



W.P.(MD).No.21057 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.21057 of 2018

and

W.M.P(MD)No.18859 of 2018

1.Minor.J.Barani Kumar

2.Minor J.Balakumar
represented through their mother
and natural guardian S.Anulakshmi

... Petitioners

Vs.

1.The Regional Joint Director of Collegiate Education,
Clive Building, 1st Floor,
Theppakulam P.O,
Trichy.

2.The Principal,
Government Arts College,
Trichy-620 022.

3.Usha Devi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to disburse the death benefits of the petitioner's father Late B.Jeyakumar, employed as Assistant Professor in Tamil at Government Arts College, Trichy to us along with the 3rd respondent, within the time fixed by this Court.



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For Petitioners : Mr.H.Arumugam
For R1 & R2 : Mr.M.Ramesh
Government Advocate
For R3 : Mr.D.Senthil

ORDER

This writ petition is filed for Writ of Mandamus, directing the 1st respondent to disburse the death benefits of the petitioner's father Late B.Jeyakumar, employed as Assistant Professor in Tamil at Government Arts College, Trichy to them along with the 3rd respondent, within the time fixed by this Court.

2. The petitioners are minors and the writ petition is filed by the petitioner's mother and natural guardian of the petitioners. This writ petition is filed claiming the death benefits of the father of the minor petitioners. The petitioner's mother has filed this writ petition in a representative capacity.

3. The contention of the writ petitioners' mother is that she was married to late B.Jeyakumar on 11.07.2007, who worked as Assistant Professor (Tamil) at Government Arts College Trichy. The marriage was arranged by



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both the families and performed as per the Hindu rites and rituals. Out of wedlock, the petitioner's mother was blessed with the petitioners on 16.09.2011 who are twin babies. The petitioner's mother came to know that her husband had already married to one Mrs.Usha Devi, the third respondent herein. When the petitioner enquired, the late Jeyakumar had admitted the earlier marriage but stated that he was separated from his first wife. The marriage was also nullified and as on date there was no relationship with her and also promised that the third respondent will not interfere in the life. Since the third respondent has not interfered, the petitioner's mother believed the words of the late husband. In the year 2015, the late Jeyakumar was bed ridden due to kidney failure. In spite of petitioner's effort, he could not be saved and he died on 22.06.2016. In the funeral rites, the third respondent had also participated and both the petitioner's mother and the third respondent performed the last rites. The petitioner's mother was under bonafide impression that the death benefits will be handed over to the petitioners.

3. In the meantime, the third respondent claiming to be the first wife had applied for legal heir certificate and also claimed the terminal benefits of the deceased Jeyakumar. When the petitioner's mother approached the second



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respondent, it was intimated that the marriage was considered as second one and she is not entitled to any benefits. However, the children are entitled to a share in the benefits along with the third respondent as the legal representatives. However, the contention of the petitioner's mother is that if the third respondent accepts the separation with deceased through customary divorce, the petitioner's mother is entitled to the entire benefits. The ration card issued in the name of her husband's father, namely, Balakrishnan which includes her mother-in-law, brother-in-law, the petitioner's mother and the petitioners. The name of the third respondent or her son's name was not found in the family card. In this regard, the petitioner's mother submitted a representation to Tahsildar to issue legal heir certificate, however there is no response. The petitioner's mother submitted several representations without any reply. In the meanwhile, the petitioner received information that the third respondent is approaching the authorities to receive the entire benefits. Hence, the present writ petition has been filed.

4. The third respondent has filed a counter affidavit stating that the marriage between the deceased husband and the third respondent was solemnized on 29.01.2001 and the same was registered one and they have a son



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namely J.Parithi Kumar and they were living happily, but unfortunately the third respondent's husband died on 22.06.2016 due to kidney failure, even though she had donated her kidney to save the life of her husband, after getting approval from the concerned authority. At the time of the death, the deceased husband was working as an Assistant Professor who joined the service on 13.10.2008. In the service record, the third respondent's name was mentioned as nominee and the third respondent's son was also added as legal heir. After the death of the third respondent's husband, the third respondent applied for legal heir certificate and based on the application the authorities have issued the terminal benefits and other benefits directly to the third respondent, vide proceedings, dated 30.06.2017 and contributory pension amount also paid to the third respondent on 23.11.2017. The third respondent has received the entire benefits was known to the petitioner and after knowing the same, the petitioners have filed the above writ petitioner to get legal right through this Court. Even though there are no entitlement to get so, the petitioners and their mother are no way connected with the third respondent's husband and they have filed the above writ petition to grab the amount from the third respondent as if the petitioner's mother is the wife of the husband. The petitioners have filed this writ petitioner by suppressing various facts. The petitioners have also filed the



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Suit for partition in O.S.NO.510 of 2022 on the file of II Additional Subordinate Court, Tiruchirappalli and after notice, the third respondent has entered appearance in the above Suit and the same is pending for adjudication. At the time of admission, this Court has granted status quo, vide order, dated 09.10.2018. Hence, the third respondent prayed to dismiss the writ petition.

5. Heard Mr.H.Arumugam, learned Counsel appearing for the petitioners, Mr.M.Ramesh, learned Government Advocate appearing for the first and second respondents, Mr.D.Senthil, learned Counsel appearing for the third respondent and perused the records.

6. The contention of the petitioners is that the petitioners have submitted objection to the respondents before granting legal heir certificate, vide letter, dated 14.07.2016 and also issued a legal notice, dated 07.09.2016 and inspite of these letters which was issued in the year 2016 itself, the respondents have disbursed the terminal benefits to the third respondent. Moreover, the petitioners are not aware when it was disbursed and how much it was disbursed. Inspite of several request, the respondents declined to furnish any details to the petitioners. The petitioners' mother claiming to be a legal wife



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of the deceased Jeyakumar has claimed the entire terminal benefits and also compassionate appointment.

7. However, the third respondent submitted that since the deceased Jeyakumar was ailing from kidney failure she had donated her kidney to the said deceased Jeyakumar and has also incurred debt due to medical expenses. The terminal benefits which were received was also used to close the debts which were incurred for the treatment of the deceased Jeyakumar and prayed that the claim of the petitioners cannot be considered.

8. The learned Counsel appearing for the official respondent submitted that the terminal benefits to the tune of Rs.12,36,328 was already paid to the third respondent and the family benefit fund was also paid on 30.06.2017.

9. It is an admitted fact that the petitioners and their mother had also filed another Suit in O.S.No.510 of 2022 on the file of II Additional Subordinate Court, Tiruchirappalli and the third respondent had entered appearance.



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10. The contention of the petitioner's mother is that inspite of objection, the official respondent has disbursed the terminal and other benefits to the third respondent and the same is illegal. Such plea cannot be entertained, since the third respondent is the nominee in the service book of the deceased Jeyakumar. The Learned Counsel for the petitioner submitted that the official respondents ought not to have disbursed the benefits to the third respondent and prayed to direct the official respondents to pay half of the terminal benefits to the petitioners. Since a suit has been filed to determine the rights of the parties, this Court is not inclined to entertain this writ petition. Any direction or observation by this Court would have a bearing on the suit and that would amount to predetermining the rights of the parties. Therefore, the prayer of the petitioner is declined. The parties are at liberty to raise any ground before the Civil Court in the Suit and adjudicate the issue.

11. Hence, this Writ Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

12.12.2022

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