



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P (MD)No.20112 of 2021

and

W.M.P (MD)No.16816 of 2021

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1.Asia Jothi Thamizhvanan
2.Minor.Padmaselvan
3.Minor Padma Sanjan ... Petitioners
(Petitioners 2 & 3 are rep. by
father 1st petitioner herein)

versus

1.The Secretary to Government,
Government of Tamil Nadu,
Social Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Commissioner,
Employees Provident Fund Organization,
NO.37, Royapettah High Road,
Chennai-600 014.

3.The Regional Provident Fund Commissioner-II
E.P.F.Organization,
Regional Office,
Lady Doad College Road,
Chokkikulam,
Madurai-625 002. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the third respondent in TN/MDU/RO Gr.II(6)/57435/10142 dated 14.07.2021 and quash the same and consequently, direct the respondents herein to disburse the EPF amount lying to the credit of first petitioner's deceased wife J.Esther Kanmani in EPF No.101056946940, death-cum-terminal benefits, pension and insurance amount under the (EDLI) Scheme.



For Petitioner : Mr.S.Srinivasa Raghavan
For R1 & R2 : Mr.P.T.Thiraviam
Government Advocate
For R3 : Mr.John Xavier

ORDER

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This writ petition has been filed challenging the order of the third respondent, dated 14.07.2021 made in TN/MDU/RO Gr.II(6)/57435/10142, wherein, the third respondent insisting the petitioner to obtain a certificate of guardianship issued by the Court for the claim of EPF benefit for the minor children and for a consequential direction to direct respondents to disburse the EPF amount lying to the credit of first petitioner's deceased wife J.Esther Kanmani in EPF No.101056946940, death-cum-terminal benefits, pension and insurance amount under the (EDLI) Scheme.

2. The learned counsel appearing for the petitioner submitted that the first petitioner's wife, namely, J.Esther Kanmani, was appointed as Assistant Professor of Maths Department in Syed Hameedha Arts & Science College, UGC Approved and Accredited with B-Grade by NAAC. His wife died in a road accident on 17.10.2020 leaving behind the petitioner and two minor sons as her legal heirs. On the demise of first petitioner's wife, he submitted representations to the Employer of his wife viz., Syed Hameedha Arts & Science College to disburse the death-cum-terminal benefits, Employees Provident Fund amount lying to the credit of EPF Account No.101056946940 of his wife, pension and insurance amount under the (EDLI) Scheme. The third respondent by way of the impugned order, dated 14.07.2021 insisted the college authorities to forward a guardianship certificate from the competent Court of law to enable them to consider the request for disbursement of the EPF amount. Therefore, the petitioners have filed the present writ petition.

3. The learned counsel for the petitioners referring the scheme of the Employees' Provident Fund Scheme, 1952 submits that the first petitioner is the natural guardian and there is no requirement for such certificate as claimed by the third respondent in the impugned order. He has also relied on the similar order passed by the Principal Bench of this Court in W.P.No.6943 of 2018, dated 11.08.2018.

4. The learned counsel appearing for the third respondent by referring the Employee's Provident Fund Scheme and by referring the Manual of Accounting Procedure, which has been prepared by the Department based on the Employee's Provident Fund Scheme 1952, submitted that Clause (c) of Manual of Accounting Procedure made a requirement as follows:-

"c) under the Christian law, the father and mother are the natural guardian of the person of the minor. They

<https://hcservices.courts.gov.in/hcservices/> way of claim to the properties of the minor as



natural guardians. They have to be appointed guardian by Court. If they come in possession of any property of the minor, they hold the same in trust for the minor subject of course, to the right of incurring certain expenses on behalf of the minor."

Therefore, as per the manual, the petitioners have to obtain a necessary certificate of guardianship from the appropriate Court.

5. In reply, the learned counsel for the petitioner submitted that the manual referred by the learned counsel for the third respondent has been prepared based on the Employee's Provident Scheme 1951 and as per the scheme, the natural guardian is entitled to get the benefit on behalf of the minor children and therefore, the order of the third respondent is not correct in rejecting the claim of the petitioner. He would further submit that the Provident Fund amount is a debt and not a property as per Section 306 of Indian Succession Act and therefore, the clarification made in the manual is not proper.

6. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 & 2 and the learned counsel appearing for the third respondent and perused the materials available on record.

7. The manual referred by the learned counsel for the third respondent is made based on the Employee's Provident Fund Scheme, 1952. For easy reference, Clause 72(3) of the Employee's Provident Fund Scheme, 1952 is extracted hereunder:-

"72(3) If the person to whom any amount is to be paid under this scheme is a minor for whose estate a guardian under the Guardian and Wards Act, 1890, has been appointed, the payment shall be made to such guardian. Where no guardian under the Guardian and Wards Act, 1890 has been appointed, the payment shall be made to the guardian, if any, appointed under sub-paragraph 4A of Paragraph 16, where no guardian under the Guardian and Wards Act, 1890, or under Sub-Paragraph 4A of Paragraph 61, has been appointed, the payment shall be made to the natural guardian and in the absence of a natural guardian, to such persons as the Commissioner (where the amount does not exceed Rs.20,000/- or the Chairman of the Central Board, if the amount exceeds Rs.20,000) considers to be the proper person representing the minor and the receipt of such person for the amount paid shall be a sufficient discharge thereof"

8. Based on the same, this Court in a similar issue in W.P.No.6943 of 2018, dated 11.08.2018 passed the following order:-

"5.The issue arising for consideration is when the mother is the natural guardian, whether the authorities

are insisting upon the production of guardianship



certificate in order to disburse the provident fund amount. It is appropriate to look into Para 73(3) of the Employees' Provident Fund Scheme, 1952 which reads as follows:-

"72(3) If the person to whom any amount is to be paid under this scheme is a minor for whose estate a guardian under the Guardian and Wards Act, 1890, has been appointed, the payment shall be made to such guardian. Where no guardian under the Guardian and Wards Act, 1890 has been appointed, the payment shall be made to the guardian, if any, appointed under sub-paragraph 4A of Paragraph 16, where no guardian under the Guardian and Wards Act, 1890, or under Sub-Paragraph 4A of Paragraph 61, has been appointed, the payment shall be made to the natural guardian and in the absence of a natural guardian, to such persons as the Commissioner (where the amount does not exceed Rs.20,000/- or the Chairman of the Central Board, if the amount exceeds Rs.20,000) considers to be the proper person representing the minor and the receipt of such person for the amount paid shall be a sufficient discharge thereof"

6. The scheme do not provide that the natural guardian should produce the guardianship certificate in order to get the provident fund amount. The word 'guardian' means a person having care of the person of the minor or office property or of both his person and property, as per Section 4(2) of the Guardianship and Wards Act, 1890. It is not in dispute that the mother is the natural guardian of the wards. Therefore, it is not proper for the second respondent to insist upon the production of the guardianship certificate, for disbursing the provident fund amount to the petitioner.

7. The second respondent it hereby directed to disburse the amount due to the legal heirs of the petitioner viz., the two sons of the deceased, as claimed in the petition without insisting upon the guardianship certificate, within a period of three weeks from the date of receipt of copy of the order"

9. In the light of the order passed by this Court in W.P.No.6943 of 2018, dated 11.08.2018, the impugned order passed by the third respondent, dated 14.07.2021 is set aside. The respondents are directed to disburse the EPF amount to the petitioners within a period of four weeks from the date of receipt of a copy of this order.



10. In view of the above observations and direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19pandemic, a web copy of the order may be utilized for officialpurposes, 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 Secretary to Government,
Government of Tamil Nadu,
Social Welfare Department,
Fort St. George,
Chennai-600 009.
- 2.The Commissioner,
Employees Provident Fund Organization,
NO.37, Royapettah High Road,
Chennai-600 014.
- 3.The Regional Provident Fund Commissioner-II
E.P.F.Organization,
Regional Office,
Lady Doad College Road,
Chokkikulam,
Madurai-625 002.

+1 CC to M/s.S. SRINIVASA RAGHAVAN, Advocate (SR-35047[F] dated 18/11/2021)

+1 CC to M/s.SPL GP (SR-35305[F] dated 22/11/2021)

W.P (MD) No.20112 of 2021
18.11.2021

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