IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.518 of 2018
and
W.M.P.No.1817 of 2018

M.Lavanya @ Lillyrose ...Petitioner

vs

1.Secretary to Government of Tamil Nadu,
Home Department,
Secretariat, Chennai - 600 009

2.Secretary to Government of Tamil Nadu,
Adidravidar & Welfare Department,
Fort St.George, Chennai - 9.

3.Director General of Police,
Kamarajar Salai,
Chennai - 4.

4.Office of the Principal Accountant General(A&E),
Tamil Nadu, No.361, Anna Salai,
Chennai - 600 018

5.Superintendent of Police,
Tuticorin District, Tuticorin.

6.Superintendent of Police,
Villupuram District, Villupuram.

7.The Collector,
Tuticorin District,
Tuticorin.

8.The Collector,
Villupuram District,
Villupuram.

9.S.Shanmugathammal

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to dispose the representation dated 18.12.2017, within the time stipulated by this Hon'ble Court.

For Petitioner	:	M/s.S.Thamizharasi
For Respondents	:	Mr.A.N.Thambidurai Special Government Pleader for R1 to R3 & R5 to R8 M/s.T.S.Selvarani for R4 Mr.Y.Prakash for R9

O R D E R

Though the relief sought for in the present writ petition is to consider the representation submitted by the writ petitioner, this Court is of the considered opinion that the issues involved in the present writ petition deserve moulding of the relief in the interest of justice.

2.The writ petitioner, admittedly, is the legally wedded wife of Late. S.Muthumani, who was employed as Sub Inspector of Police in F2 Police Station, Egmore and passed away. Admittedly, there is no counter claim in respect of the status of the writ petitioner as the wife of Late.Sri.S.Muthumani, who was working as Sub Inspector of Police.

3.The grievances of the writ petitioner is that she filed a Succession Certificate in O.P.No.263/2012 on the file of the District Judge, Tuticorin and subsequently, the matter was referred to Lok Adalat for settlement at the request of the parties. The mother of the deceased employee also claimed 50% of the death benefits as well as the pensionary benefits due to the deceased employee. In other words, the mother-in-law of the writ petitioner, Sri.S.Shanmugathammal also claimed 50% of the share in terminal and pensionary benefits due to the deceased employee. Under these circumstances, the parties had chosen to arrive a compromise and accordingly, a memo was filed before the Lok Adalat and unfortunately the Lok Adalat, without even considering the provisions of the law, accepted the terms of settlement for sharing of the pensionary benefits and passed an order on 12th September 2015. The terms of settlement was entered into between the writ petitioner as well as her mother-in-law in S.O.P.263/12, are as follows:-

S.O.P. 263/12 . Principal District Court, Thoothukudi.

TERMS OF SETTLEMENT

Both Parties present and their counsels present. Matter settled in Lok Adalath. Joint Memo filed and recorded.

1) To grant succession certificate infavour of the Petitioner as wife and to collect her half share in the debts and securites mentioned in Annexure 'A' of the S.O.P. No. 263/12 on the file Principal District Court, Thoothukudi.

2)To grant succession certificate infavour of the Respondent as mother and to collect her half share in the debts and securities mentioned in Annexure 'A' of the S.O.P. No. 263/12. on the file Principal District Court, Thoothukudi.

3) The order passed in S.O.P. 3/2004 on the file of the District Munsif of Kamuthi will not bind this S.O.P. 263/12. on the file Principal District Court, Thoothukudi.

4)To grant succession in favour of the Petitioner and the respondent in respect of claim amount passed in M.A.C.O.P No. 81/04 and 38/2008 ~~263/12~~ on the file Principal District Judge, Thoothukudi.

5)Award passed in terms of joint memo and joint memo will form part of the award.

6)To issue succession certificate on the terms of settlement.

M. Lavanya
Signature of the Petitioner

Signature of the Respondent

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(Separate sheet may attached, if required)

4.As far as the terms of settlement arrived between the parties before the Lok Adalat, the properties and other bank deposits or immovables, the same can be shared between the parties as per the terms of settlement. However, the terminal and pensionary benefits can never be shared between the wife and the mother of the deceased employee with reference to the Pension Rules in force. Thus, the terms of settlement arrived between the parties before the Lok Adalat is to be restricted to the extent of sharing the immovable and other immovable properties belonged to the deceased employee. As far as the terminal and pensionary benefits are concerned, the same is to be settled strictly in accordance with the Tamil Nadu Pension Rule 1978.

