



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.13241 OF 2020

Maria.L

... Petitioner

-VS-

The Employees Provident Fund Organisation,
No.3 Rajaji Salai,
Opposite to Henkala Hotels,
Tambaram, Chennai- 600 045.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent Authority to accept the petitioner's Form No.20 under the Employees Provident Funds Scheme 1952 without insisting on production of a guardian certificate for minor children from Court of law.

For Petitioner : Mr.Shaikh Mehrunisa

For Respondent : Mr.R.Vishnu for
Mr.K.Ramu (R1)

O R D E R

This Writ Petition has been filed, seeking for a direction to the respondent Authority to accept the petitioner's Form No.20 under the Employees Provident Fund Scheme, 1952, without insisting on production of a Guardian Certificate for minor children from the Court of law.



2. According to the petitioner, she was married to one Lurthunathan as per the Christian Rites on 05.10.2001 and out of the wedlock, two children were born to them, who are now aged about 17 and 15 years respectively. It is further stated that her husband passed away on 06.01.2019, due to heart attack and that the petitioner has got a legal heir certificate, showing names of her children and herself. The petitioner made a request to the Employees Provident Fund Organisation (in short 'EPFO'), claiming Provident Fund amount, duly annexed with Form-20 along with other required documents, but the EPFO Authority returned the same for want of guardianship certificate for her minor children, from the Court of law, as she belongs to Christian community. It is further stated that EPFO gave the petitioner the Death Claim Form 20/10D/51F, along with Check List No.62589/10095, which listed out the documents to be submitted by the Claimant and in Serial No.12 (handwritten), one of the conditions was to submit the Guardianship Certificate from the Court for minor children for Christian community.

2.1. It is also stated that the petitioner is illiterate, struggling to meet out her daily expenses and she has been eking out her livelihood with the assistance of her sister. She also submitted that since her daughter has completed 12th Standard, she has to join the college and her minor son is studying X Standard. It is her case that due to pandemic, Courts are taking up only urgent cases and since she is struggling to remit fees for her children's education, she has come up with the present Writ Petition, seeking for the above direction to the EPFO without standing on technicalities to release the amount.

3. Mr.R.Vishnu, learned Standing Counsel for EPFO, by reiterating the averments made in the counter affidavit has submitted that the deceased husband of the petitioner worked in M/s.Raj Hardware, Chrompet and he was a Christian by faith. The Guardianship Certificate is mandatory for settlement of EPF dues to the minor family members as per the "Manual of Accounting Procedure, Part II-A of EPF Act, 1952". It is further contended that the wages as mentioned by the petitioner is not correct and that the deceased employee was getting only Rs.4,550/- per month and his EPF employee share of contribution was Rs.528/- per month. That apart, the petitioner has not furnished the Guardianship Certificate as required under the Act and the EPFO cannot bypass the procedures, as it would set a bad precedent



and there is also a possibility of settling the claim to a wrong person, which will later end up with litigation. Therefore, EPFO is not inclined to deviate the procedure contemplated under the Rules and hence, the Writ Petition is liable to be rejected by giving an opportunity to the petitioner to produce the Guardianship Certificate, so that EPFO can settle the benefits due to the deceased to his legal heirs. It is further contended that there are pensionary benefits and Employees Deposit Linked Insurance and that the EPFO is willing to part with the minor share, till the minors attain majority and after attaining majority the amount would be disbursed to the surviving minors, who attain majority.

4. Heard both sides. Perused the material available on record.

5. It is not in dispute that the petitioner is the wife of late Lurthunathan and that there was a contribution by the employer and employee. Further, the wife of the deceased is entitled to family, pension apart from getting accumulated P.F. Amount and Employees Deposit Linked Insurance. Since there is no reference to the word "GUARDIAN" under the EPFO Act, naturally, the Court will have to pass orders based on the Personal Law applicable to the parties. The Laws applicable to Hindus and Muslims specifically mention, as to who is the natural guardian? But, under the Christian Law, natural guardian is not defined. Hence, the parties will have to obtain the order from the Competent Court to claim amount due to the minor. If this Court directs the EPFO to disburse the claim amount to the petitioner, who is the mother / natural guardian of the children, when there is no specific mention about the natural guardian, in case of any litigation, at a later point of time, EPFO will have to answer for the amount, which has been disbursed by it which may or may not be accepted by the Court at that point of time. Hence, this Court is of the view that under the Christian law, as there is no mention about the natural guardian, the appointment of guardianship rests with the appropriate Court alone, as, in this case, there is no natural guardian under the Christian law.

6. In the present case on hand, it is not in dispute minor children are entitled to share in P.F. and E.D.L.I and non production of Guardianship Certificate does not mean that



the education of the children should be affected, as the minor children were indisputable born to the petitioner and the deceased. Therefore, this Court has to see how the money has got to be disbursed to the minor children, in the absence of Guardianship Certificate, as the right to live includes food, shelter and educational expenses.

7. Hence, this Court is of the view that the respondent EPFO shall directly pay the eligible share amount of the minor to the school, college or any other educational institution for the purpose of children's education and if there is a shortfall, the petitioner will have to pay the amount and this arrangement shall have to be continued till the minor children attain majority. It is made clear that unless the petitioner produces the Guardianship Certificate, no amount shall be disbursed to the petitioner. It is further made clear that for availing EDLI and other portion of Pensionary benefits, the production of Guardianship Certificate by the petitioner from the competent Court of Law is absolute.

8. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

arr

To:
The General Manager
The Employees Provident Fund Organisation
No.3 Rajaji Salai,
Opposite to Henkala Hotels,
Tambaram, Chennai- 600 045.
+1cc to Mr.Shaikh Mehrunisa, Advocate, S.R.No.33028

W.P.No.13241 of 2020

RLD(CO)
RLP(15/11/2021)