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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2021

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THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE R. VIJAYAKUMAR

W.A. No. 2651 of 2021
&
C.M.P. No. 17240 of 2021

1. The State of Tamil Nadu,
rep.by its Secretary to Government,
Home (Fire and Rescue Services)
Department,
Chennai - 9.
2. The Director of Fire and Rescue
Department,
Egmore,
Chennai - 600 008.
3. The Divisional Fire Officer,
South Chennai Region,
Chennai - 600 083. ...Appellants/Respondents 1to3

Vs.

1. M. Parvathy
2. Mrs. Radha
3. Mr. Ganesh
4. Mr. Suresh ...2to4 Respondents/4to6 Respondents

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:Petition filed under Article 226
of the Constituion of India to issue a writ of Mandamus
direction, directing the 1st respondent to consider and pass
orders on the representation of the petitioner dated 17.2.2014
in regard to sanction the petitioner's 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.K. Tippu Sultan
Govt. Advocate

For Respondents :: No Appearance

J U D G M E N T

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

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

2. The 1st respondent herein/writ petitioner had approached this Court seeking disposal of her 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 pay arrears of pension with interest within a stipulated time. The learned Single Judge, after considering the materials on record and the rival submissions, disposed of the writ petition directing the appellants herein to dispose of the representation of the writ petitioner dated 17.02.2014 and pass appropriate orders with regard to settlement of pensionary benefits to the writ petitioner in accordance with law, within a stipulated time. Aggrieved by the said order, the Department is before this Court in this writ appeal.

3. According to the appellants, one S. Mohan, while working as Leading Fireman in Guindy Fire and Rescue Services Station had opted for Voluntarily Retirement and he retired from service with effect from 31.05.1997 and thereafter, he died on 13.09.1997. The appellants would further submit after his demise, M.Parvathy/the 1st respondent herein submitted an application for settlement of all pensionary benefits along with necessary certificates stating that she is the legally wedded wife of deceased S. Mohan. According to the appellants, in case of any dispute with regard to pension claim, as per Tamil Nadu Pension Rules, the original wife and children and children born through second wife alone are eligible to receive the pensionary benefits and as the names of respondents 2 to 4 were also shown as legal heirs in the Service Book of S. Mohan, sanction was given to disburse only 50% of the family pension in favour of the 1st respondent herein and during the pendency of the writ proceedings, the same had also been paid to the 1st respondent/writ petitioner. However, according to the appellants, the learned Single Judge failed to appreciate the fact that only due to rival claims and for want of valid documentary evidence, the Department could not sanction the remaining 50% of pensionary benefits to the 1st respondent/writ petitioner.



4. A perusal of the order under challenge reveals that the learned Single Judge, after going through the records, came to the conclusion that eventhough the deceased Government Servant mentioned respondents 4 to 6 as legal heirs in the service book and DCRG nomination form, thereafter, he had requested to cancel the names of legal heirs that was furnished by him. Even assuming for the sake of argument, there is a dispute, the writ petitioner/who is the 1st respondent herein has produced the marriage certificate, legal heirship certificate, death certificate, family card besides obtaining a decree from the Civil Court in her favour that she is the legally wedded wife.

5. The contention of the Department is that a departmental enquiry was conducted initially and both the parties had participated and based on the understanding arrived at, which was not recorded, 50% of the amount had been paid to the writ petitioner. Not satisfied with the same, the remaining amount was claimed, which was also accepted by the learned Single Judge.

6. As rightly observed by the learned Single Judge, before the Civil Court, Radha and her children, who were respondents 4 to 6 in the writ petition, were made as parties, but they did not choose to appear and contest, hence, they were set ex parte. Even before this Court, they have been made as parties and they have not chosen to contest the writ petition. Though it has been stated by the Government Counsel Mr.K.V. Sajeew Kumar that they have no objection for disposing of the representation dated 17.02.2014, the observation made in paragraph Nos 5 and 6 of the order passed in the writ petition stares at them.

7. We are of the view that the learned Single Judge, instead of directing the appellants herein to dispose of the representation, could have straightaway ordered payment of the balance amount. Merely because, time has been granted to the appellants to dispose of the representation, it does not mean that the Department can sit as an Appellate Court over the order of the learned Single Judge and set at nought the findings of the learned Single Judge. We are of the view that Parvathy, the 1st respondent herein, who is the writ petitioner has produced documentary evidence to establish her case that she is the legally wedded wife by furnishing the Civil Court's decree. The relevant portion of the Civil Court's judgment and decree is extracted hereunder:

"1. That it is hereby declared, the plaintiffs alone are the only legal heirs of the deceased Mr.S. Mohan;

2. that the defendants 4 to 6 be and hereby directed, by means of mandatory



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injunction, to pay the entire terminal benefits, death benefits and other benefits to the plaintiffs;

3. that the defendants 1 to 3 be and are hereby restrained by means of permanent injunction from receiving the terminal benefits, death benefits and other benefits of the deceased Mr.S. Mohan from the defendants 4 to 6 from the other officials..."

It is no doubt true that Civil Court has no jurisdiction to decide issues (2) & (3) framed in the suit with regard to service benefits. However, the Civil Court has got jurisdiction to decide the first issue and when there is a specific finding in O.S. No. 706 of 1997 dated 29.04.2004 that the plaintiffs in the suit alone are the legal heirs of deceased S. Mohan, administrative decision cannot supersede the judgment and decree of a Civil Court, which has become final and not challenged before the Appellate Court. That apart, the appellants herein were defendants 5 and 6 before the Civil Court and they are bound by the decree passed by the Civil Court. Hence, the balance amount due to 1st respondent's/ writ petitioner's husband has got to be paid to her. Accordingly, the writ appeal fails and the same is dismissed.

8. As the time limit granted by the learned Single Judge has already expired, we direct the appellants to, instead of disposing of the representation dated 17.02.2014, pay the amount due to the 1st respondent/writ petitioner within 8 weeks from the date of receipt of a copy of this order. No costs. Connected C.M.P. is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Secretary to Government
State of Tamil Nadu
Home (Fire and Rescue Services) Department,
Chennai - 9.



2. The Director of Fire and Rescue
Department,
Egmore,
Chennai - 600 008.

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3. The Divisional Fire Officer,
South Chennai Region,
Chennai - 600 083.

+1cc to the Government Pleader, S.R.No.55028

W.A. No. 2651 of 2021

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NSK 29/11/2021