

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :10.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 11666 OF 2013

Mrs.Puspha

.. Petitioner

- Vs -

1. State of Tamil Nadu
Rep. By Secretary to Government
Highways Department
fort St. George
Chennai 600 009.

2. The Superintending Engineer
Highways and Rural Department
Coimbatore 641 018

3. The Divisional Engineer
Highways and Rural Department
Coimbatore 641 018

4. The Assistant Divisional Engineer,
Highways and Rural Department
Coimbatore 641 018

5.K.Maruthappan

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified Mandamus, calling for the entire records in pursuant to the impugned proceedings letter No.16/2011/AA2 dated 21.10.2011 on the file of the 3rd respondent and quash the same and consequently direct the respondents 1 to 4 to settle the terminal benefits including gratuity, GPF payable on the death of the petitioner's father with 10% interest and also direct the respondents 1 to 4 to pay the arrears of family pension payable to the petitioner's mother from February 1979 to till her death with interest.

For Petitioner : Mr.R.Rajkumar for
M/S.N.Naganathan

For Respondents: Mr.A.N.Thambidurai,
Spl.G.P. for RR-1 to 4
: Mr.M.Mohammed Hassan for
M/S.B.Rama Moorthy for R5

ORDER

This Writ Petition was filed by the petitioner, to call for the entire records in pursuant to the impugned proceedings letter No.16/2011/AA2 dated 21.10.2011 on the file of the 3rd respondent and quash the same and consequently direct the respondents 1 to 4 to settle the terminal benefits including gratuity, GPF payable on the death of the petitioner's father with 10% interest and also direct the respondents 1 to 4 to pay the arrears of family pension payable to the petitioner's mother from February 1979 to till her death with interest.

2.The case of the petitioner is that the petitioner's father namely K.Kandasamy (deceased) was appointed as Gangman in the office of 3rd respondent in the year 1958 and his service was also provincialised in the year 1973. While in service, his father died in the year 1979, leaving behind her mother and the petitioner as his legal heirs. It is the further case of the petitioner that at that time of her father's death, the petitioner's age was 6 years and the petitioner's mother who is uneducated and illiterate person was not aware as to where to approach for the terminal and pensionary benefits of deceased. The petitioner's father had been rendering service for 21 years; in order to claim such benefits, in the year 1999, the petitioner's mother approached the Road Inspector under whom her father was working for the settlement of terminal benefits. However inspite of her best efforts and repeated request, she could not receive the benefits till her death. The grievance of the petitioner is that taking advantage of the illiteracy of her mother, the road inspector made the 5th respondent to impersonate her father and receive his salary. Immediately thereafter the petitioner's mother approached the 3rd and 4th respondent and also made a police complaint on 16.06.1999 in which detailed enquiry was conducted by the respondents resulting in the suspension of the 5th respondent on 29.06.1999 and based on the complaint made by the petitioner's mother, the law enforcing agency registered FIR in Cr.No.14 of 2000 for impersonation as against the 5th respondent and a charge sheet has been laid before the Judicial Magistrate No.6, Coimbatore and registered as CC.No.912 of 2000 under Section 419 IPC on 23.2.2000. Subsequently it was renumbered as CC.No.54 of 2002 and transferred to Judicial Magistrate Court No.3. After trial, the trial Court acquitted the accused against which revision in CrI. RC.No.28 of 2004 was preferred by her mother and the prosecution also filed the appeal in C.A. No.159 of 2005 before this Court and this Court by its order dated 12.4.2011, dismissed the revision and appeal confirming the acquittal against which SLP was preferred before the Hon'ble Supreme Court in SLP(CrI) No. 37704 of 2011 and the Hon'ble Apex Court

confirmed the order of the trial court as affirmed by this Court. In the meanwhile, on 21.10.2011, the 3rd respondent had intimated to the petitioner that he had taken steps to grant the benefits to the 5th respondent on the basis of the order passed by the Judicial Magistrate Court to the 5th respondent. Therefore, for claiming the pensionary benefits of her father, the present petition has been filed.

3. Learned counsel appearing for the petitioner submitted that though the impersonation of the petitioner by the 5th respondent has been negated, which has attained finality, however, it is not in dispute that the petitioner's father had worked as Gangman from the year 1958 till his death with the official respondents, which would be evident from the records that the petitioner's father stopped attending duty on and from 25.6.1979. Therefore, the petitioner is entitled to her father's due share of pensionary benefits and terminal benefits for the period served by him with the respondents and, therefore, this Court may issue a direction to the respondents to settle the terminal benefits to the petitioner.

