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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2021

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

W.A. No. 2352 of 2021
&
C.M.P. No. 14994 of 2021

1. Mrs. Radha
2. Mr. Ganesh
3. Mr. Suresh

..Appellants/
Respondents 4 to 6

Vs.

1. M. Parvathy
2. The State of Tamil Nadu,
rep. by its Secretary to Government,
Home (Fire and Rescue Service Department),
Chennai -9.
3. The Director of Fire and Rescue Services,
Egmore, Chennai - 8.
4. The Divisional Fire Officer,
South Chennai Division,
Chennai - 83.

1st Respondent/Petitioner

..Respondents 2 to 4/
Respondents 1 to 3

Prayer: Writ Appeal as against the order dated 25.01.2021 passed in W.P. No. 11945 of 2014.

Prayer in W.P.No.11945 of 2014 : Writ Petitioner filed under Artcile 226 of the Constitution of India to issue a writ of Mandamus to direct the 1st respondent to consider and pass orders on the representation of the petitioner dated 17.02.2014 in regard to sanction the petitioner husband Terminal Benefits and also pay full Family Pension as per the Pension Rules and pay arrears of pension with interest within the stipulated time



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For Appellants :: Mr.P. Ravishankar for
M/s.P. Usharani
R. Dasaratha Rao

For Respondents:: Mr.K.V. Sajeew Kumar,
Govt. Counsel

J U D G M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN,J.)

The present writ appeal has been preferred challenging the order dated 25.01.2021 passed in W.P. No. 11945 of 2014.

2. The 1st respondent herein filed the writ petition seeking a direction to consider and pass orders on the representation dated 17.02.2014 with regard to sanction of her husband's terminal benefits and also to pay full family pension as per the Pension Rules and for arrears of pension with interest within a stipulated time. Though the appellants herein were made as parties and notice was served on them, they chose to remain absent.

3. After considering the submissions made, perusing the materials on record and taking note of the fact that based on earlier orders, necessary proposal with regard to payment of pensionary benefits due to the 1st respondent/writ petitioner's husband was pending with the Government, the learned Single Judge disposed of the writ petition, directing the authority concerned to consider the representation of the 1st respondent/writ petitioner and pass appropriate orders with respect to settlement of pensionary benefits, in accordance with law, within a period of six weeks. Aggrieved by the said order, respondents 4 to 6 in the writ petition have come forward with the present writ appeal.

4. The first appellant contended that she is the wife of one Late S.Mohan, who died on 13.09.1997 and that the other appellants are the children born to them out of the wedlock. It is stated that since the first appellant is the legally wedded wife of said Mohan, on his demise, she is entitled to all the terminal benefits including family pension applicable as per Rules. It is further stated that the 1st respondent herein, claiming to be the wife of said Mohan approached the Civil Court in O.S. No. 706 of 1997 seeking a (i) declaration that she and her son alone are the legal heirs of deceased S. Mohan, (ii) mandatory injunction directing the authorities to release the entire terminal benefits, death benefits and other benefits and (iii) permanent injunction restraining the appellants herein from receiving the terminal and other benefits of deceased S.



Mohan. Though the appellants remained absent before the Civil Court and were set ex parte, it is contended by the appellants that the Civil Court has no jurisdiction to entertain the suit after coming into force of Family Courts Act, 1984 and in terms of Section 7 of Family Courts Act, the Family Court alone has got jurisdiction to decide as regards the marital status and the Civil Court's judgment is ab initio void and it is nullified in the eye of law. Reliance was placed on the judgment of the Honourable Apex Court reported in (2016) 13 SCC 308 (Balram Yadav V. Furmaniya Yadav) wherein the relevant paragraph reads thus:

"7. Under Section 7(1) Explanation (b), a Suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the Civil Court. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws."

As the learned Single Judge has granted relief to the 1st respondent, the appellants would submit that the order requires to be interfered with.

5. Per contra, the official respondents would contend that it was the 1st respondent Parvathy, who had approached this Court to consider the case of settlement of terminal benefits of deceased S.Mohan. Though the appellants were made as parties and were given time to implead themselves in the writ proceedings, after impleadment and issuance of notice, the appellants, who did not contest, not only in the writ petition, but also before the Civil Court, cannot now contend that the 1st respondent/writ petitioner is not entitled to any benefits. According to the official respondents, the entire service records of deceased S. Mohan contain the name of Parvathy as his wife and that their marriage, which had been solemnized as early as on 01.12.1975, had been registered on 05.10.1994 and the 1st respondent had also produced all the relevant documents, namely, marriage registration certificate, legal heirship certificate, death certificate, family card, to substantiate her claim.

6. Heard both parties.



7. A reading of the decision of the Honourable Apex Court in the judgment reported in (2016) 13 SCC 308 (cited supra) would make it clear that it is for the Family Court to decide the marital status. It is true that the Civil Court has no jurisdiction to decide about the relief sought for in the suit mentioned supra. But the fact remains that the entire service records of the deceased employee contain the name of Parvathy and that she has been nominated to receive the family pension, which have been produced by the official respondents/Government. Notwithstanding the fact that the Civil Court's decree is not binding on the ground that it has got no jurisdiction to decide about the entitlement of service benefits, taking into account that there is a valid marriage certificate and the records also prove that Parvathy is the legally wedded wife, she alone would be entitled to benefits (in terms of Rules applicable) due to deceased Mohan and not others. In case, the 1st appellant is able to establish that the 2nd and 3rd appellants were born to her and deceased Mohan, she can seek appropriate relief with regard to the monetary dues payable to the children born to her and certainly, the 1st appellant is not entitled to any relief. Hence, we find that the order of the learned Single Judge cannot be interfered with and the writ appeal stands dismissed. No costs. Connected C.M.P. is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home (Fire & Rescue Service Department)
Chennai - 9.
2. The Director of Fire and Rescue Services,
Egmore, Chennai - 8.
3. The Divisional Fire Officer,
South Chennai Division,
Chennai - 83.

+lcc to Mr.R.Dasaratha Rao, Advocate, S.R.No.47426

+lcc to the Government Pleader, S.R.No.48236

W.A.No.2352 of 2021

BS(CO)

RGA(18/10/2021)