



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.11972 of 2021

WEB COPY

C.Mercy

... Petitioner

Vs.

1. The Accountant General A & E,
Tamil Nadu, Chennai - 600 018.

2. The Commissioner/Director,
Welfare of Differently Abled Department,
Lady Wellington College Campus,
No.5, Kamarajar Salai,
Chennai - 600 005.

3. The District Collector,
Tirunelveli District,
Tirunelveli - 627 009.

4. The District Differently Abled Welfare Officer,
Tirunelveli - 627 009.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus directing the 3rd respondent District Collector as Designated Authority to issue Limited Guardianship Certificate to the Petitioner on the basis of the petitioner's application dated 07.06.2021 within the time frame stipulated by this Court.

For Petitioner : Mr.P.Senthur Pandian

For Respondents : Mr.P.Gunasekaran for R1

Mr.Lingadurai,

Government Advocate for R2 to R4

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the third respondent to issue Limited Guardianship Certificate to the petitioner on the basis of the application given by the petitioner on 07.06.2021.

2. The petitioner, who is represented by her sister, is taking care of the petitioner as a guardian, since the petitioner is suffering from mental illness. The father of the petitioner had worked in the Tamil Nadu Special Police Batalian and he retired from service on 31.05.1979 on attaining superannuation. During his life time, he was receiving pension and he died on 22.04.2012.



Thereafter, the mother of the petitioner was receiving family pension and she also died on 12.11.2014.

3. The further case of the petitioner is that since she is a mentally ill person and she is entitled for family pension as per G.O.Ms.No.107, dated 07.03.2000. The learned counsel appearing on behalf of the first respondent would further submit that the petitioner is entitled to claim for such family pension under Rule 49 (6) (iii) of the Tamil Nadu Pension Rules. The petitioner is being taken care of by her sister and the petitioner is not in a position to apply for the family pension. Hence, the sister of the petitioner had submitted the necessary application before the third respondent, requesting for issuance of Limited Guardianship Certificate, in order to apply for the family pension on behalf of the petitioner. The grievance of the petitioner is that the third respondent has not acted upon the application and left with no other option, the present Writ Petition has been filed before this Court.

4. Heard Mr.P.Senthur Pandian, learned counsel appearing for the petitioner, Mr.P.Gunasekaran, learned counsel appearing for the first respondent and Mr.M.Lingadurai, learned Government Advocate appearing for the respondents 2 to 4.

5. The entitlement for issuance of a Limited Guardianship Certificate, was dealt with by this Court, in an order passed in C.M.A.No.2701 of 2019, dated 16.08.2019. The relevant portion of the order is extracted hereunder:-

"...

Therefore, as per the provisions of the old Act, namely, the Mental Health Act, 1987, the appellant is remedyless because the same has been repealed. Now the appellant cant move an application before the District Collector, Chennai, under Rule 5(2) of the said G.O. and the District Collector may be directed to consider the request of the appellant, on merits.

4.Agreeing with the submission made by the learned Government Advocate, this Court hereby directs the appellant to move an Application under Rule 5(2) of the said G.O. before the District Collector. On receipt of such application from the appellant along with the Observation Report and other necessary documents, the District Collector, as per Rule 5(2) (v), shall take upon the application and make a decision within a period of one month from the date of receipt of a copy of this order."

6. It is clear from the above that the only provision under which the Limited Guardianship Certificate can be secured is under the Tamil Nadu Right of Persons with Disability Act and Rules 2018. Rule 5 (2) specifically provides for making such an application.



7. In view of the above, there shall be a direction to the third respondent to act upon the application submitted by the petitioner on 07.06.2021 and issue necessary certificate within a period of four weeks from the date of receipt of a copy of this order.

8. The petitioner is directed to make a fresh representation to the third respondent along with all the relevant documents and also a copy of this order.

9. This Writ Petition stands disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

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/Director,
Welfare of Differently Abled Department,
Lady Wellington College Campus,
No.5, Kamarajar Salai, Chennai - 600 005.
2. The District Collector,
Tirunelveli District,
Tirunelveli - 627 009.
3. The District Differently Abled Welfare Officer,
Tirunelveli - 627 009.

+1 CC to M/s.P.SENTHUR PANDIAN, Advocate (SR-22878[F] dated 16/07/2021)

+1 CC to M/s.SPL GP (SR-23202[F] dated 19/07/2021)

**W.P. (MD) .No.11972 of 2021
16.07.2021**

RC(27.07.2021) 3P-6C