

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.02.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.20106 of 2010 and
W.M.P.No.31149 of 2019 and
W.M.P.No.160 of 2020

S.Kavithendral

... Petitioner

Vs.

1.The Chief Superintendent
Central Telegraph Office
George Town, Chennai 600 001.

2.The Deputy Controller of Communication Accounts
O/o The Principal CCA,
DOT Cell, Tamilnadu Circle,
No.238, R K Mutt Road,
Mandaveli, Chennai 600 028.

... Respondents

[R2 impleaded in this writ petition
by order of this Court dated 25.02.2021]

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to disburse the death benefits and other available benefits lying in the hands of respondent on account of death of late G.K.Raghavan, on 14.10.2003 by virtue of a registered Will dated 21.02.2003, registered as Document No.69/2003, SRO, Periamet dated 14.10.2003.

For Petitioner : Mr.R.Thanjan

For Respondents : Ms.K.Parameswari

ORDER

The prayer sought for herein is to issue a writ of mandamus directing the respondent to disburse the death benefits and other available benefits lying in the hands of respondent on account of death of late G.K.Raghavan, on 14.10.2003 by virtue of a registered Will dated 21.02.2003, registered as Document No.69/2003, SRO, Periamet dated 14.10.2003.

2. One G.K.Raghavan was working at the respondent Department i.e., erstwhile Department of Telecommunication and he died on 14.10.2003 while he was in service.

3. The said G.K.Raghavan was a Telegraphic Mechanic and during his lifetime, according to the petitioner, he adopted the petitioner as adoptive daughter and the petitioner is none other than the daughter of the said Raghavan's brother G.Gopal. According to the petitioner, such adoption was factually taken place at the age of 11 years of the petitioner.

4. It is the further case of the petitioner that, from such adoption, the petitioner was nurtured only by the said Raghavan and during his lifetime, he executed a Will in favour of the petitioner, which was registered on 14.10.2003 bearing Document No.69/2003, Sub Registrar Office, Periamet.

5. It is the further case of the petitioner that, the said Will got probated before this Court in O.P.No.535 of 2005 by order dated 28.03.2007. Therefore, by virtue of the Probated Will executed by the deceased Raghavan, who was the erstwhile employee of the respondent Department, the petitioner alone will be the sole legal heir of the deceased employee. Therefore, she is entitled to succeed whatever the estates of the deceased employee including the retiral benefits like DCRG and other benefits.

6. In this context, the petitioner seems to have approached the respondent for getting such DCRG and other benefits payable to the deceased employee Raghavan. However, since the same has not been considered and disbursed to the petitioner, he approached this Court by filing the present writ petition with the aforesaid prayer.

7. In this context, though counter affidavit had already been filed by the respondent, an additional counter affidavit has also been filed on behalf of the respondent by the present Department viz., Bharat Sanchar Nigam Limited, Chennai - Chennai Telephones i.e., Divisional Engineer (Legal).

8. In the said additional counter affidavit of the respondent, inter alia, the following has been stated:

"5. It is submitted that as per the decision of the Government of India for conversion of DOT into BSNL with effect from 01.10.2000, the employees of DOT were called to opt for the absorption into BSNL. It is submitted that Late Sri.G.K.Raghavan too opted for permanent absorption with effect from 01.10.2000 and accordingly order of permanent absorption of Sri.G.K.Raghavan in BSNL has been issued on 29.12.2003. Based on the said order, his Pension or Family Pension

and Gratuity are governed by the CCS (Pension) Rules 1972. As such the Department of Telecommunications (DOT) only has got right to disburse/sanction the retirement benefits and Death Cum Retirement Gratuity either to the retired employee during his lifetime or to his legal heirs after the death of such employee. However BSNL has got limited role that they could only facilitate for the receipt of such benefits by the retired employee or his legal heirs through DOT if all the records are found in order and in conformity with CCS (Pension) Rules 1972. Hence, it is just and necessary to implead the Department of Telecommunications as one of the party to this application so as to come to a just and reasonable conclusion: Since BSNL does not have any authority to sanction/disburse such amounts to the Petitioner except to make arrangements for such sanctioning/dispersing the amounts by DOT it is also important to implead DOT which address is as given below:

The Deputy Controller of Communication Accounts
O/o The Principal CCA,
DOT Cell, Tamilnadu Circle,
No.238, R K Mutt Road,
Mandaveli, Chennai 600 028.