5.As per the Pension Rules, the legally wedded wife is competent to receive the terminal and pensionary benefits and the same cannot be shared by the mother of the deceased employee as per the Pension Rules. When the legally wedded wife is very much alive and set out the claim to receive the terminal and pensionary benefits, the authorities competent are bound to settle the same only in favour of the wife and the pensionary benefits can never be shared between the parties, which is in violation of the very scheme of pension itself.

6.The facts enumerated in the writ petition reveals that the mother of the deceased employee also made a claim with reference to the terminal and pensionary benefits due to the deceased employee and a compromise was arrived, based on some force before the Lok Adalat. Unfortunately, the Lok Adalat also failed to consider the statutory provisions and no settlement can be permitted in violation of statutory provisions.

7.Any terms of settlement running contrary to the statute or rules, can never be considered as a valid contract and such conditions are to be declared as void. As far as the pensionary benefits are concerned, the Tamil Nadu Pension Rules are unambiguous that the same are to be settled in favour of the wife. Thus, any terms of settlement granted between the parties, which all are running contrary to the provisions of law, can never be approved by the Lok Adalat. Thus, the Lok Adalat failed to consider the basic principles in the matter of settlement of terminal and pensionary benefits and allowed the parties to sign the terms of settlement, which resulted, filing of the present writ petition by the writ petitioner.

8.The learned counsel for the writ petitioner made a submission that the writ petitioner was forced to sign the terms of settlement and she had not signed voluntarily. However, such contentions cannot be accepted at this point of time in the writ petition as the writ petitioner had signed the terms of settlement and not raised any objections at the time of signing the settlement.

9.Beyond the acceptance of the terms of settlement, this Court is bound to verify the statutory validity of the terms of settlement arrived between the parties. Even in the Indian Contract Act, any terms and conditions or agreement entered into between the parties, if in violation of any statute or opposed to public policy, such covenants can be declared as null and void. This being the basic principles of Law of Contract as well as the Lok Adalat Act contemplates the compromise must be voluntarily made between the parties, this Court is of an undoubted opinion that the award of the Lok Adalat passed in between the writ petitioner as well as the mother of the deceased employee, regarding the settlement of terminal and pensionary benefits are to be declared as null and void.

10.It is useful to refer the counter filed by the Principal Accountant General of Tamil Nadu. The Principal Accountant General of Tamil Nadu has enumerated the provisions of the Tamil Nadu Pension Rules and clearly stated that the pension cannot be shared between the wife and the mother of the deceased employee and the relevant portion of the counter statement is as follows:-

> "3.In this connection, the connected rule provision is submitted below:
>
> a) As per Rule 49(13)(b)(i) of Tamilnadu Pension Rules, the family pension in respect of the deceased government servant is payable initially to the spouse of the deceased government. Then only other family members, Children, parents, legally adopted children, failing which the mother, only in the case of unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant. The relevant portion of the Rule is reiterated below:

[1][(iii) father and mother [including step mother] in the case of unmarried Government servants.]

[2][(iii) [3][legally adopted son and daughter, father], failing which the mother, in the case of unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant.]

(c) "pay" means the emoluments as specified in rule 30.

Provided that in a case in which average emoluments as referred to in rule 31 are treated as emoluments for the purpose of Death-cum-Retirement Gratuity referred to in rule 45, such average emoluments shall be treated as pay:

[4][Provided further that if the emoluments of the deceased Government servant have been reduced during the last ten months of his service other than as penalty, the average emoluments as referred to in rule 31 shall be treated as pay.]

NOTE.1 One half of deputation (Duty) allowance while on deputation to other Government shall also be taken into account as pay for the purpose of this rule.

[5][NOTE.2 Pay drawn by a Government servant appointed under rule 10 (a) (i) or rule 39 (a) (i) of the General Rules for the Tamil Nadu State and Subordinate Services shall not be reckoned as pay for the purpose of this rule.]

[6][(13-A) A military pensioner, who on retirement from military service, on retiring pension, service pension, or invalid pension is governed for the grant of ordinary family pension under military rules and is re-employed in a civil service or civil post before attaining the age of superannuation, shall for the purpose of eligibility for the family pension under this rule or the family pension already authorized under military rules be governed as follows:–

(a) if he dies, while holding a civil post, his family shall be allowed family pension under this rule, or the family pension authorized at the time of retirement or discharge from the military service, whichever is more advantageous to the family;

(b) if he has an appointment to a civil service or post, opted to retain military pension for the past military service and –

b) It is clear from the above rule provision, that only the petitioner Smt Lilly Rose, wife of the deceased is eligible to receive family pension and the Court Order is incontravention of the rule provision and Government, the first respondent is competent authority to relax the rule provision and issue orders sanctioning family pension as per the settlement deed. On receipt of the same along with family pension proposals only, this respondent office can take further action in the instant case."

