

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.9143 OF 2018

Date: 13.08.2018

Between:

Dasari Alivelu, w/o. Dasari Venkataiah,
Aged 52 years, r/o. H.No.6-208/1,
Pandurangapuram, Khammam District.

.....Petitioner

and

The South Central Railways, rep.by its
Divisional Railway Manager, Secunderabad
and two others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner claims to be the wife of Dasari Venkataiah (3rd respondent). Alleging that 3rd respondent is not taking care of her and her children, she claimed to have moved out of his house and living separately. She filed M.C.No.71 of 1991 pending on the file of Judicial Magistrate of First Class, Yellandu, claiming maintenance. Initially, the Court granted maintenance of 200/- per month and later on the amount is increased from time to time. By order dated 16.02.2018 made in CrI.M.P.No.227 of 2016 in M.C.No.71 of 1991, maintenance amount is enhanced to 5000/- per month. The Magistrate also directed the employer of 3rd respondent to deduct the maintenance amount of 5000/- per month from the salary of 3rd respondent and remit the same to the credit of petitioner's bank account.

2. According to petitioner, her husband was to retire from service on attaining the age of superannuation on 31.03.2018 and apprehended that he would not pay maintenance after retirement.

3. This writ petition is filed to declare the action of respondent authorities in not restraining from making payment of the retirement benefits to 3rd respondent, as such payment without any apportionment of petitioner's benefits would put the petitioner to irreparable loss, hardship and injury and sought for direction to 2nd respondent to apportion the retirement benefits of 3rd respondent between the petitioner and the 3rd respondent.

4. This writ petition is filed just few days before the retirement of 3rd respondent and in interim application, petitioner prayed to restrain the respondent authorities from making complete payment of retirement benefits of 3rd respondent.

5. This Court, by order dated 20.03.2018, while ordering notice before admission, directed stay of disbursement of retirement benefits to 3rd respondent. The interim order granted on 20.03.2018 was for limited period of three weeks. Said interim order was extended from time to time and valid up to four weeks from 27.06.2018. Meanwhile, 3rd respondent filed counter-affidavit opposing further extension of interim order.

6. Heard Smt B.Rachna learned counsel for petitioner and Mr P.Ashok Kumar learned counsel for 3rd respondent.

7. According to learned counsel for petitioner, after retirement of 3rd respondent, petitioner may not be able to get the maintenance amount and, therefore, she would suffer irreparable loss if the employer of 3rd respondent do not apportion the retirement benefits payable to 3rd respondent and, therefore, direction is sought for apportionment of retirement benefits. Learned counsel would submit that as the order of competent Court was on reduction of maintenance amount from the salary payable to 3rd respondent, after the retirement, the employer may not deduct the amounts from the pension payable to 3rd respondent and it would be difficult for petitioner to survive unless maintenance is paid.

8. While petitioner complains of ill-treatment by her husband, bad habits of husband and forced her to live separately and to take

care of her children and that he could not take proper care of her son, who was suffering from physical deformity and ultimately succumbed to ailments. On the contrary, 3rd respondent blames the petitioner alleging that she herself left the company of 3rd respondent and 3rd respondent was forced to take care of physically challenged son and to perform marriage of their daughter. He alleges that his wife did not even attend their daughter's marriage. The Court is not entering into these rival claims.

9. The only issue for consideration is whether the prayer sought in the writ petition can be granted.

10. In recognition of long satisfactory service, the Railway Administration provides monthly pension to the retired employee. An employee gets monthly pension for his subsistence in the remainder of his life, who is deprived of his pay and allowances and other emoluments while in service. The Pension Rules govern the settlement of retirement benefits of Railway employee. Thus, right accrues to an employee to get monthly pension on retirement and other retirement benefits for the service rendered by him unless he is visited with any punishment that would deny full/partial pension and gratuity. The Pension Rules do not envisage apportionment of retirement benefits and monthly pension to any other person other than the retired employee. In the absence of specific provision in the Pension Rules governing the employment in Railways the employer cannot be compelled to apportion the retirement benefits and pension payable to the retired employee to

any person including the family members. In the absence of such provision, no direction as sought for can be granted.

11. The record would disclose that as early as in the year 1991 petitioner filed M.C.No.71 of 1991 and obtained monthly maintenance, enhanced from time to time. In the petition filed by petitioner, the monthly maintenance is now enhanced to 5000/-. The Court of Judicial Magistrate of First Class is competent to enforce these orders. If the petitioner apprehends that there is a likelihood of not depositing the monthly maintenance after the retirement of her husband, nothing prevents the petitioner to file appropriate petition before the competent Court to seek further directions as warranted by law.

12. In the guise of obtaining order of maintenance to be deducted from the salary of 3rd respondent, petitioner cannot seek to stall the payment of retirement benefits to 3rd respondent and to seek direction to apportion retirement benefits by way of writ petition under Article 226 of the Constitution of India. Thus, Writ Petition has no merits and it is accordingly dismissed. However, it is open to petitioner to avail appropriate remedy as available in law. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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