

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 29135 OF 2013

AND

M.P. NO. 1 OF 2013

A.R.Bommi

.. Petitioner

- Vs -

1. Gunasekaran

2. The Principal  
Government Polytechnic College  
Udhagamandalam 643 006.

3. The Principal Accountant General  
Tamil Nadu & Puducherry  
Anna Salai, Teynampet  
Chennai 600 018.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein to disburse 50% of the terminal benefits payable to the 1<sup>st</sup> respondent herein on his attaining superannuation on 31.5.2014 to the petitioner herein towards permanent alimony.

For Petitioner : Mr. M.Baskaran

For Respondents : No Appearance for R-1

Mr. A.N.Thambidurai,

Spl. GP for RR-2 & 3

ORDER

The case is listed today for passing orders. Learned counsel for the petitioner is present, while there is no representation for the 1<sup>st</sup> respondent. Learned Special Government Pleader appears for the official respondents. The case was instituted in the year 2013 and till date, the case is in the stage of notice of motion. Considering the long pendency of the case, and there being no representation on behalf of the 1<sup>st</sup> respondent, this Court is inclined to take up the case on merits.

2. It is the case of the petitioner that she married the marriage between her and the 1<sup>st</sup> respondent was solemnised on 20.2.1990. Sometime after marriage, matrimonial discord arose between the petitioner and the 1<sup>st</sup> respondent which led to the petitioner being driven out of her matrimonial home and is presently residing under the care and custody of her brother.

3. It is the further case of the petitioner that though efforts were taken to reconcile the family dispute between the petitioner and the 1<sup>st</sup> respondent, it did not fructify fruitfully, thereby, the petitioner and the 1<sup>st</sup> respondent decided to dissolve the marriage by mutual consent and, accordingly, HMOP No.40 of 1994 was filed before the Sub Court, Vellore and by order dated 1.11.1994, the marriage was dissolved by way of mutual consent. It is further averred by the petitioner that at the time of dissolution of the marriage, no amount towards permanent alimony/maintenance was provided to the petitioner.

4. It is further averred by the petitioner that M.C. NO.41 of 1993 was instituted before the Principal Family Court at Chennai and by order dated 8.11.93, maintenance at Rs.400/- per month was ordered to the petitioner from 1.1.94, which was subsequently enhanced to Rs.500/- on another petition in M.P. No.666 of 1995 dated 10.11.98 w.e.f. 1.1.198. It is further averred by the petitioner that the 1<sup>st</sup> respondent evaded payment of maintenance, which prompted the petitioner to file M.P. No.1 of 1999 claiming arrears of maintenance. It is further averred by the petitioner that the 1<sup>st</sup> respondent is to attain the age of superannuation on 31.5.14 and in view of the attitude of the 1<sup>st</sup> respondent in not paying maintenance amount regularly, the petitioner would be left in lurch after he attains superannuation. Hence, the petitioner is constrained to file the present petition for a direction to the respondents 2 and 3 to pay 50% of the terminal/retirement benefits payable to the 1<sup>st</sup> respondent to her in lieu of permanent maintenance.

5. Learned counsel appearing for the petitioner reiterated the contentions advanced in the grounds and submitted that the maintenance ordered to the petitioner should be safeguarded by a direction to the respondents 2 and 3 to pay 50% of the terminal/retirement benefits due to the petitioner on his superannuation.

6. Learned Special Government Pleader appearing for the respondents 2 and 3 submitted that the prayer sought for by the petitioner cannot be maintained as no provision exists in the rules to pay the terminal/retirement benefits to any other person during the life time of the employee. If at all the petitioner is aggrieved due to non-payment of maintenance

amount, it is for the petitioner to work out her remedies in a manner known to law.

7. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and also perused the materials available available on record.

8. It is seen from the records that due to non-service of notice on the 1<sup>st</sup> respondent, the case as against the 1<sup>st</sup> respondent stood dismissed as early as on 3.6.15. The matter having been dismissed insofar as the 1<sup>st</sup> respondent is concerned, the petitioner not having taken any effective steps to serve notice on the 1<sup>st</sup> respondent, this Court is of the considered view that no positive direction can be given to the 1<sup>st</sup> respondent. Further, even according to the petitioner, the 1<sup>st</sup> respondent has attained the age of superannuation way back in May, 2014 and at the time of institution of the petition, no interim order was passed in favour of the petitioner by this Court. In the absence of any interim order, at this length of time, no order, as prayed for, can be granted in favour of the petitioner.

9. In the above facts and circumstances, the relief sought for by the petitioner cannot be granted and, accordingly, this writ petition is dismissed. However, liberty is granted to the petitioner to work out her remedies in a manner known to law by initiating appropriate proceedings for claiming the arrears amount payable by the 1<sup>st</sup> respondent. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal  
Government Polytechnic College  
Udhagamandalam 643 006.
2. The Principal Accountant General  
Tamil Nadu & Puducherry  
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+1 cc to the Government Pleader Sr.No. 25764

W.P. NO.29135 OF 2013

rsv (co)  
rr ii (08/09/2020)