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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	10.03.2021
PRONOUNCED ON:	31.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.2645 of 2021
and W.M.P. (MD)No.2192 of 2021
(Through Video Conference)

C.Raja

... Petitioner

Vs.

1.The Commissioner,
Employees Provident Fund Organization,
Regional Office, NGO B Colony,
Perumalpuram, Tirunelveli-7.

2.The Assistant Commissioner,
Employees Provident Fund Organization,
Regional Office, NGO B Colony,
Perumalpuram, Tirunelveli-7.

3.The Manager,
Muruga Home Industry,
No.1/216, 2/218, Thenkasi Road,
Aamdipatti, Kalathimadam Post,
Alangukalam, Tenkasi District 627 851

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records from the 2nd respondent related to his first impugned order CBE/TNY/8(4)/10365/ 37100/2019 dated 29/05/2019 and the subsequent impugned order by the 2nd respondent in his proceedings CB/TNY/AG.8 (4)/10365/37100/2020 dated 09/09/2020 quash the same and direct the 2nd and 3rd respondent to accept the proposal without insisting upon the court issued Legal Guardianship Certificate by relying upon the legal guardianship certificate issued by the District Collector, Tirunelveli in his proceedings 195404721465754 dated 10/01/2020 under the National Trust Act and the first respondent to sanction and pay the Employees Provident Fund and the monthly pension payable to the petitioner all within a time to be fixed by this Court.



For Petitioner : Mr.P.Senthur Pandian
For R-2 : Mr.J.Mathesh
For R3 : No Appearance

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ORDER

The brief facts of the case are as follows:-

1.1. Mrs.Peachiammal, who was employed as a Beedi roller under the third respondent Company and a member of the Employees Provident Fund (E.P.F) Scheme, died on 11.08.2017. She was survived by a son namely Mr.Raja and her two daughters. Her husband had predeceased her.

1.2. Mr.Raja, son of Mrs.Peachiammal, who is the petitioner herein is a 'mentally retarded' (M.R.) person, as certified on 11.06.2019, by the District Disabled Rehabilitation Officer, Tirunelveli and one Mariappan, who is the deponent of the affidavit filed in support of the writ petition, was stated to be his 'Guardian'. The District Collector, Tirunelveli, being the Head of the District Local Level Committee under the National Trust Act, issued the Legal Guardianship Certificate dated 10.01.2020, declaring Mariappan as the Legal Guardian of the ward viz., Mr.C.Raja.

1.3. The claim for the Employees Provident Fund of late Pechiammal, came to be returned to them by the second respondent herein, by seeking for a Guardianship certificate obtained from a Court of Law. On the objections made by the petitioner, the second respondent had passed the second impugned order dated 09.09.2020 by stating that the Manager appointed under the Indian Lunacy Act alone is eligible for the claim of the mentally retarded person and that the declaration of the same should be obtained through a Court of Law. Aggrieved against the orders of the second respondent, the present writ petition has been filed.

2. Learned counsel for the petitioner submitted that the appropriate Authority to issue the Disability Certificate for 'Mental Retardness' is the District Disabled Rehabilitation Officer and as per the provisions of the National Trust Act, the District Collector, Tirunelveli is the competent Authority to issue Legal Guardianship Certificate. Since both the aforesaid Disability Certificate dated 11.06.2019 issued by the District Disabled Rehabilitation Officer and the certificate of appointment of Legal Guardian dated 10.01.2020 issued by the District Collector, who is the Chairman of the Local Level Committee, have been produced before the second respondent, the impugned order insisting for a Guardian Certificate from the Court of Law and thereby rejecting the claims of the petitioner, is illegal.



3. Per contra, the learned standing counsel for the second respondent placed reliance on the averments made in the counter affidavit and submitted that under Clause 72(3A) of the E.P.F. Scheme 1952, the E.P.F. amount due to a lunatic / mentally disordered person, is required to be paid to the Manager appointed under the Indian Lunacy Act, supported by a Guardianship Certificate obtained from a Court of Law.

4. The reasoning adopted in the impugned order that the provisions of the Indian Lunacy Act would apply to a mentally retarded person and the claim for E.P.F. could be adjudicated only on the basis of the Guardianship Certificate obtained from the Court of Law, is not based on *intelligible differentia*.

5. The National Trust Act, 1999 has been enacted for the welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. The Act provides *inter alia* for constitution of Local Level Committees and appointment of Guardian by the Local Level Committee, in respect of persons suffering from the above said disabilities including Mentally Retarded.

6. The Guardianship Certificate issued under Section 14 of the National Trust Act, is the appropriate Certificate for the purpose of grant of Gratuity, EPF, Pension, etc., of the deceased employee to enable a mentally retarded person to receive the same. The sanctity of a Legal Guardianship Certificate issued by the Local Level Committee constituted under the National Trust Act, 1999, came to be clarified in the official memorandum, dated 17.11.2009 issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India in the following manner:-

"2. It has, however, been intimated by the National Trust or the welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, New Delhi, that certain Ministries/Departments have not been accepting the Legal Guardianship Certificate issued by the Local Level Committee of the District, constituted under the provisions of the National Trust Act, 1999. It need to be emphasized here that such action on the part of Ministries/Departments not only results in inconvenience and harassment to the persons with disabilities but also leads to delay in the family pension sanction process. Besides, it has to be appreciated by one and all that persons with disabilities deserve special attention, support, protection and care of all concerned in order to enable them lead a dignified life in the society.

