



WEB COPY

W.P(MD).No.12129 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD).No. 12129 of 2014

and

MP(MD)No.1 of 2014

and

W.M.P.(MD)No.13003 of 2016

Melkias

... Petitioner

-Vs-

1. The Accountant General (A&E)
Office of the Principal Accountant General,
No.361, Anna Salai, Chennai 600 018.
2. The Director of Medical Service,
No.258, DMS Complex 3rd Floor,
Near Fire Service, Anna Salai,
Teynampet West, Chennai 600 006.
3. The Dean,
Kanyakumari Medical College,
Asaripallam 629 201,
Kanyakumari District.
4. Michael Hethsi

5. Hersom Savia

... Respondents

(Respondents 4 and 5 are impleaded as per order dated 11.09.2014 in M.P.No.2 of 2014)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the third respondent in Na.Ka.No.8132/Ni4/2013, dated 16.05.2014 quash the same and consequently direct the respondents herein to disburse the death-cum-retiral and family pension of late Justin, W/o.M.Melkias, to the petitioner and his children within a reasonable time as may be fixed by this Court.

For Petitioner	: Mr.M.Subash Babu
For R1	: Mr.P.Gunasekaran
For R2 and R3	: Mr.D.Muruganantham Additional Government Pleader
For R4 and R5	: No Appearance

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ORDER

The relief sought for in the present writ petition is to quash the order of rejection rejecting the claim of the writ petitioner to settle the DCRG amount and other terminal benefits in favour of the nominees of the deceased employee.

2.The husband of the deceased employee is a pensioner, the petitioner's wife Late.Justin was working as a Head Nurse in the third respondent hospital and she died on 23.07.2013, due to her illness. The petitioner and his deceased wife were blessed with one daughter, namely, Michael Hethsi and son, namely, Hersom Savia. The grievances of the writ petitioner is that the family pension has already been sanctioned and being paid to him. However, the terminal benefits including DCRG, GPF and other benefits including encashment of earned or unearned leave were settled in favour of his son and daughter by the respondents equally, based on the nomination given by the deceased employee.

3.This Court is of the considered opinion that as per the Tamil Nadu Pension Rules 1978, the authorities are bound by the nominations provided by the employees in their service records. The settlements are to be made based on the nominations entered in the service records. The manner, in which, the nominees is to be made, is also contemplated under the Tamil Nadu Pension Rules 1978. In this context, it is relevant to consider Rule 46 of the Tamil Nadu Pension Rules 1978, which stipulates persons to whom gratuity a payable, section 46(1)(a) states that "the gratuity payable under Rule 45 shall be paid to the persons or persons on whom the right to receive die gratuity is conferred by means of a nomination under Rule 48".

4.Let us look into Rule 48 of the Tamil Nadu Pension Rules, which speaks about 'Nomination'. Accordingly, to Section 48(1), "a Government servant shall make a nomination in Form 1 or Form 2, as may be as appropriate in the circumstances of the case conferring on one or more persons the right to receive the Death-cum-Retirement Gratuity payable under Rule 45:

Provided that, if at the time of making the nomination-

(i) the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

(ii) the Government servant has no family the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not."



Rule 45 sub-rule (5) provides definition for 'family'. The said Rule states that "for the purposes of this rule and rule 46, 47 and 48 'family' in relation to a Government servant means.

(i) Wife or wives, including judicially separated wife or wives in the case of a male Government servant.

(ii) husband, including judicially separated husband in the case of a female Government servant.

(iii) [sons including step sons, adopted sons and sons born through illegitimate wife.

(iv) unmarried daughters including step daughter, adopted daughters and unmarried daughters born through illegitimate wife.

(v) widowed daughters including step daughters, adopted daughters and widowed daughter born through illegitimate wife.]

(vi) father, including adoptive parents in the case of individuals whose personal law permits adoption.

(vii) mother [and step mother], including adoptive parents in the case of individuals whose personal law permits adoption.

(viii) brothers below the age of eighteen years, including step brothers.

(ix) unmarried sisters and widowed sisters, including step sisters.

(x) married daughters, and

(xi) Children of pre-deceased son."

5.The learned Additional Government Pleader appearing on behalf of the respondents 2 and 3 states that the family pension was already sanctioned in favour of the writ petitioner, as the family pension is to be granted only to the spouse. Accordingly, the writ petitioner is receiving the family pension, however, the other terminal benefits were settled in favour of the son and daughter of the deceased employee who were the nominees in the service register. Thus, the respondents have acted in accordance with the Tamil Nadu Pension Rules 1978 and had not committed any perversity or infirmity while implementing the provisions of the Tamil Nadu Pension Rules. Thus, the writ petitioner is not entitled to get the DCRG and other terminal benefits as applicable to the deceased employee which was already settled in favour of the nominees.



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6. Accordingly, the writ petition is devoid of merits and stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

sjj

To

1. The Director of Medical Service,
No.258, DMS Complex 3rd Floor,
Near Fire Service, Anna Salai,
Teynampet West, Chennai 600 006.

2. The Dean,
Kanyakumari Medical College,
Asaripallam 629 201,
Kanyakumari District.

+1 CC to Mr.M.SUBASH BABU, Advocate SR-21416.
+1 CC to the SPL GP SR-21630.

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CS (23.11.2020) 4P 5C