

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.24565 of 2013

A.Yacob

... Petitioner

vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai 600 003.

2. The Zonal Officer,
Zone - I,
Corporation of Chennai,
Chennai 600 021.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus, directing the Respondents to forthwith sanction terminal benefits of the Petitioner's father J.D.Anthony to the Petitioner.

For Petitioner : Mr.K.Raja

For Respondents : Mr.S.Saravanan

O R D E R

Petitioner has come up with this Writ Petition seeking a direction to the Respondents to forthwith sanction his father's terminal benefits to him.

2. According to the Petitioner, his father viz. J.D.Anthony was working as a Sanitary Worker under the control of the 2nd Respondent. Since he did not attend duty from 14.10.2004 and his whereabouts were not known, the Petitioner's mother gave a letter to the 2nd Respondent on 06.05.2005 to that effect. Later, at the request of the 2nd Respondent, F.I.R. was lodged on 23.11.2006 at P1, Police Station, Pulianthope, Chennai and Crime Number was assigned as 964/2006.

3. It is further stated by the Petitioner that his father had the habit of consuming liquor and drugs continuously and was also in the habit of leaving home and returning after four or five months. Since the Petitioner's father had not been heard of for seven years, it is deemed that he is presumed to have been dead on 14.10.2011. In the meanwhile, as his father's whereabouts were not known, due to stress, the Petitioner's mother too left them in lurch in 2007.

4. It is the case of the Petitioner that till date, terminal benefits of his father have not been sanctioned and that his two brothers, viz. Yesavoo and Andrews have no objection to grant terminal benefits of their father, to him. In this regard, the Petitioner has also sent a representation dated 22.07.2013 to the Respondents seeking terminal benefits of his father and the same was acknowledged by them. Since, no effective steps were taken by the Respondents to settle the terminal benefits of his father, the Petitioner has come up with the present Writ Petition.

5. In the counter affidavit, Respondents have stated that the Petitioner's father was absent on several occasions and the Corporation has also initiated departmental action against him. As regards disbursement of his father's terminal benefits, the Petitioner filed a Writ Petition in W.P.No.21921 of 2013 and this Court, by an order dated 07.08.2013 directed the 1st Respondent therein to pass orders on the Petitioner's representation dated 22.03.2013 in the light of the judgment of this Court rendered in the case of N.Pankajam vs. State of Tamil Nadu reported in 2006 (3) MLJ 702, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of the order.

6. Pursuant to the said order of this Court, the Respondent/Corporation sent a letter to the Petitioner, to furnish the relevant documents viz. (a) Father's Death Certificate (Original), (b) Legal Heir Certificate (True Copy), (c) Income Certificate (Original), (d) Father's Birth Certificate (e) Notarized No Objection Certificate from the other legal heirs of the deceased in Rs.20/- Non-Judicial stamp paper, (f) Certificate from the Tahsildar with regard to the family circumstances, (g) Identification Certificate with photo of the Petitioner from the Government Doctor and (h) Petitioner's 5 nos. of Passport size photographs and (i) Community Certificate.

7. Respondents have further stated in their counter that the Petitioner has furnished only four documents viz. (a) Income Certificate (True copy), (b) School Transfer Certificate (True Copy), (c) Undertaking Letter of Andrews (True Copy) and (d) Community Certificate. According to the Respondents, the

Corporation will clear all the dues to the Petitioner immediately on production of the documents sought by them along with the No Objection Certificate of the other legal heirs of the deceased J.D.Anthony.

8. Heard the learned counsel for the parties and perused the material documents available on record.

9. It is not in dispute that the whereabouts of the Petitioner's father was not known since 14.10.2004 and a police complaint in that regard was lodged on 23.11.2006. It is also not in dispute that the Petitioner had the benefit of the judgment and decree of the Civil Court in O.S.No.220 of 2016, dated 21.01.2019, whereby, the father of the Petitioner was declared dead. While considering various issues, the contention of the Respondent/Corporation authorities is that they are bound to issue Death Certificate and other Certificates pertaining to the Petitioner's father, based on the order passed by the Civil Court.

10. The contention of the Respondents that the reliefs sought in the Civil Suit vide (C) and (D) have been rejected, cannot be accepted, as the judgment and decree passed in the Civil Suit with regard to the issue on hand has to be read as a whole. The Civil Court cannot issue any direction to the authorities to discharge their official duty in the present set of facts. Further, the contention of the Respondent/Corporation that they require necessary Certificates as mentioned supra, for the purpose of settling the terminal benefits, cannot be brushed aside. Only after declaration that the petitioner's father is no more and after issuance of Death Certificate of the Petitioner's father by the competent authority, the other authorities can take necessary steps to issue Legal Heir Certificate and other Certificates that are required by the Petitioner.

11. In view of the foregoing, this Writ Petition is disposed of with the following directions:

(i) The authorities concerned are directed to issue Death Certificate of the Petitioner's father upon necessary application made by the Petitioner.

(ii) Once an Application is filed before the Authority concerned for issuance of Legal Heir Certificate of the deceased J.D.Anthony, the authorities shall process the same and furnish necessary Legal Heir Certificate within 15 days from the date of Application made by the legal heirs jointly.

12. If, for any reason, it is found that the Petitioner's father viz. J.D.Anthony is alive and that the Petitioner has approached this Court with unclean hands, it is needless to mention that the Respondents can bring the same to the attention of this Court for necessary action for perjury against the Petitioner. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai 600 003.
2. The Zonal Officer,
Zone - I,
Corporation of Chennai,
Chennai 600 021.

+1cc to Mr.K.Raja, Advocate, S.R.No.61738

+1cc to Mr.S.Saravanan, Advocate, S.R.No.61689

W.P.No.24565 of 2013

RR(CO)
CS/11/10/2019

सत्यमेव जयते

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