



WEB COPY



W.P.No.31025 of 2005

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.31025 of 2005
and WPMP No.66 of 2015

S.Kamila Banu

....

Petitioner

Vs

1. The Deputy Registrar of Co-op Societies,
Chengalpattu Circle,
(Opp to G.H),
Trichy Main Road,
Chengalpattu, Kancheepuram District.

2. Raghuman Sheriff

....

Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Mandamus directing the first respondent to disburse all the benefits of the petitioner's father Mr.Abdul Salam of DCRGB including the pension benefits to the petitioner.

For Petitioner	:	Mr.C.Prakasam
For R1	:	Mr.M.Muthusamy
		Government Advocate

ORDER

This Writ Petition has been filed for direction directing the first respondent to disburse all the benefits of the deceased father of the petitioner of DCRGB including the pensionary benefits.



W.P.No.31025 of 2005

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent and perused the materials available on record.

3. The petitioner is a adopted daughter of Late Mr.Abdul Salam, who was working as Sub Registrar in the Co-op Department at Chengalpattu. While he was in service, he died on 13.11.1991. He had no issues. Hence, he adopted the petitioner as his daughter. The said adoption had taken place when she was six months old. Her father got married one Sabera Begum. During his service, he nominated his wife as his nominee and the same was registered in his Service Register. However, she died and thereafter, her father nominated the petitioner as his nominee in his Service Register.

4. After demise of her father, the petitioner obtained legal heirship certificate from the Tahsildar, Chengalpattu, by its proceedings Mu.Mu.No.11538/91/A3, dated 22.11.1991, for the purpose of changing over the name in the properties, electric service connection, revenue records and receiving DCRB, PF, Compassionate Appointment and Insurance. She submitted a request before the first respondent for



W.P.No.31025 of 2005

disbursal of the benefits of her deceased father. While being so, the second respondent filed a suit in O.S.NO.91 of 1992 on the file of the District Munsif, Chengalpattu, as against the first respondent for permanent injunction, not to disburse the benefits to the petitioner unless a succession certificate is issued by the Competent Authority. The District Munsif, by a Judgment dated 23.02.1999, granted six months from the date of Judgment, to get the succession certificate and ordered that until then the plaintiffs are entitled for an injunction. The second respondent failed to produce any succession certificate so far. Thereafter, the petitioner submitted a representation before the first respondent to disburse the terminal benefits of her deceased father.

5. A perusal of the counter filed by the first respondent revealed that the father of the petitioner had nominated the petitioner as his nominee in the Service Register. Though initially, her father nominated his wife as his nominee, unfortunately, she died. During their life time, they had no issues and as such, they adopted the petitioner as their daughter. Since the father of the petitioner had nominated and registered her name in the Service Register, the petitioner also produced the legal heirship certificate issued by the Tahsildar. However, the



W.P.No.31025 of 2005

second respondent filed a suit and even after a specific direction, the second respondent failed to produce any succession certificate to claim the benefits of her deceased father.

6. Rule 46(1)(a) says of the Tamil Nadu Pension Rules 1978 that the gratuity payable under Rule 45 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 48. If there is no such nomination or if the nomination made does not substitute, the gratuity shall be paid in the manner as follows :

“(i) If there are one or more surviving members of the family as in clauses (i), (ii) and (iv) of sub-rule (5) of Rule 45 to all such members in equal shares ;

(ii) if there are no such surviving members of the family as in sub-clause (1) above, but there are one or more members as in clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) of sub-rule (5) of rule 45, to all such members in equal shares”.

7. Further, Rule 48 says that a Government servant shall make a nomination in Form 1 or Form 2, as may be as appropriate in the circumstances of the case conferring in one or more persons the right to



W.P.No.31025 of 2005

receive the death-cum-retirement gratuity payable under Rule 45 provided that, if at the time of making the nomination, the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

8. In the case on hand, the deceased employee got married to one Sabera Banu and he nominated her name as his legal heir in his Service Register. Admittedly, they had no issues. While she was alive, they adopted the petitioner as their daughter. Thereafter, she died on 13.10.1991. Therefore, the father of the petitioner nominated the petitioner's name as his nominee in the Service Register.

9. Under the Mohammedan Law, whether the adoption is permitted or not is not the question. The question is whether the petitioner, being the adopted daughter of the deceased employee, can be nominated as his nominee, when other family members are there. For the purpose of Rules 46, 47 and 48 of the Tamil Nadu Pension Rules, the “Family” means :-

“(i) Wife or wives, including judicially separated wife or wives in the case, of a male Government servant ;



W.P.No.31025 of 2005

(ii) husband including judicially separated husband,
in the case of a female Government servant ;

(iii) Sons including step-sons, adopted sons and
born through illegitimate wife;

(iv) unmarried daughters including stepdaughters,
adopted daughters and unmarried daughters born through
illegitimate wife ;

(v) widowed daughters including stepdaughters,
adopted daughters and widowed daughters born through
illegitimate wife ;

(vi) father, including adoptive parents in the case of
individual whose personal law permits adoption ;

(vii) mother, including adoptive parents in the case
of individual whose personal law permits adoption ;

(viii) brothers below the age of eighteen years,
including step brothers ;

(ix) unmarried sisters and widowed sisters,
including step sisters ;

(x) married daughters ; and

(xi) children of pre-deceased son.”

10. Thus, it is clear that insofar as the brothers of the
deceased employee are concerned, the brothers means “brothers below
the age of 18 years including step brothers. Insofar as daughters are
concerned, Rules says that “unmarried daughters including



W.P.No.31025 of 2005

stepdaughters, adopted daughters and unmarried daughters born through illegitimate wife”.

11. As far as the petitioner is concerned, she comes under the category stepdaughter of the deceased employee, though the adoption is not permitted under Mohammedan Law. It is also evident from the legal heirship certificate issued by the Tahsildar, by its proceedings Mu.Mu.No.11538/91/A3, dated 22.11.1991, that the petitioner alone is the legal heir of the deceased employee and it was issued for the purpose of changing over the names in the properties, electric service connection, revenue records and receiving DCRB, PF, Compassionate Appointment and Insurance of the deceased employee. The second respondent, being the brother's son of the deceased employee, does not come under the definition of family as per Rule 45(5) of the Tamil Nadu Pension Rules. Therefore, he is not entitled for death benefits of the deceased employee viz., Mr.Abdul Salam. Petitioner comes under the definition of family under Rule 45(5) of the Tamil Nadu Pension Rules as “unmarried daughter including stepdaughter”. Except the second respondent, there are no rival claimants such as the deceased employee's other family members as defined under Rule 45(5) of the Tamil Nadu Pension Rules.



W.P.No.31025 of 2005

Therefore, the petitioner is entitled to receive all terminal benefits of the deceased employee from the first respondent.

12. In view of the above, the first respondent is directed to disburse all the benefits of the deceased viz., Abdul Salam, including the pension benefits, DCRG to the petitioner forthwith.

13. With the above direction, this Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

15.09.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
Lpp

To

1. The Deputy Registrar of Co-op Societies,
Chengalpattu Circle,
(Opp to G.H),
Trichy Main Road,
Chengalpattu,
Kancheepuram District.



WEB COPY



W.P.No.31025 of 2005

G.K.ILANTHIRAIYAN, J.

Lpp



WEB COPY



W.P.No.31025 of 2005

W.P.No.31025 of 2005
and
WPMP No.66 of 2015

15.09.2023