



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.419 of 2021
and W.M.P.(MD).No.341 of 2021

K.Madasamy

... Petitioner

Vs.

1.The Additional Commissioner and
Regional Director,
ESI Corporation,
Administration Branch,
3rd Floor, 143, Sterling Road,
Nungambakkam, Chennai.

2.The Deputy Director (Admin),
ESIC Medical College & Hospital,
ESI Corporation, K.K.Nagar, Chennai.

3.The Deputy Director,
Administration Branch,
ESIC Hospital,
Employee's State Insurance Corporation,
Vannarpettai, Tirunelveli

4.The Medical Superintendent,
Administrative Branch, ESIC Hospital,
Employee's State Insurance Corporation,
Vannarpettai, Tirunelveli Town & District.

5.T.Duraipandi

6.Thangakili

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to disburse the death-cum-service Benetifs of the petitioner's deceased wife Smt.Late D.Thangapappa (Nursing Orderly) to the petitioner.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.I.Pinaygash for R1 to R4
Standing Counsel
Mr.G.Thalaimutharasu for R5 & R6

**ORDER**

Heard the learned counsel appearing for the petitioner and the learned counsels appearing for the respondents.

2.The petitioner herein is the husband of one Late Thangapappa, who had died during the course of her employment as Nursing Orderly, at the Government Medical College/Hospital, Tirunelveli. The petitioner herein seeks for disbursement of death-cum-service benefits of his deceased wife, in his favour. The respondents 5 & 6 herein are the parents of late Thangapappa, who are rival claimants of the death-cum-service benefits.

3.The official respondents, have filed a counter affidavit dated 11.03.2021, in which, it is stated that the death-gratuity of the deceased Government servants would be processed under Rule 50 of the Central Civil Services Pension Rules, 1972 and the benefits would be disbursed in accordance with Rule 51(1).

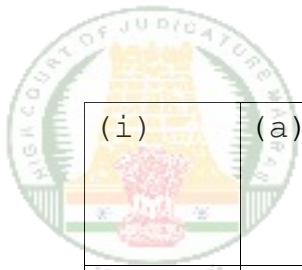
4.As per Rule 50(6) of the Central Civil Services Classification Control and Appeal Rules, the gratuity shall be payable on such persons in the manner enacted below:-

"(6)For the purpose of this rule and Rule 51,52 and 53, 'family', in relation to a Government Servant, means -

(i)	Wife or wives [including judicially separated wife or wives] in the case of a male Government Servant,	
(ii)	Husband, [including judicially separated husband] in the case of a female Government servant,	
(iii)	Sons including stepsons and adopted sons,	
(iv)	Widowed daughters including stepdaughters and adopted daughters,	
(v)	Father,	Including adoptive parents in the case of individuals whose personal law permits adoption,
(vi)	Mother,	Including adoptive parents in the case of individuals who personal law permits adoption,
(vii)	Brothers below the age of eighteen years including stepbrothers,	
(viii)	Unmarried sisters and widowed sisters including stepsisters,	
(x)	Married daughters and	
(xi)	Children of a pre-deceased son.	

5.Rule 51(1) reads as follows:

51.Persons to whom gratuity is payable



(i)	(a)	The gratuity payable under Rule 50 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 53;
	(b)	If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below -
	(i)	If there are one or more surviving members of the family as in [clauses (i), (ii), (iii), (iv) and (v)] of sub-rule (6) of Rule 50, to all such members in equal shares;
	(ii)	If there are no such surviving members of the family as in sub-clause (I) above, but there are one or more members as in clauses [(vi), (vii), (viii), (ix), (x) and (xi) of sub-rule (6) of Rule 50, to all such members in equal shares.

6.As per the aforesaid Rules, when there is no nomination made by the deceased employee, the gratuity amount shall be first paid to the members of the family as referred to in Rule 50 (6) (i) to (v). Only in case, when there are no surviving members in the aforesaid five clauses, the remaining surviving members in clause 50 (6) (vi) to (xi) would be considered.

7.In the instant case, the petitioner, who is the husband of the deceased employee, falls under Rule 50(6)(ii), whereas, the respondents 5 and 6, namely the father and mother, fall under the category of Rule 50(6)(vi) & (vii). Apparently, the claim of the husband of the deceased employee, would supersede the claims of the parents, as per the Rules governing disbursement of the gratuity. Consequently, the parents of the deceased employee may not be entitled for the claim.

8.In the light of the above Rule position, there shall be a direction to the first respondent herein to disburse the death-cum-service benefits of the late Government Employee, namely Tmt.Thangapappa (Nursing orderly), in favour of her husband/petitioner herein, atleast within a period of six weeks from the date of receipt of a copy of this order.

9.This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.I.PINAYGASH, Advocate (SR-12867[F] dated 22/03/2021)

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-12871[F] dated 23/03/2021)

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-12877[F] dated 23/03/2021)

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PK(CO)

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