

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM

THE HON'BLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.34842 of 2016

B.Mallika

... Petitioner

Vs.

1.The Principal Accountant General
Office of Principal Accountant General
(Accounts and Entitlements) Tamil Nadu
361, Anna Salai, Chennai 18.

2.The Commissioner,
For Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai 51.

... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Mandamus directing the respondent to disburse the family pension to the petitioner of her deceased husband Balan.

For Petitioner : Mr.R.Kamalarani

For Respondents : Mr.V.Vijayashankar
and Mr.Gowtham for R1

Mrs.T.Girija,
Government Advocate for R2

ORDER

The present writ petition has been filed by the petitioner seeking to disburse the pensionary benefits of her deceased husband Balan. It is the case of the petitioner that she is a legally wedded wife and that she is entitled to all terminal benefits and pensionary benefits of her husband Balan. The petitioner had already approached this Court by filing a writ petition in W.P.No.8197 of 2015 to disburse family pension on the ground that she is the legally wedded wife of late Balan and the representation of the petitioner was considered by taking

into account the death certificate and legal heir certificate issued by the Tahsildar on 12.07.2004, wherein the legal certificate contained the names of five persons including Mallika, the petitioner herein. As there was another person by name Nesammal, which has been recorded in the family pension proposal, it has been observed by the Accountant General Office that legal status may be determined along with other documents for the pension proposal to be considered for the disbursement of the amount.

2. It is represented by the petitioner that her ration card contains the name of the petitioner as husband and that duty cast upon the respondents to disburse the family pension.

3. The learned counsel appearing for the 2nd respondent would submit that already proposals have been sent to the 1st respondent i.e., the Principal Accountant General Office and that there are discrepancies in the records and the records shows that Nesaamal is the wife and the name of the petitioner does not figure there. It has been stated that only on receipt of the family pension proposal along with proper details, eligibility of the family pension would be considered.

4. The 1st respondent has filed a counter affidavit stating that to comply with Hon'ble court order, on receipt of the above representation from the petitioner dated 14.12.2015, this office considered the same and passed orders vide letter dated 23.08.2016 on the following lines;

'As per the records of this office, late Sri Balan, at the time of his retirement had declared only the following persons as his family members:

- 1.Smt.B.nesamma, wife
- 2.Smt.Vasantha, Daughter
3. Sri.B.Baskaran, Son
- 4.Sri B.Ezhilan, Son
- 5.Sri B.Muhilan, Son
- 6.Sri.B.Dasarathan, Son

5. The proposal has been returned to the office of the Tamil Nadu Cooperative Milk Producers Federation for proper verification and necessary proposal needs to be resubmitted. It has been stated that beneficiary to the family pension has been identified normally on the basis of the details furnished by the retired Government Servant or relying on the Legal Heir Certificate issued by the Tahsildar concerned or any decree of the jurisdictional court declaring any person as legal heirs/legally wedded spouse of the deceased. Even though various

averments have been made in the counter affidavit, they also referred Rule 49 of the Tamil Nadu Pension Rules read with G.O.Ms.No.327 dated 30.08.2001 as there are no clinching evidence to prove Mallika/petitioner as his wife to grant benefits, the pensionary benefits cannot be granted.

6. Even though counter affidavit, they have filed a written instructions stating that proposals have been forwarded to the 1st respondent Principal Accountant General Office for disbursement of pension and the records clearly show that the name of Mallika has not been mentioned by the deceased Balan. Apart from the written instructions original records have been produced. The original record in Page no.81, photograph of the deceased Balan and Nesammal is found and the learned counsel for the respondents would submit that the lady in the photograph is Nesammal and not Malliga. Apart from that in Page No.109, the name of Nesammal is mentioned as wife, aged 48 years, Tmt.Vasantha as Daughter, aged about 30 years married, Thiru.B.Ezhilan, as Son aged about 24 years, unmarried, Thiru.B.Mukhilan, as Son aged about 22 years, Thiru.B.Dasarathan as on aged about 20 years. Though it has been stated that the name of Baskaran is mentioned as Son aged about 28 years, the same has been struck off. Reason for removing the same is not known to any of the respondents, but in any event, the family pension is payable only to the names mentioned by the petitioner as nominee.

7. The male children aged about 25 years, are not eligible for pension. The dispute is whether the petitioner is entitled to pensionary benefits or not, more particularly when the fact is that Nesammal is no more as on date. Merely because Nesammal is not alive, it does not mean the petitioner would automatically got the status as wife. This Court is not aware as to whether the petitioner is the first wife or the second wife ? Even though, in the ration card, the said Mallika is shown as a wife, only competent Court is entitled to decide about the marital status. Unless and until judgment and decree is produced to prove the fact that she is the legally wedded wife, she will not be entitled to any relief. Hence, it is open to the petitioner to approach the competent forum to establish the stand. However, this Court will not preclude the petitioner to produce necessary documents that are available, based on which her stand could be established that she is the wife of deceased employee. The case of the petitioner shall be considered by the respondents in accordance with the law.

8. The writ petition stands dismissed with the above directions. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Accountant General
Office of Principal Accountant General
(Accounts and Entitlements) Tamil Nadu
361, Anna Salai, Chennai 18.

2.The Commissioner,
For Milk Production and Dairy Development,
Madhavaram Milk Colony,
Chennai 51.

+1 cc to M/s.Kamala Rani, Advocate Sr.No.74710
+1 cc to M/s.Vijay Shankar, Advocate Sr.No. 75420
+1 cc to The Government Pleader Sr.No.75508

AKM/30.10.19/4P-6C /

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