

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.03.2019

CORAM:
THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.15366 of 2009

S.Shenbagavalli

.. Petitioner

Vs

1.The District Collector,
Erode District.

2.The Panchayat Union Commissioner,
Bhavani, Erode District.

3.Smt.Selvi

4.The Assistant Director of Local Fund Audit,
Panchayat Union (Pension),
Chennai - 600 108.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents 1, 2 and 4 to desist from disbursing Family Pension to the third respondent and to recover the Family Pension already disbursed to her.

For petitioner : Mr.M.Ravi

For R1 & R4 : Mr.K.Ravikumar, AGP

For R2 : Mr.S.Gunasekaran

For R3 : Ms.Zeenath Begum
for Mr.V.Rajesh

ORDER

The petitioner, who is the daughter of first wife of Late Mr.S.C.Easwaran, has filed this writ petition seeking for issuance of a writ of mandamus to direct the respondents 1, 2 and 4 to desist from disbursing Family Pension to the third respondent, who is the second wife of Late Mr.S.C.Easwaran, and to recover the Family Pension already disbursed to her.

2. It is averred that the petitioner's father Late Mr.S.C.Easwaran, while serving in the Panchayat Union Office, Bhavani, Erode District, died on 01.11.2000, leaving behind her and other legal heirs. It is also stated that the petitioner is the only daughter born to Late Mr.S.C.Easwaran and his legally wedded wife Kannammal. Now, the petitioner is living with her husband, who is also serving in District Treasury, Erode.

3. It is stated by the learned counsel for the petitioner that as there was a dispute with regard to retiral benefits between the petitioner and the second wife, the petitioner has filed a suit in O.S.No.276 of 2004 on the file of the Additional District Munsiff Court, Bhavani, seeking for permanent injunction, whereby, the learned trial Court, vide its judgment and decree dated 02.04.2004, decreed the suit in favour of the petitioner. As against that, when an appeal was filed in A.S.No.12 of 2006 on the file of the Additional District Court-cum-Fast Track Court, Bhavani, the same was also dismissed on 30.10.2006, confirming the judgment and decree passed by the learned trial Court. Aggrieved by the same, the third respondent herein also has filed a second appeal No.470 of 2008 before this Court and the same is pending. Therefore, it is pleaded that since the petitioner has succeeded before the learned trial Court as well as learned first appellate Court, a direction may be issued to the official respondents as prayed for.

4. Learned counsel for the second respondent submitted that the entire pensionary benefits have been paid to the third respondent on the basis of the nomination made by the deceased person, therefore, the prayer of the petitioner seeking to recover the Family Pension already made to the third respondent is liable to be rejected.

5. Learned counsel for the third respondent submitted that when the second appeal filed by third respondent is pending, without challenging the validity of the legal heir certificate issued by the Tahsildar, Bhavani, the present prayer seeking to desist the official respondents from paying the Family Pension to the third respondent is liable to be rejected.

6. I also find merit on the above said submissions, for the reasons that firstly, when the second appeal filed by the third respondent is pending before this Court, the present writ petition filed by the petitioner cannot be entertained; secondly, the petitioner has not questioned the validity of the legal heir certificate issued by the Tahsildar, Bhavani. Therefore, in view of such reasons, I do not find any merit in the writ petition and accordingly, it is dismissed. The parties are directed to abide by the judgment and decree to be passed in the Second Appeal pending before this Court. No Costs. M.P.No.1 of 2009 is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The District Collector,
Erode District.
- 2.The Panchayat Union Commissioner,
Bhavani, Erode District.
- 3.The Assistant Director of Local Fund Audit,
Panchayat Union (Pension),
Chennai - 600 108.
- 4.The Tahsildar,
Bhavani.
- 5.The Additional District Munsif Court,
Bhavani.
- 6.The Additional District Court -Cum-
Fast Tract Court,
Bhavani.

+1cc to Mr.V.Rajesh, Advocate, S.R.No.19880
+1cc to Mr.S.Gunasekaran, Advocate, S.R.No.20235
+1cc to Mr.M.Ravi, Advocate, S.R.No.20186
+1cc to the Government Pleader, S.R.No.20916

W.P.No.15366 of 2009

SR(CO)

RRS (03/04/2019)



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