4. Per contra, learned counsel appearing for the 5th respondent submitted that impersonation of the petitioner by the 5th respondent has been negated by the Courts, which has attained finality and there being no question of impersonation, the claim of the petitioner for pensionary benefits is not sustainable and, the 5th respondent is entitled to the benefits for the period served by him with the official respondents.

5. Learned Special Government Pleader appearing for the official respondents submitted that the petitioner's father was working as a daily wager with the respondents from 1957 till 25.6.1979 and the records reveal that his absence in not attending duty resulted in placing the petitioner's father under suspension. However, the proceedings for the terminal benefits has been initiated by the petitioner's mother only in the year 1999, after prolonged delay and that no records are available to decide calculate the service and pay the pensionary benefits and, therefore, on the ground of delay and laches, the learned Special Government Pleader prays for dismissal of the petition.

6. This Court heard the submissions made by learned counsel appearing on either side and perused the materials available on record.

7. The status of the petitioner's father as an employee under the official respondents is not in dispute. Equally it is not in dispute that the 5th respondent has been working with the official respondents since May, 1979. Though it is the contention of the petitioner that the 5th respondent has been

impersonating her father, the said issue has been negated by the trial court, which has been affirmed by this Court and the Supreme Court. However, mere negating the impersonation of the 5th respondent would not be a ground to hold that the petitioner had not been in the service of the official respondents. Even it is not the case of the official respondents that the petitioner's father was not in their employ during the time between 1957 and 1979. The ground raised by the respondents for this Court to reject the present petition is only on the ground of delay. It is the case of the respondents that the long lapse of time between the death of the petitioner's father and the claim made herein, the material records pertaining to the employment of the petitioner's father are not available, which makes it impossible for the official respondents to calculate the benefits due and payable to the petitioner's father. But that cannot be a ground to negative the rights of the petitioner to the due share of the benefits of her father. But equally it is to be borne in mind that the petitioner has come before this Court after a lapse of almost three and a half decades to claim the benefits to which her father is entitled.

8. It is to be placed on record that the respondents cannot be expected to keep all the files relating to a person for such a long period of time. Even the pension rules postulates the full service of an employee at 33 years. That being the case, the petitioner having come almost after 34 years before this Court to claim the benefits of her father, cannot expect the respondents to have the service records of her father at this point of time so as to enable them to calculate the service benefits. However, that cannot take away the right of the petitioner to the due share of the benefits to which her father is legally entitled.

9. In the above backdrop, the scales of justice needs to be adjusted in such a manner that neither the petitioner is deprived of her rights nor the official respondents are deprived of their rights and the balance needs to be maintained so as to render substantial justice. On a holistic consideration of the issue, the fact that the service of the petitioner's father with the official respondents having not been disputed, this Court is of the considered view that a lumpsum could be granted towards the benefits to which the petitioner's father would be entitled keeping in view the facts, narrated above and which would, in effect be the just and reasonable order that could be passed in the facts and circumstances of the case.

10. In the above circumstances, this Court is of the considered view that a sum of Rs.1,00,000/- as lumpsum compensation towards the benefits of the petitioner's father,

payable to the petitioner as a one time settlement would meet the ends of justice. Accordingly, this writ petition is allowed in terms directing respondents 2 to 4 to pay a one time lumpsum compensation in a sum of Rs.1,00,000/- (Rupees One Lakh only) to the petitioner towards full and final settlement of the dues to which the petitioner's father is entitled for the services rendered by him between 1957 and 1979. The above lumpsum compensation is ordered in full quit of the official respondents liabilities and no further benefits would stand accrue to the petitioner. The respondents 2 to 4 are directed to settle the compensation amount of Rs.1,00,000/- as one time settlement to the petitioner within a period of 3 months from the date of receipt of a copy of this order or production of the same by the petitioner. There shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jrs
To

1. The Secretary to Government
Highways Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009.
 2. The Superintending Engineer
Highways and Rural Department
Coimbatore 641 018
 3. The Divisional Engineer
Highways and Rural Department
Coimbatore 641 018
 4. The Assistant Divisional Engineer,
Highways and Rural Department
Coimbatore 641 018
- +1 Cc to Mr.N. Naganathan, Advocate sr 29731.
+1 CC to Govt. Pleader sr 29719.
+1 CC to M/S.B.Rama Moorthy, Advocate sr 4746(12/10/2020)

W.P. NO.11666 OF 2013

MR(CO)
SP(29/09/2020)