



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)Nos.4541 and 11364 of 2015

and

M.P. (MD)Nos.1, 2, 2, 3 and 3 of 2015

WEB COPY

W.P. (MD)No.4541 of 2015:-

Valantena

... Petitioner

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Housing and Urban Development Department,
St.George Fort, Chennai.

2.The Secretary,
Housing and Urban Development Department,
St.George Fort, Chennai.

3.Lenina

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in G.O.Ms.No.14, dated 29.01.2015 and quash the same and consequently, to direct the respondents 1 and 2 to grant all the retirement and terminal benefits to all the legal heirs as per the legal heir certificate issued by the Competent Authority, dated 03.04.2012 within a time frame as stipulated by this Court.

For Petitioner : Mr.S.Gokulraj

For R1 and R2 : Mr.D.Muruganandam

Additional Government Pleader

For R3 :Mr.Ananth C.Rajesh

W.P. (MD)No.11364 of 2015:-

1.K.Ramesh Hosimin

2.K.Gagarin

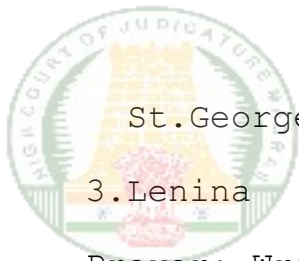
... Petitioners

vs.

1.The State of Tamil Nadu,
represented by its Secretary,
Housing and Urban Development Department,
St.George Fort, Chennai.

2.The Secretary,
Housing and Urban Development Department,

<https://hcservice.ecourt.gov.in/hcservice5/>



St.George Fort, Chennai.

3.Lenina

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent in G.O.Ms.No.14, dated 29.01.2015 and quash the same and consequently, direct the respondents 1 and 2 to grant all the retirement and terminal benefits to all the legal heirs as per the legal heir certificate issued by the Competent Authority, dated 03.04.2012 within a time frame as stipulated by this Court.

For Petitioner : Mr.S.Gokulraj
For R1 and R2 : Mr.D.Muruganandam
Additional Government Pleader
For R3 :Mr.Ananth C.Rajesh

COMMON ORDER

These Writ Petitions have been filed to quash the order of second respondent, dated 29.01.2015 in G.O.Ms.No.14 and to direct the respondents 1 and 2 to grant all the retirement and terminal benefits to all the legal heirs, as per the legal heir certificate issued by the Competent Authority, dated 03.04.2012.

2.The petitioners in these two writ petitions are the son and daughters of one K.Kalimuthu, through his second wife. The father of the petitioners in both writ petitions was working as Under Secretary in Housing and Urban Development Department, Government of Tamil Nadu and while he was on service, he was not seen from 02.07.1993. The Government issued G.O.R2(D)No.48, dated 19.08.1998 stating that the petitioners' father is missing with effect from 29.09.1993 and dropped the disciplinary proceedings that was pending against him earlier.

3.The petitioners' father had a first wife, by name, K.Sarojini. The third respondent in the writ petitions is the daughter of K.Kalimuthu, through his first wife, by name, K.Sarojini. It is stated that in the suit filed by the first wife in O.S.No.508 of 2001 on the file of the II Additional District Munsif Court, Tirunelveli, to declare the civil death of petitioners' father and for getting terminal and monetary benefits, a decree came to be passed declaring the death of K.Kalimuthu from 02.07.2000. Though the plaintiff was held to be entitled to for the pension benefits, insofar as the terminal benefits were concerned, the suit was dismissed, as the petitioners are also entitled to the terminal benefits. Though the mother of petitioners filed an appeal suit in A.S.No.11 of 2008 as against the judgment of the suit in O.S.No.508 of 2001, it is admitted that the said appeal was also



dismissed confirming the judgment and decree in O.S.No.508 of 2011.

4.The grievance of the petitioners in these writ petitions is that the second respondent, by impugned order, has directed 100% family pension to Smt.Sraojini, who is the first wife of K.Kalilmuthu, and to sanction the arrears to be paid to Tmt.Lenina, the third respondent herein. The petitioners have no grievance against this part of the order. In the impugned order, 3/4 of withheld DCRG has been directed to be disbursed to Tmt.Sarojini, first wife, who was no more, when the order was passed. Stating that the petitioners are entitled to 3/4 of withheld DCRG and the third respondent is entitled to 1/4 of the amount, the above two writ petitions have been filed.

5.From the facts admitted, the petitioners are the illegitimate children of K.Kalimuthu. It is admitted that the marriage between the mother of petitioners and the deceased, K.Kalimuthu was during the substance of the first marriage. The gratuity is a statutory liability and therefore, on the death K.Kalimuthu, his legal heirs are entitled to the same. Since the illegitimate children are also entitled to, the petitioners are also entitled to get equal share, as that of legitimate children. However, on the date of death of K.Kalimuthu, the first wife and the third respondent were alive. Hence, in law, the petitioners and third respondent along with the mother of third respondent are entitled to get DCRG.

6.Going by the proportionate share of petitioners, the petitioners are entitled to 3/5 of withheld DCRG and 2/5 withheld DCRG should be paid to the third respondent. Accordingly, the impugned order is set aside and the respondents 1 and 2 are liable to settle the DCRG to the petitioners herein as per Section 8 of Hindu Succession Act. Since there is no dispute with regard to quantum of share, the petitioners in W.P.(MD)No.11364 of 2015 are entitled to 1/5 each, and the petitioner in W.P.(MD)No.4541 of 2015 is entitled to 1/5 share. The amount shall be paid within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)



To

The Secretary,
Housing and Urban Development Department,
St.George Fort, Chennai.

+1CC TO M/S.SPL GOVERNMENT PLEADER , SR NO.100570
+1CC TO Mr.ANANTH C.RAJESH, ADVOCATE, SR NO.100452
+1CC TO Mr.S.GOKULRAJ, ADVOCATE, SR NO.100174

W.P. (MD) Nos.4541 and 11364 of 2015
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