11.Even, the Accountant General of Tamil Nadu prayed that this Court may pass such orders as it may deem fit. The Accountant General never prayed for to dismiss the writ petition.

12.This Court is of the considered opinion that the Award of the Lok Adalat is to be restricted to the extent of the immovable and movable properties belonged to the deceased employee and accordingly,the same shall be shared between the writ petitioner as well as her mother-in-law. However, the terminal and pensionary benefits of the deceased employee, Late.Sri.S.Muthumani is concerned, the same are to be settled only in favour of the writ petitioner by following the procedures as contemplated under the Tamil Nadu Pension Rules, 1978.

13.The learned Special Government Pleader for the respondents made a submission that based on the Lok Adalat award, the Director General of Police sent a proposal to the Government to relax the relevant provisions of the Tamil Nadu Pension Rules. Such a proposal ought not to have submitted by the Director General of Police. Contrarily, appropriate applications ought to have filed before the Lok Adalat for the purpose of reviewing the award passed. Any such award or compromise arrived between the parties, if found not in consonance with the Tamil Nadu Pension Rules, can never be approved by the competent authorities. The competent authorities are duty bound to enlighten the authorities regarding the provisions of the Tamil Nadu Pension Rules for the purpose of settling the terminal and pensionary benefits of the Government employee.

14.In the present case, the proposal to relax the Rules are sent in a routine manner and such an action can never be appreciated.

15.The power of relaxation is only an exception and can never be used for the purpose of diluting or violating the statutory rules. The power of relaxation cannot be used in an arbitrary manner to deprive the wife of the deceased employee to receive the pensionary and terminal benefits of the deceased employee. Thus, the power of relaxation can never be exercised by the competent authorities for the purpose of depriving the wife of an employee to receive the terminal and pensionary benefits. The power of relaxation is to be exercised, only to mitigate the gross injustice, if any occurred. Contrarily, the same cannot be utilized for the purpose of depriving a person from getting her right as per the provisions of the Tamil Nadu

Pension Rules. Thus, submission of proposal to the Government to grant relaxation of Rule itself is perverse and untenable. Contrarily, it is duty mandatory on the part of the Director General of Police to appraise the Government by citing the relevant Rules and take appropriate decision. Under these circumstances, the very proposal deserves no consideration on the hands of the 1st respondent / Secretary to Government, Home Department.

16.This being the factum, the relief sought for in the present writ petition is moulded and accordingly, the following orders are passed:-

1) The writ petitioner is entitled to get all the terminal and pensionary benefits due to the deceased employee Late. Sri.S.Muthumani in accordance with the provisions of the Tamil Nadu Pension Rules 1978.

2) The respondents are directed to send the Pension proposals to the Principal Accountant General of Tamil Nadu within a period of 8 weeks from the date of receipt of a copy of this order and the Principal Accountant General shall consider the Pension proposal and pass necessary orders in accordance with law within a period of 8 weeks from the date of receipt of the pension proposals from the competent authorities.

3) As far as the Lok Adalat award is concerned, it is restricted only in respect of the immovable and movable properties belongs to the deceased employee and the award is declared as null and void in respect of the compromise arrived between the parties with reference to the settlement of terminal and pensionary benefits as per the Tamil Nadu Pension Rules 1978.

17.With the above directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.Secretary to Government of Tamil Nadu,
Home Department,
Secretariat, Chennai - 600 009

2.Secretary to Government of Tamil Nadu,
Adidravidar & Welfare Department,
Fort St.George, Chennai - 9.

3.Director General of Police,
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4.Office of the Principal Accountant General(A&E),
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5.Superintendent of Police,
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6.Superintendent of Police,
Villupuram District, Villupuram.

7.The Collector,
Tuticorin District,
Tuticorin.

8.The Collector,
Villupuram District,
Villupuram.

+1cc to Mr.S.Thamizharasi, Advocate Sr.38514
+1cc to the Government Pleader Sr.39877

W.P.No.518 of 2018

kk[co]
srg 04/06/2019