

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.568 of 2021

R.Bhagya Devi .. Appellant/5th Respondent

Vs

1. R.Priyadarshini ...1st Respondent/Petitioner

2. The State of Tamil Nadu
rep. by the Principal Secretary to Government
Home Department, Secretariat
Fort St. George
Chennai - 600 009. ...2nd Respondent/1st Respondent

3. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai - 600 004. ...3rd Respondent/2nd Respondent

4. The Revenue Divisional Officer
Tambaram
Chennai. ...4th Respondent/3rd Respondent

5. The Tahsildar
Sozhinganallur Taluk
Chennai. ...5th Respondent/4th Respondent

6. R.Kavya ...6th Respondent/6th Respondent

Prayer: Appeal under Clause 15 of the Letters Patent against the order made in W.P.No.11658 of 2017 on 21.12.2020.

Prayer in WP.No.11658 of 2017

prayed that this Hon'ble Court may pleased to issue a Writ, order of direction more specifically in the nature of a Writ of Mandamus, directing directing the 3rd respondent to complete the enquiry in proceedings No. Na. Ka. 533/2017E dated 17.4.2017 in

accordance with law after affording due opportunity to the parties within the time frame fixed by this Honourable Court and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Appellant : Ms.Vaigai
Senior Counsel
for M/s.Anna Mathew

For Respondents : Mr.K.R.Ramesh Kumar
for 1st respondent
Mr.G.K.Muthukumar
Special Government Pleader
for respondents 2 to 5

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The family disputes of an erstwhile government employee comes to the fore in this appeal.

2. The writ petitioner claims to be a daughter of the deceased employee through the first wife, whom the concerned employee divorced. The employee thereafter married the present appellant. The appellant is Bhagya Devi and, with the deceased employee, the appellant had a daughter by the name of Satya alias Kavya. The writ petitioner goes by the name of Priyadarshini.

3. The writ petition was instituted upon the second wife and widow of the deceased employee seeking to obtain the pensionary and retirement benefits on the basis of a legal heir certificate, where she and her daughter were shown to be the only legal heirs. An initial direction was passed in the writ petition for the revenue authorities to consider whether the appellant herein and her daughter were the only legal heirs. In other words, the status of the writ petitioner qua the deceased employee was required to be ascertained.

4. It appears that upon the revenue authorities taking up such matter for consideration, the writ petition came up and the same was disposed of on the basis of the writ petitioner's submission that the matter had become infructuous since the revenue authorities had decided to look into the legal heir

issue. The appellant is aggrieved by the twist in the tail of the order, so to say, in the Writ Court disposing of the petition by directing status quo to be maintained.

5. Before even the merits of the appeal are addressed, it must be mentioned that no final order in any form can require status quo to be maintained, unless the intention of the order is to ensure the status to be permanently maintained as existing at the time of the order. In the present case that could never have been the intention, since all that the Court wanted was that the issue as to whether the writ petitioner was a legal heir of the deceased employee or not, to be decided before the retiral and the pensionary benefits pertaining to the deceased employee were disbursed.

6. To the extent that the impugned order of December 21, 2020 can be implied to suggest that the order of status quo would remain in effect till the legal heir issue was decided by the revenue authorities and the employer acted thereupon, the appellant has a genuine grievance. The appellant says that the right to receive pension is not a right that is governed by the laws of succession. Similarly, the appellant asserts that as to who may receive the gratuity due upon the death of an employee and who may receive the insurance pay-out or the provident fund dues would depend on the governing rules and the laws of succession have no role to play therein.

7. Ordinarily, it is the spouse of a deceased employee who is entitled to the family pension upon the death of the concerned employee engaged in any government organisation. In the present case, the rules pertaining to pension permit only the widow to be entitled to receive the family pension. Rule 22 (9) (i) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 points to the widow being entitled to the family pension subject to sub-rule (8). However, sub-rule (8) pertains to more widows than one and matters arising in connection therewith. In the present case, at the time of the death of the concerned employee, he had only one wife. The legal relationship with the first wife having been severed by divorce, only the appellant herein could be regarded as widow and entitled to the family pension without there being any other claimant.

8. Similarly, as for the gratuity, in terms of Rule 19 of the said Rules of 1958 read with the definition of "family" as indicated in the nominations clause contained in Rule 21, only the widow in the present case would have been entitled to receive the gratuity and no other. That is because in terms of Rule 19 only nominees who are included within the definition of "family" would be entitled to receive the gratuity and though

the writ petitioner in this case could be regarded as family within the said definition, in fact, there was no nomination in her favour.

9. So far as provident fund and insurance are concerned, they are governed by the Rules of nomination and subject to the class of nominees as defined. It is not the writ petitioner's case that the writ petitioner was nominated by her father to receive all or a part of the provident fund dues or the insurance pay-out.

10. Accordingly, the order of status quo in the impugned judgment and order of December 21, 2020 is liable to be vacated insofar as it pertains to family pension, to which the appellant has been found to be exclusively entitled. Similarly, the dues on account of gratuity, provident fund and insurance claim may only be received by the appellant.

11. However, there may be other payments due to a deceased employee at the time of his death. Such other payments, unless the rules of the employer otherwise specify, would form the estate of the deceased employee and would have to abide by the laws of succession and rules of inheritance. For such purpose, the consideration as to whether the writ petitioner is entitled to be regarded as an heir of the concerned employee is of some relevance.

12. Since the appellant graciously accepts that the writ petitioner is, indeed, the daughter of the appellant's deceased husband through his first marriage, no adjudication is necessary by the revenue authorities as the balance dues of the deceased employee from the employer, if not governed by rules which specify how they would be dealt with, have to be made over to the heirs in conjunction for the same to be distributed amongst them in accordance with law.

13. Accordingly, the appeal is allowed by setting aside the judgment and order of December 21, 2020, particularly, insofar as it directs status quo to be maintained, and by permitting the appellant herein to receive all dues on account of the deceased employee in respect of family pension, gratuity, provident fund and insurance claim. If any further sum is due from the employer on account of the deceased employee, whether on account of leave encashment or unpaid salary or other unpaid claim (other than pension, gratuity, provident fund and insurance claim), half of it should be made over to the appellant and half each of the balance should be made over to Priyadarshini and Kavya within eight weeks from date.

W.A.No.568 of 2021 is disposed of along with W.P.No.11658 of

2017. There will be no order as to costs. Consequently,
C.M.P.No.2358 of 2021 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Secretary to Government
State of Tamil Nadu
Home Department, Secretariat
Fort St. George
Chennai - 600 009.
2. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore, Chennai - 600 004.
3. The Revenue Divisional Officer
Tambaram
Chennai.
4. The Tahsildar
Sozhinganallur Taluk
Chennai.

+1cc to M/s.Anna Mathew, Advocate, S.R.No.18564

+2cc to Mr.K.R.Ramesh Kumar, Advocate, S.R.No.18800

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W.A.No.568 of 2021

NR(CO)
KM(17/04/2021)