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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 22286 of 2011

- 1.Kamachi
- 2.Minor Abirami
- 3.Minor Vinoth Kumar

... Petitioners

Vs.

1. The Assistant P.F.Commissioner (PGHS)
Employees Provident Fund Organisation
Sub Regional Office,
No.18, Madurai Road, Trichy.
2. The Enforcement Officer,
Employees Provident Fund Organisation
Cuddalore-III Division,
22, Nethaji Road,
Manjakuppam, Cuddalore.
3. The Chairman and Managing Director,
Neyveli Lignite Corporation,
Corporate Office,
Neyveli.
4. The General Manager (P&A)
Mines-II and Expansion
Neyveli Lignite Corporation,
Neyveli.
5. M/s.RSV Construction,
D, Balagangadara Tilak Road,
Block -20, Neyveli-3.
6. M/s.B.Mathialagan
D-18, Gnanasmbandar Salai,
Block-19, Neyveli -3.
7. M/s.Start Engineering Contractor
No.6/486, Cuddalore Main Road,
Neyveli-2.
(R5 to R7 are impleaded as per order
of this Court dated 01.02.2017)

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, Directing the 3rd and 4th respondents to forward the claim in respect of the petitioners in form F-10-D along with the necessary documents to the 1st respondent as requested in letter dated 04.02.2011 within a stipulated time and direct the 1st respondent to settle the compensation and the family pension payable to the petitioners on account of the death of P. Subramanian.

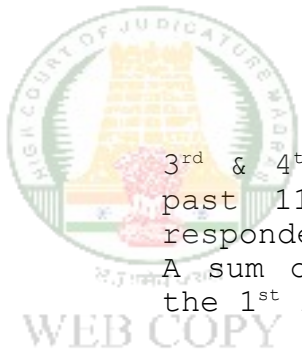
For Petitioner : M/s.M.Devaraj
For Respondents : Mr.M.Palanimuthu -R1 &R2
Mr.N.Nithianandam - R3 & R4
Mr.S.Kadarkarai - R6 & R7

O R D E R

The writ petitioners are legal heirs of the deceased Subramanian who was engaged by the various private contracts, particularly respondents 5 to 7 under the 3rd & 4th respondent-Corporation. According to the petitioner, the deceased husband Subramanian was employed under the 3rd respondent-Corporation in the 1995. The contractors have deducted the amount towards Employees Provident Fund Scheme and Pension Scheme. After demise of her husband, the 1st petitioner approached the Union for settlement of death benefits from the respondents. The Union had made a representation dated 07.06.2010 to the respondent enclosing the details of the deceased husband such as Training Certificate, Identity Card issued by the 3rd respondent, Wage Slip issued by the contractor, Death Certificate and Legal Heir Certificate to the 2nd respondent.

2. The learned counsel for the petitioners has further submitted that as requested by the 1st respondent by letter dated 04.02.2011 all the particulars have been furnished to the 3rd & 4th respondents, but no particulars are available in the new code TN43768 assigned by the 3rd & 4th respondents instead of Code No. TN/10719/AP/CR/105. The 1st petitioner's husband's name has been missed while entering the details under new PF Scheme, therefore his name was not included in the new Employees PF Scheme, hence for the said mistake of the 3rd respondent, the Employee Provident Fund and the Family Pension has not been paid. Thereafter, it is informed by the 1st respondent that the petitioner has to obtain Form-10(D) together with supporting documents duly attested and has to be forwarded by the 3rd respondent to the 1st respondent. But the 3rd & 4th respondents who are duty bound to send the particulars to the 1st respondent are not taking action. Hence the present writ petition.

3. According to the learned counsel for the petitioner, the



3rd & 4th respondents have not forwarded the Form 10(D) for the past 11 years. The said act on the part of the 3rd & 4th respondents are arbitrary and against the provisions of the Act. A sum of Rs.13 Crores has not been claimed from the office of the 1st respondent by the 3rd & 4th respondents.

4. The learned counsel appearing for the 1st & 2nd respondents have filed counter affidavit. In paragraph 13 of the counter affidavit, it is stated as follows;

"13. For the averments made in Ground A & B, it is submitted that the allegation of the petitioners are stoutly denied as false for the reason that this first respondent and the second respondent have taken all necessary actions to instruct the third and the fourth respondents to forward the claim application in Form 10-D in respect of the deceased Subramanian and if only the claim application is forwarded to this office by the third and the fourth respondents duly countersigned and attested by them, this first respondent will be in a position to sanction the monthly pension to the petitioners with all the required supporting documents, if the claim application is found to be in order. It is understood from the averments made by the petitioner that the details relating to the deceased Subramanian are not available with the third and the fourth respondents. It is submitted that this first and the second respondents have no second opinion about the concept that because of the fault of the employer, the employee and his family should not be put to suffer. This first respondent is ready to sanction the monthly widow/children pension to the petitioners herein if the third and the fourth respondents forward the claim application in Form 10-D duly countersigned and attested by them along with the required supporting documents, if found in order otherwise."

