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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.902 of 2018
and
W.M.P(MD)Nos.929 and 930 of 2018

1.Rasheeda
2.Jaheer Hussain
3.Dhaheera Banu
4.Mehaja Been ... Petitioners

Vs.

1.The Principal Accountant General,
(Accounts and Entitlement)
No.36, Anna Salai,
Chennai - 600 018.

2.The District Collector,
Coimbatore District.

3.The Tahsildar,
Pollachi, Coimbatore.

4.Subaida Begam
5.Navsath
6.Navas
7.Rishvana
8.Minor Sibana ... Respondents
(R8 Rep by Mother and guardian 4th Respondent)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the 1st respondent in Lr.No. Pr.AG(A & E)/Legal Cell/Misc./630/2012-13/1948 dated 12.02.2013 quash the same and consequently direct the respondents herein to disburse the death -cum -terminal and pensionary benefits as per the award dated 25.09.2012 passed by Lok Adalat held by the Taluk Legal Services Committee Pollachi in Lok Adalat Case No. 78/2012 together with interest at 12% p.a. within a reasonable time as may be fixed by this Court.

For Petitioner : Mr.S.Srinivasa Raghavan
For Respondents : Mr.P.Gunasekaran for R1
Mr.K.Saravanan G.A, for R2 & R3
Mr.N.Tamilmani for R4 to R8

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O R D E R

The first petitioner herein is the wife of one Mohamed Ibrahim, who was a Revenue Inspector in the Government of Tamil Nadu. He retired on 31.01.1997. He passed away on 23.12.2004. The said Mohamed Ibrahim had taken one Subaida Begam as his second wife. Through both the wives, he was blessed with as many as seven children. Dispute arose between the two branches and the same was amicably settled. The petitioners herein had filed SOP No.125/10 before the Sub-Court, Pollachi and the matter was referred to Lok Adalat on 25.09.2012. A compromise was entered into between the parties and the same was also duly incorporated in the award passed by the Lok Adalat. As per the terms of compromise, it was agreed that the first wife, namely, the first petitioner herein shall be paid family pension till her life time. Arrears of pension shall be equally divided among the children on 50:50 basis. In other words, 50% will go to the children of the first branch and the remaining 50% of the arrears of pension would go to the second branch. When the first respondent was intimated about the said award passed by the Lok Adalat, the first respondent passed the impugned order to the effect that the award passed by the Lok Adalat is not inconsonance with Rule 49 of the Tamil Nadu Pension Rule. The petitioners were therefore called upon to obtain relaxation order from the Government. This is under challenge in this writ petition.

2.Heard the learned counsel appearing on either side.

3.Mr.P.Gunasekaran, learned standing counsel appearing for the first respondent strongly contended that no court order can run counter to express provision of law. As per Rule 49(7) of Tamil Nadu Pension Rule, where family pension is payable to more the widows then one, the family pension shall be paid to the widows in equal share. Therefore, the learned standing counsel appearing for the first respondent would contend that this Rule cannot be given go by in the name of enforcing the compromise entered into between the parties.

4.The learned counsel appearing for the petitioner would submit that the approach of the authorities should be to give a quietus to the dispute where the sharing of the pensionary benefits has been amicably agreed upon. The duty of the authorities is to give effect to the agreement, more so when it has been recognized by the Lok Adalat itself.

5.This Court is of the view that by giving effect to the compromise arrived at between the parties, neither the letter nor the spirt of law is being violated. According to the standing counsel of the first respondent, the pensionary benefits will have to be shared in a 50:50 ratio between the two widows. In this case, this Court can always take it that the fourth respondent has given a standing and irrevocable instruction to the Department to pay what is payable to her to the person nominated by her.

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6.Therefore, this Court is of the view that the first respondent has taken a needlessly narrow and technical view of the matter. The order impugned in this writ petition therefore quashed. The respondents 1 to 3 are directed to disburse the family pension and arrears of family pension in the same manner as laid down in the award dated 25.09.2012 passed by the Lok Adalat held by the Taluk Legal Services Committee, Pollachi in Lok Adalat Case No.78/12. Since there is a belated payment, the same shall carry interest at the rate of 12% per annum. At this stage, the learned standing counsel appearing for the first respondent would strongly contend that the question of paying interest will not arise in this case. He pointed out that only on account of the inter-se dispute between the two branches of the deceased employee, the pensionary benefits could not be paid. This Court is unable to agree with the said submission. The liability to pay interest would automatically arise when the money belonging to the other person is lying with the person who is liable to pay. In this case, the employee passed away in the year 2004. Since then the money payable to the family of the deceased employee has been lying with the Government. Therefore, the Government is bound to pay interest in this matter. It is of course true that they did not willfully withhold the money payable to the family of the deceased employee. But then mensrea has no relevance in such cases. Therefore the respondents 2 and 3 are directed to pay interest at the rate of 12% per annum.

7.This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1.The Principal Accountant General,
(Accounts and Entitlement)
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+1cc to M/S.S.Srinivasa Raghavan, Advocate SR.No. 55260
+1cc to M/S.P.Gunasekaran, Advocate SR.No. 55515
+1cc to M/S.N.Tamilmani, Advocate SR.No. 55321
+1cc to Special Government Pleader, SR.No. 55638

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JM/RSK/SAR 4/19.03.2018/4P/8C

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