

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 2252 of 2012

1. A.Baby

2. A.Adhisiyamani

3. A.Aaron

(Petitioners 2&3 are represented by their mother and natural guardian A.Baby, the first petitioner)

... Petitioners

-vs-

1. The Secretary,
Health and Welfare Department,
Fort St.George,
Chennai - 600 009.

2. The Director,
Health and Welfare Department,
DMS Building, Anna Salai,
Chennai - 600 018.

3. The Deputy Director,
Welfare Department,
Erode - 638 009.

4. Valli

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus directing the third respondent to replace the names of the petitioners in the place of the fourth respondent as the dependents of late Mr.N.Arjunan, former Chief Cook, Government Hospital, Erode in his service records and settle all his terminal benefits and pay the pension payable to his dependants to the petitioners.

For Petitioners : Mr.T.Gowthaman

For Respondents : Mr.K.Magesh

Spl. Govt. Pleader for R1 to R3

ORDER

The prayer sought for herein is for a Writ of Mandamus directing the third respondent to replace the names of the petitioners in the place of the fourth respondent as the dependents of late Mr.N.Arjunan, former Chief Cook, Government Hospital, Erode in his service records and settle all his

terminal benefits and pay the pension payable to his dependents to the petitioners.

2. The husband of the first petitioner, one Arjunan was the employee of the respondent department especially under the third respondent department. He already married the fourth respondent. However, subsequently, it seems that, the marital relationship between the said Arjunan and fourth respondent was not subsisting, of course not by way of any divorce from the Court of Law, but customary separation. Subsequently, it seems that, the first petitioner married the said Arjunan and out of their wedlock, the second and third petitioners were born.

3. While that being so, the said Arjunan died, while he was in service. After his death, the DCRG or other benefits were sought for by the petitioners, claiming to be the legally wedded wife and the children of the deceased Arjunan. However, the respondents, especially the third respondent by communication dated 09.09.2011 directed the first petitioner to produce the documents to establish that, the wedlock between the deceased Arjunan and the fourth respondent Valli was subsisting or divorce was given by the Court of Law, in order to substantiate the claim of the first petitioner that, she alone is the legally wedded wife, she and her children, who are the second and third petitioners, should get the DCRG and other benefits of the deceased employee.

4. Only at this juncture, this Writ Petition was filed by the petitioners with the aforesaid prayer.

5. I have heard Mr.T.Gowthaman, learned counsel appearing for the petitioners and Mr.K.Magesh, learned Special Government Pleader appearing for the official respondents.

6. There is no representation for the fourth respondent.

7. The learned counsel appearing for the petitioners would submit that, against the fourth respondent, in fact, the formal divorce petition was filed by the deceased employee Arjunan, but during the pendency of the divorce petition, Arjunan died and that could not be materialized, nevertheless, there has been a customary divorce between the deceased employee and the fourth respondent and also the fourth respondent has given no objection to and in favour of the petitioners that, they may receive the DCRG or other benefits of the deceased employee.

8. However, Mr.K.Magesh, learned Special Government Pleader appearing for the first to third respondents would submit that, unless the decree of divorce is obtained by the deceased employee or the fourth respondent Valli or if any declaration is obtained by the petitioners from any Court of Law, that petitioners alone are the legal heirs of the deceased employee,

the DCRG and other benefits payable to the deceased employee cannot be expected to be paid to the petitioners.

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

10. Now the only controversy is that, whether the fourth respondent is the legally wedded wife and still she is entitled to claim the benefits of the deceased employee or that has been given up by the fourth respondent to and in favour of the petitioners.

11. In this context, it is a definite case of the petitioners that, the fourth respondent has already given up and no objection to that effect has also been given.

12. Be that as it may, that issue can be ascertained by the respondents, especially the third respondent, who is the employer, who has to sanction the DCRG, who must be satisfied that, the fourth respondent has given up the claim and allowed the petitioners to make the claim on behalf of the deceased employee.

13. In that regard, this Court feels that, a direction can be given to the official respondents to issue notice to both sides, i.e., first petitioner as well as the fourth respondent and after hearing both of them, on satisfaction, that the claim was given up by the fourth respondent and therefore, the first petitioner alone would be entitled to claim the benefits of the deceased employee, the needful to that effect could be undertaken by the official respondents.

14. In that view of the matter, this Court is inclined to dispose of the Writ Petition with the following orders:

"(i) That the respondents, especially the third respondent is hereby directed to issue notice to both the first petitioner Baby and the fourth respondent Valli to appear before him with supporting documents to ascertain whether the claim over the DCRG of the deceased employee was given up by the fourth respondent to and in favour of the first petitioner and after verifying the same to the satisfaction of the third respondent, necessary orders can be passed by him for sanctioning DCRG and other benefits or pensionable benefits payable to the deceased employee Arjunan and accordingly the needful can be undertaken by the respondents within a period of twelve weeks thereafter.

(ii) It is made clear that, pursuant to the notice to be issued by the third respondent, if the fourth respondent despite the receipt of the notice, did not choose to come forward to appear before the third respondent, it can be presumed that, the fourth respondent has already given up the right of claiming the benefits of her husband / erst while husband."

15. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji
To

1. The Secretary,
Health and Welfare Department,
Fort St.George,
Chennai - 600 009.
2. The Director,
Health and Welfare Department,
DMS Building, Anna Salai,
Chennai - 600 018.
3. The Deputy Director,
Welfare Department,
Erode - 638 009.

+1 cc to Mr.T.Gowthaman, Advocate, SR.NO.12911

W.P. No. 2252 of 2012

PMK (CO)
NS (13/05/2021)

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