9.By relying upon the said stand taken by the respondent in the additional counter affidavit, Mrs.K.Parameswari, learned counsel appearing for the respondent would submit that, the proper authority to deal with the matter, as has been raised in this writ petition, is the Deputy Controller of Communication Accounts, Chennai. Therefore, the said authority can be impleaded and a suitable direction can be given to the said authority as the Sanction of DCRG and other benefits payable to the petitioner for the deceased employee Raghavan has to be made only by that authority and once that disbursement is ordered, the present Department i.e., BSNL will facilitate such disbursal to the petitioner.

10.In view of such stand taken by the BSNL who is the present respondent of the Telecommunication Department, this Court is inclined to implead the following authority as one of the party respondent in this writ petition.
The Deputy Controller of Communication Accounts
O/o The Principal CCA,
DOT Cell, Tamilnadu Circle,
No.238, R K Mutt Road,
Mandaveli, Chennai 600 028.

11.Since the said authority is also represented by the learned counsel Mrs.K.Parameswari and who would also submit

that, unless the legal heir of the deceased employee is declared by the Court of Law, such a claim made by the petitioner would not normally be considered, as there could be rival claim in this regard.

12.However, Mr.R.Thanjan, learned counsel appearing for the petitioner would submit that, since the petitioner was adopted as daughter by the deceased employee Raghavan, when the petitioner was 11 years old and during the lifetime of the said Raghavan, he, in fact, executed a Will and the same got probated. Therefore, no further legal impediment could be there for the respondent to sanction and disburse the DCRG and other benefits payable to the deceased employee to and in favour of the petitioner.

13.I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14.As has been rightly pointed out by the learned counsel appearing for the petitioner that, in order to establish the fact that the petitioner is the legal heir of the deceased employee Raghavan, during his lifetime, the employee had declared a Will dated 21.02.2003, which was, in fact, registered on 14.10.2003 as Document No.69/2003 at SRO, Periamet, Chennai - 3.

15.Not stopping with that, the petitioner, in fact, filed O.P.No.535 of 2005 before this Court for getting probate of the Will and accordingly, this Court, by order dated 28.03.2007, had passed an order issuing the probate of the said Will in favour of the petitioner.

16.These factors have been stated by the petitioner in the affidavit filed in support of this writ petition and the same has not been controverted by the respondent.

17.Therefore, in that view of the matter, this Court feels that, since the petitioner has established that, she is the legal heir of the deceased employee Raghavan, certainly, she would be entitled to get whatever be the benefits accrued on the deceased employee in view of the sudden death of him during his service.

18.It is also the case of the petitioner that, the deceased employee was a bachelor and his parents were pre-deceased of the deceased employee and therefore, absolutely there could be no chance of any legal heirs claiming over the claim of the petitioner being an adopted daughter and that has been confirmed by the proceedings issued by this Court as quoted herein above.

19.In that view of the matter, this Court is to pass the following orders in this writ petition.

That the respondents especially the newly impleaded respondent i.e. the second respondent is hereby directed to consider the request of the petitioner and do the needful for disbursement of DCRG and other benefits payable to the deceased employee Raghavan to and in favour of the petitioner and the needful shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

20.With this direction, this Writ Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

- 1.The Chief Superintendent
Central Telegraph Office
George Town, Chennai 600 001.
- 2.The Deputy Controller of Communication Accounts
O/o The Principal CCA,
DOT Cell, Tamilnadu Circle,
No.238, R K Mutt Road,
Mandaveli, Chennai 600 028.

+1cc to Mr.R.Thanjan , Advocate SR.No. 11760

+1cc to Mr.K.Parameshwari, Advocate SR.No. 11721

A.SK(18.05.2021) W.P.No.20106 of 2010