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W.P.No.8503 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2022

CORAM :

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.8503 of 2021 and

W.M.P.No.9064 of 2021

G.Shymala

..

Petitioner

Vs.

1. The Chief Educational Officer
Vellore, Vellore District.

2. The District Educational Officer
DEO Office, P.K.Puram, K.V.Kuppam Taluk
Vellore District - 632 201.

3. The Revenue Divisional Officer
Gudiyatham, Office of Revenue Divisional Officer
Gudiyatham, Vellore District.

4. The Tahsildar
KV Kuppam, Office of Tahsildar
Vellore District.

5. Poon Kozhalilan

6. Thenkozhauli

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for a writ of Mandamus forbearing the first and second respondents from sanctioning the terminal, pension benefits relating to the petitioner late husband Rajendran in favour of the fifth and sixth respondents alone and consequently direct the first and second respondents to sanction the



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terminal and pension benefits of late Rajendran who died in service as Headmaster Govt. Middle School Thirumani Katpadi Taluk, Vellore District in equal share in favour of petitioner and the petitioner's daughter Elakkiya and also fifth and sixth respondents.

For Petitioner : Mr.S.Venkatesh

For Respondents : Mr.S.Yashwanth
Additional Government Pleader
[R1 and R2]

Mrs.M.Geetha Thamaraiselvan
Special Government Pleader
[R3 and R4]

ORDER

The prayer sought for herein is for a writ of mandamus to forbear the first and second respondents from sanctioning the terminal, pension benefits relating to the petitioner late husband Rajendran in favour of the fifth and sixth respondents alone and consequently direct the first and second respondents to sanction the terminal and pension benefits of late Rajendran, who died in service as Headmaster Govt. Middle School Thirumani Katpadi Taluk, Vellore District in equal share in favour of petitioner and the petitioner's daughter Elakkiya and also fifth and sixth respondents.



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2. The petitioner's husband one Rajendran was an employee of the respondent Department and he died on 11.09.2020. He died during the employment, left behind the petitioner and her minor daughter and also the two other children, who are born out of the wedlock of the first wife of the deceased employee.

3. In this regard, it is the grievance of the petitioner that, in respect of the death-cum-retirement as well as the family pension benefits payable for the deceased employee and his family, it is a feud between the petitioner i.e., the second wife of the deceased employee and the fifth and sixth respondents who are the son and daughter of the deceased employee born out of the wedlock of the first wife, who is no more.

4. Heard Mr.S.Venkatesh, learned counsel appearing for the petitioner, Mr.S.Yashwanth, learned Additional Government Pleader appearing for the first and second respondent and Mrs.M.Geetha Thamaraiselvan, learned Special Government Pleader appearing for the third and fourth respondents.



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5. Learned counsel appearing for the petitioner submitted that though a prayer sought for in this writ petition is prohibitory in nature seeking a writ of mandamus to forbear the first and second respondents from sanctioning the terminal and pension benefits relating to the petitioner's late husband Rajendran in favour of the fifth and sixth respondents alone, he would submit that, if an enquiry is conducted by the respondents with the petitioner as well as the fifth and sixth respondents and accordingly, the death-cum-retirement benefits as well as the family pension benefit payable to them are properly divided among the two families and given to them, the petitioner may not have any objection for such an arrangement, therefore, to that effect if a direction is given to the respondents to have an enquiry and take a decision within a time frame, the petitioner would be satisfied, he contended.

6. On the other hand, Mr.S.Yashwanth, learned Additional Government Pleader appearing for the first and second respondents has relied upon the following averments made in the counter affidavit:

“.....

9. It is submitted that as per the existing rules, the legality of the wife is as follows:



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(v) *Legally wedded wives:- The second wife gets the status of legal wife in two case: Second marriage solemnised before coming into force of the Hindu Marriages Act as per the customary law among the community ; and the second marriage solemnised as per legal requirements in the case of persons governed by Mohemmaden law where bigamy is permissible. In these cases, second wife is eligible to have the family pension. The child born to the wife other than those covered by the above two cases is treated as illegitimate and not eligible for family pensions. Letter 112351/90-4 Fin 02.06.1992, 86752/92-1 Fin 10.08.1992.*

It is however submitted that insofar as Family Pension is concerned, the children of the legally wedded first wife are entitled for Family Pension until the age of 25 or till the marriage which is earlier and in case if there is claim from the children of illegal second wife, Family pension has to be divided at 50% to the children of the first wife and children of the second wife born on the void marriage, and the illegal second wife is not entitled for the benefit of Family Pension. It is further submitted as per the age recorded in the Nomination filed by the deceased employee the age of Poonkozhilan and Thenkozhali is 13 and 08



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respectively as on 01.04.1997 and if the age is correct, they would have crossed the age of 25 and they are not eligible for Family Pension. Hence the death certificate of the first wife of the deceased employee, age proof of the two children of the first wife are to be verified to finalise their entitlements.
...”

7. Relying upon this averment, learned Additional Government Pleader would contend that, the legal heir certificate already issued in favour of the fifth and sixth respondents, omitting to include the petitioner, being the second wife, has subsequently been canceled by the proceedings issued by the Revenue Divisional Officer in this regard by proceedings dated 19.01.2021 and therefore as on date, who are all the legal heirs of the deceased employee have to be ascertained and in this regard, an enquiry would be conducted by the first respondent by calling both the petitioner as well as the fifth and sixth respondents and accordingly, if no other legal heirs are available, the death-cum-retirement benefits payable to the deceased employee would be disbursed on 50-50 basis and that decision have to be taken only after ascertaining who are all the legal heirs of the deceased employee. Therefore, in this regard, a limited enquiry would be conducted by the first respondent and



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accordingly a decision would be arrived at by the first respondent within a time frame that may be stipulated by this Court.

8. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

9. Though the fifth and sixth respondents are the son and daughter of the deceased employee, born out of the wedlock of the first wife, since she is no more, thereafter, the second wife i.e., the petitioner was married by the deceased employee, out of that wedlock, one female child born and she is a minor it seems.

10. Be that as it may. Now both are legally wedded wives, if so, the legal heirs i.e., the son and daughters born out of these wedlocks of the deceased employee are entitled to get the benefits as per the proportionate, which are to be made in this regard and therefore, this Court feels that, a limited enquiry to that effect, to ascertain whether these persons alone are the legal heirs of the deceased employee or any other legal heirs are available, to be conducted by the first respondent



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and after conducting such an enquiry, the first respondent shall decide and pass orders as to the claim made by the petitioner as well as the fifth and sixth respondents for sharing the death-cum-retirement benefits of the deceased employee.

11. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

- ◆ That there shall be a direction to the first respondent to conduct an enquiry as indicated above by calling upon the petitioner as well as the fifth and sixth respondents and after ascertaining these factors as to the legal heirs of the deceased employee, the death-cum-retirement benefits can be disbursed accordingly between both the families i.e., the legal heirs of the deceased employee born out of the first and second wedlock.
- ◆ The needful as indicated above shall be undertaken by the first respondent within a period of twelve weeks from the date of receipt of copy of this order.



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Connected miscellaneous petition is also closed.

19.09.2022

Index: Yes/No

drm/mp

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R.SURESH KUMAR,J.

(mp/drm)

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