

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No. 30369 of 2019

J. Vivek Vaithiyanathan

... Petitioner

Vs.

1. The Principal Secretary to Government,
Finance (Pension) Department,
Secretariat, Chennai - 9.
2. The Principal Secretary/Commissioner,
Department of Treasuries and Accounts,
Intergrated Complex for Finance Department,
3rd Floor, Veterinary Hospital Campus,
Anna Salai, Nandanam,
Chennai - 600 035.
3. The Director/Commissioner,
Department of Social Welfare and
Nutritious Meal Program,
Panagal Maligai, Saidapet,
Chennai.
4. District Social Welfare Officer,
Department of Social Welfare,
Collectorate Campus,
Tiruvannamalai District, Tiruvannamalai.

5. J. Rajeswari

6. Dimple Kumutha

7. Jayasudha

8. Poornima

9. Vinod Kumar

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondents to sanction Petitioner's father family pension and other pensionary benefits and pay one of the share to the Petitioner from his retirement benefits and pay the family pension to the Petitioner along with other eligible persons from the date of his father's superannuation till his completion of 25 years of age, with 9% interest per annum.

For Petitioner : Mr. U. Karunakaran

For Respondents : Mr. A.N. Thambidurai
Special Government Pleader

O R D E R

This writ petition has been filed by the Petitioner, praying for the issuance of a Writ of Mandamus, to direct the Respondents to sanction Petitioner's father family pension and other pensionary benefits and pay one of the share to the Petitioner from his retirement benefits and pay the family pension to the Petitioner along with other eligible persons from the date of his father's superannuation till his completion of 25 years of age, with 9% interest per annum.

2. Heard the learned counsel appearing for the Petitioner and the learned Special Government Pleader appearing for the Respondents.

3. The case of the Petitioner is that, he is the son of second wife of his father namely deceased late G.Jagadeesan, who worked as Industrial Co-operative Officer in the department of Social Welfare and Nutritious Meal Program and died on 08.09.2010 due to jaundice. During in service, he was placed under suspension and departmental proceedings. Claiming equal share in respect of the family pension and other pensionary benefits, the Petitioner has made representation on 13.08.2019 to the Third Respondent, requesting to sanction his share of family pension and other benefits.

4. According to the Petitioner, he also made an application to the concerned Tahsildar, Madhavaram for issuance of Legal Heir Certificate and since the Tahsildar refused to give Legal Heir Certificate, the Petitioner filed a Writ Petition in W.P. No. 26772 of 2019 before this Court and it is pending. According to the Petitioner, his mother sent Joint Affidavit to the first wife and her children for getting family pension proportionately, but they refused to sign the same.

5. The grievance of the Petitioner is that, though he made representation on 19.08.2019 to the Fourth Respondent to sanction his share in the family pension, being the son of the deceased employee born to second wife of the deceased employee, till date the Fourth Respondent has not sanctioned the same. Hence the Petitioner is come forward with the present writ petition.

6. The learned counsel would submit that the Petitioner is the son of the second wife of the deceased employee who retired in the year 2000 and died in the year 2010, but due to pendency of the disciplinary action initiated by Department of Social Welfare, Vigilance and Anti-corruption Department, no retirement benefits as well as the pensionary benefits were settled. He would further submit that later the disciplinary proceedings were ended in the year 2010, in favour of the deceased employee, and even then also, no retirement benefits and pensionary benefits were settled.

7. The learned counsel would also submit that being son of second wife of the deceased employee, the Petitioner is entitled to one of the share in the family pension and despite his request through representation, the Respondents have not acceded to his request. Therefore, the learned counsel would implore this Court to issue direction as sought for.

8. It is not in dispute that children from second marriage are legitimate children and they could claim a share of the family pension till they attain majority while the second wife is not entitled to it. In this case, the Petitioner is claiming himself as the son of the second wife of the deceased employee and made a representation requesting to sanction his share in the family pension and pensionary benefits. On a perusal of the representation, this Court is of the view that the same has not made in a proper perspective since it does not contain Legal Heir Certificate to establish that he is the son of the second wife of the deceased employee and moreover the writ petition filed by the Petitioner seeking for a direction to Tahsildar to issue Legal Heir Certificate is still pending and as such mere based upon the representation without any valid documents, the Respondents have rightly not entertained the same. Therefore, in such circumstances, this Court is unable to entertain the present writ petition. However, the Petitioner is at liberty to workout his remedy in the manner known to law by making an effective representation along with valid documents including Legal Heir Certificate in a proper way.

9. For the forgoing reasons, the writ petition is disposed of giving liberty to the Petitioner to make a representation

along with valid documents and if any such representation is being made, the Respondents are directed to consider and dispose of the same after affording an opportunity to the private respondents ie., Respondents 5 to 9, in accordance with law and on merits. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Finance (Pension) Department,
Secretariat, Chennai - 9.
2. The Principal Secretary/Commissioner,
Department of Treasuries and Accounts,
Intergrated Complex for Finance Department,
3rd Floor, Veterinary Hospital Campus,
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4. District Social Welfare Officer,
Department of Social Welfare,
Collectorate Campus,
Tiruvannamalai District, Tiruvannamalai.

+lcc to Mr. U. Karunakaran, Advocate SR.89343
+lcc to the Government Pleader SR.89947

SPD(CO)
CB(11/12/2019)

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