3. All the Ministries/Departments, etc. are, therefore, again requested to ensure that Guardianship Certificate issued by the Local Level Committee



constituted under the provisions of the National Trust Act, 1999, for the purpose of grant of family pension in respect of persons suffering from the said disabilities, are invariably honoured/accepted. The Certificate issued by the Local Level Committee, has the same sanctity and force as the one issued by a Court of Law and cannot be summarily dismissed and ignored. The Ministries/Departments may also pass on these instructions for necessary action and compliance to the Establishments/Organizations in the field under their control."

7. The Department had once again reiterated the aforesaid guidelines in its later official memorandum dated 31.07.2006 as follows:-

"2. For the welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities, Parliament has passed National Trust Act, 1999 (No. 44 of 1999). Section 14 of the said Act provides for appointment of guardian in respect of persons suffering from the disabilities mentioned above by the local level committees. It has however, been brought to the notice of this Department that the certificate of guardianship issued under the said Act are often not accepted for grant of the family pension as provision for the same do not exist in the Pension Rules. It is accordingly, clarified that since the guardianship certificate under the Act is issued on the authority of the law passed by the Parliament, the same may be accepted for nomination appointment of guardian for grant of family pension in respect of persons suffering from the above disabilities included in the Act."

8. In the present case, the second respondent herein had relied upon the provisions of the Indian Lunacy Act and had insisted for appointment of a Manager for receiving the E.P.F. claim amount, along with Guardianship Certificate obtained from the Court of Law. As stated earlier, the appropriate Authority to issue a Disability Certificate, in favour of a mentally retarded person, would be the District Disabled Rehabilitation Officer and the Guardianship Certificate for appointment of a Legal Guardian of a mentally retarded person, would be the District Collector / Chairman of Local Level Committee.

9. The official memorandum of the Ministry of Personal & Public Grievances and decision of the Government of India had also ratified this proposition and had issued guidelines to Authorities to refrain from rejecting the claims made on behalf of the mentally retarded persons by rejected these Disabilities Certificate and Guardianship



Certificate. Furthermore, Section 116 of the Mental Health Care Act, 2017 prohibits all Civil Courts from entertaining any civil proceedings which the Authority or the Board is empowered.

10. Thus, the reliance placed by the second respondent on the provisions of the Indian Lunacy Act and their claim to obtain the Guardianship Certificate from the Court of Law, is not only misplaced but also illegal.

11. In this background, this Court is of the affirmed view that the appropriate provisions applicable for issuance of a Disability Certificate or Certificate of Legal Guardianship, would be under the provisions of the National Trust Act, 1999 and not under the Indian Lunacy Act, insofar it relates to mental retardation of a person is concerned.

12. As rightly pointed out by the learned counsel for the petitioner, the claim for disbursement of the E.P.F amount made before the second respondent was in conformity with the law and such a claim, which was supported by a Disability Certificate and Legal Guardianship Certificate issued under the provisions of the National Trust Act, was proper and legal. Consequently, it can be said that the second respondent had not properly construed the provisions of the National Trust Act and had misquoted the legal provisions and thereby denied the claim of E.P.F. by a mentally retarded person, represented by his legal guardian appointed under the Act. Since such a claim was wrongfully denied, the petitioner would be entitled for interest on the E.P.F. dues.

13. It would be pertinent to mention that the late deceased employee viz., Peachiammal was survived by the petitioner and two of her daughters viz. Mrs.Lakshmi and Mrs.Prema. The second respondent herein, in their impugned order, dated 29.05.2019 had confirmed that the two daughters Mrs.Lakshmi and Mrs.Prema are dis-entitled to claim the E.P.F. dues since they are not dependent of the deceased member and had further, affirmed that the petitioner herein, is eligible for 100% E.P.F. and E.D.L.I. benefits of the deceased employee.

14. For the foregoing reasons, the impugned orders CBE/TNY/8 (4)/10365/37100/2019 dated 29/05/2019 and the subsequent impugned order by the 2nd respondent in his proceedings CB/TNY/AG.8(4)/10365/37100/2020 dated 09/09/2020 are quashed. Consequently, there shall be a direction to the second respondent herein, to forthwith release the E.P.F. dues in favour of the petitioner herein, viz. Mr.C.Raja (M.R.) represented by his care giver / Legal Guardian viz. Mr.Mariappan, with interest at the rate of 6% per annum from the date on which, the E.P.F. amount became due, till the date of actual payment, within a period of six weeks from the date of receipt of this order. The Writ Petition stands allowed accordingly. However, the respondent is ordered to pay costs to the petitioner. Consequently, connected W.M.P.



(MD)No.2192 of 2021 is closed.

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Sd/-

Assistant Registrar ()

/ /2021

Sub Assistant Registrar(CS)

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.

To

1.The Commissioner,
Employees Provident Fund Organization,
Regional Office, NGO B Colony,
Perumalpuram, Tirunelveli-7.

2.The Assistant Commissioner,
Employees Provident Fund Organization,
Regional Office, NGO B Colony,
Perumalpuram, Tirunelveli-7.

+1 CC to M/s.P.SENTHUR PANDIAN, Advocate (SR-14919[F] dated 31/03/2021)

+1 CC to M/s.J.MATHESH, Advocate (SR-15360[F] dated 07/04/2021)

Order made in
WP. (MD)No.2645 of 2021
Dated:31.03.2021

Ak(12/05/2021) 6P 5C