



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.276 of 2018
and
C.M.P. (MD) .No.1639 of 2018

The Tahsildar,
Sathur Taluk,
Virudhunagar District.

...Appellant/2nd Respondent

vs.

1.Rajeswari

...1st Respondent/Petitioner

2.The Accountant General,
No.361, Anna Salai,
Chennai-600 018.

3.Kumaravel

...Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order, dated 27.06.2014, made in W.P.(MD).No.13584 of 2012.

Prayer in WP(MD). 13584/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records pertaining to the impugned order in Na.Ka.A3/2823/2012, dated 10-09-2012 on the file of the Respondent No.2 and quash the same as illegal and consequently to direct the Respondents to provide Family Pension to the Petitioner within the time stipulated by this Honourable Court.

For Appellant : Mr.V.R.Shanmuganathan,
Special Government Pleader

For Respondent No.1 : Mrs.Rajeswari,
Party-in-person

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM,J]

This appeal, by the Tahsildar, Sathur Taluk, Virudhunagar District, is directed against the order in W.P.(MD)No.13584 of 2012, dated 27.06.2014. The said writ petition was filed by the first



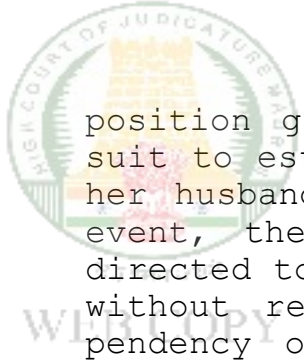
respondent/writ petitioner to quash the order passed by the appellant, dated 10.09.2012 and consequently for a direction to provide family pension to the first respondent/writ petitioner.

2. It appears that the first respondent's husband since deceased had nominated his elder son Mr. R. Kumaravel in the service records and the first respondent was mentioned as a divorcee. The Court after having considered the factual position in paragraph 5 of the impugned order, has issued the following direction:-

"5. In view of the fact that the petitioner was issued a legal heir certificate by the competent authority and also in view of the fact that there is no objection from his elder son, the order impugned in this writ petition is set aside and consequently, the second respondent is directed to send the pension proposals to the first respondent, within a period of three weeks from the date of receipt of a copy of this order. On receipt of the pension proposal, the first respondent is directed to pass appropriate orders for sanction of family pension to the petitioner, within a period of four weeks, thereafter. The petitioner is directed to enclose all the necessary documents, as directed by the second respondent for granting family pension to her."

3. On a reading of the above order, it is seen that the third respondent herein has conveyed no objection for the family pension to be paid to the first respondent. Though, there is no specific letter to the said effect, the first respondent appearing in person would submit that when a notice was served on the third respondent in the writ petition, he had appeared before the Court and stated that he has got no objection to sanction the family pension in favour of the first respondent. The first respondent would further submit that she had filed W.P.(MD) No. 18304 of 2015 challenging the order passed by the appellant herein, dated 05.09.2012 and the consequential order passed by the District Collector, Virudhunagar District, dated 11.12.2014 and sought for a direction to pay family pension to her on account of the demise of her husband Thiru. Ramasubbu, the Deputy Tahsildar, Virudhunagar District. It appears that there was a rival claim by one Jayalakshmi, who was impleaded as fourth respondent. The said writ petition was disposed of by an order, dated 13.02.2017 and in the said order, in Paragraph 4 the Court has recorded that though the said Jayalakshmi has been duly served with substituted service by effecting paper publication and the said service is also completed, she has not entered her appearance either in person or by counsel. Further, it is recorded that the said Jayalakshmi has also filed a Writ Petition in W.P.(MD) No. 3680 of 2013 claiming that she alone is the legally wedded wife of Ramasubbu and that she is entitled to the pensionary benefits.

4. This Court heard the first respondent, who was represented by her daughter Karpagam as the first respondent appears to be partially blind. The Court after having taken note of the factual



position granted liberty to the first respondent 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 and in the event, the first respondent filed the Civil Suit, the same was directed to 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 the Civil Court was directed to pass orders within a period of six months from the date of presentation of the plaint. Further, the Court ordered that the said Jayalakshmi should be impleaded as a defendant in the suit. The official respondents therein, who includes the appellant herein was directed to continue to pay 50% of the pension to the first respondent herein till the issue is resolved in one way or the other.

5.It is submitted by Karpagam on behalf of the first respondent, who is also present before the Court that the first respondent had filed a suit in O.S.No.54 of 2017 on the file of the Principal District Munsif Court, Aruppukkottai, wherein the District Collector was the first defendant, The Accountant General was the second defendant and the appellant herein was the third defendant and Jayalakshmi was the fourth defendant. The first respondent sought for a declaratory relief to declare that she alone is the lawful wedded wife of the Ramasubbu and to declare that the legal heirship certificate issued in favour of the Jayalakshmi by the appellant herein as illegal.

6.The said Jayalakshmi was impleaded as fourth respondent did not appear before the Court and she was set ex-parte and the trial Court by judgment, dated 12.01.2018 granted a decree as prayed for.

7.Thus, in the light of the reasons assigned in the impugned order passed in the writ petition as well as taking note of the subsequent development, we find that there is no ground to interfere with the order passed in the writ petition. Accordingly, the writ appeal fails and dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

+2cc to M/S.R.Rajeswari, Party-in-Person SR.No. 49111

W.A.(MD) No.276 of 2018
16.02.2018