67246
+1cc to the Government Pleader, S.R.No. 67833

W.P.No.2171 of 2013

rrs 23/10/2018