5. In view of the above statement, the learned counsel appearing for the 1st & 2nd respondent submitted that appropriate directions may be issued to the 3rd & 4th respondents to forward the claim form to the 1st respondent, so as to pass necessary orders by the 1st respondent.

6. The learned counsel appearing for the respondents 3 & 4 has also filed the counter affidavit and would submit that these respondents are unable to proceed with the claim made by the petitioners without necessary documents from the respondents 5 to 7. The relevant paragraph is extracted hereunder;



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"8. I state that pursuant to communication of the 1st and 2nd respondents, on perusal of Form 3A and 6A submitted by the respondents nos.5 to 7, the answering respondents by communications dated 13.08.2010 and 18.06.2011 requesting them to submit Form-5, Form -10 and PF remittance details under Code No.TN/10719/AP/CR/1015 along with code number, if any, assigned to the deceased immediately for processing the PF & Pension claims of the petitioners. These communications clearly establishes that the answering respondents was promptly requesting the immediate employers, namely, the respondent nos. 5 to 7 to provide the required documents to the 1st & 2nd respondents to clear the lapses on the part of the answering respondents."

7. Therefore, according to the learned counsel appearing for the 3rd & 4th respondents, there is no lapse on the part of the 3rd & 4th respondents. The learned counsel has further submitted that the deceased employee was worked under the 5th & 7th respondents who are the contractors under the 3rd & 4th respondents, therefore, if any such particulars submitted by the respondents 5 & 7, the respondents 3 & 4 shall forward the same to the first respondent after necessary compliance.

8. Counter affidavit on behalf of the 6th respondent is also filed and the admitted the fact that the deceased employee was worked under various contractors including the 7th respondent such as R.Rajendran, C.Vadivelu, RSV Constructions, V.Mathiazhagan. The learned counsel has further submitted that for the period from July 2000 to till the date of death of the individual is concerned, they had remitted the PF Contribution amount for the period of his actual deployment. According to the learned counsel for the 6th & 7th respondent, they have discharged their statutory liability with respect to the deceased contract workman/petitioner.

9. From the aforesaid facts of the case, the writ petitioners had approached this Court based on the communication received from the 1st & 2nd respondent that the 3rd & 4th respondents did not submit the Form 10(D) to settle the death benefits to the deceased employee Subramanian. Further, it is also clear that due to non submission of required particulars by the 3rd & 4th respondents, the 1st & 2nd respondents could not proceed with the claim application submitted by the 1st petitioner/wife of the deceased employee.

10. The learned counsel appearing for the private respondents has submitted that based on the available records, particulars will be forwarded to the respondents 3 & 4 for



claiming compensation amount as well as pensionary benefits of the deceased employee.

11. Recording the submissions made by the learned counsels appearing for the respondents concerned and recording the statement made in the counter affidavit filed by the respective respondents, the following directions are issued;

- i. The petitioners and the respondents 6 & 7 shall forward the details of the deceased Subramanian along with the relevant documents to the 3rd & 4th respondents within a period of twelve weeks from the date of receipt of a copy of this order.
- ii. On receipt of such particulars from the petitioners and respondents 6 & 7, the 3rd & 4th respondents shall examine the same and forward necessary proposal along with Form 10 (D) to the 1st & 2nd respondents, as expeditiously as possible, not later than eight (8) weeks from the date of receipt of particulars from the petitioner as well as private respondents.
- iii. Based on the particulars received, the 1st & 2nd respondents shall pass orders for settling the amount payable to the petitioners under the new PF Scheme as well as Pensionary benefits in accordance with law, without any further delay.

12. With these observations, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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TO

1. The Assistant P.F.Commissioner (PGHS)
Employees Provident Fund Organisation
Sub Regional Office,
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2. The Enforcement Officer,
Employees Provident Fund Organisation
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22, Nethaji Road,
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3. The Chairman and Managing Director,
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Corporate Office,
Neyveli.

4. The General Manager (P&A)
Mines-II and Expansion
Neyveli Lignite Corporation,
Neyveli.

+1cc to Mr.N.Nithianandam, Advocate, S.R.No.610

+1cc to M/s.M.Devaraj, Advocate, S.R.No.178

W.P.No.22286 of 2011

GPL (CO)
CT 14/02/2022