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W.P.No.26448 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.26448 of 2013
and M.P.No.1 of 2013

The Superintending Engineer
Vellore Electricity Distribution Circle
TANGEDCO, Gandhi Nagar, Vellore.

.... Petitioner

-Vs-

1.C.Kantha

2.The Presiding Officer
Additional Labour Court
Vellore-9.

3.Chief Internal Audit Officer
Board Office, Audit Branch
TNEB, Chennai.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records in C.P.No.51 of 2010 dated 20.09.2011 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.P.Subramanian

For Respondents : R1 – No appearance
R2 - Court
Mr.J.C.Durai Raj
Additional Government Pleader – for R3



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ORDER

The Management is challenging the order in C.P.No.51 of 2010 dated 20.09.2011. One Chinnasamy was an employee under the Management. He was twice married; through his first wife, he had three children, 1) Bakkiam 2) Kuppu and 3) Elumalai. After the death of the first wife, he married the 1st respondent Kantha. He passed away on 22.09.1985. There is no dispute that on his death, the family is entitled to be paid family pension. This issue was covered by the Board Proceedings (CH) No.67 dated 20.04.1990.

2. The Board Proceedings states that the wife will be entitled to 50% and the remaining 50% will be paid to one of the members of the family born through the first wife. There is no dispute that the second wife is continued to be paid 50%. The remaining 50% is the subject matter of issue.

3. Initially, the Board had paid the first daughter Bakkiam till she got married. After Bakkiam's death, the money was paid to the second daughter Kuppu. After Kuppu's marriage, 50% of the family pension was being paid to Elumalai. On Elumalai's wedding, the amount was not paid to Elumalai on the objection made by the 1st respondent. The objection of the 1st respondent Kantha was that Elumalai having got married on 04.06.2003, he is not entitled to



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be paid the family pension and that the second wife / herself is entitled to the entire family pension.

4. It is here, the case takes a curious twist. Mr.P.Subramanian, learned counsel for the petitioner Management would submit that the Board continued to pay 50% of the family pension to Elumalai, but on receipt of the objection raised by the second wife, they stopped the pension to Elumalai, though he attained the age of 25 years only on 19.06.2009.

5. There is no dispute that the son Elumalai is entitled to be paid the said sum from the next day after the marriage of the second daughter Kuppu till he attained the age of 25 years ie., on 19.06.2009. The Board partly accepted the objection of the 1st respondent / second wife and retained the amount with it from 09.04.2003 to 19.06.2009. This constrained the 1st respondent / second wife to file C.P.No.51 of 2010 for a direction to pay the arrears of 50% of family pension to be paid from June 2003 to May 2009.

6. It is pertinent to note that, by the time the Computation Petition was filed, Elumalai had attained the age of 25 and therefore he was not paid a single penny after 20.06.2009. The dispute is with respect to the amount retained by the writ petitioner from June 2003 till May 2009. On 01.06.2023, I had passed



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an order requesting Mr.P.Subramanian learned counsel for the petitioner to get instructions as to whether they paid 50% of the balance amount to Kantha or at least to Elumalai. Mr.Subramanian would submit that the amount was paid neither to the son Elumalai nor to the second wife Kantha and the Board had retained the amount with itself.

7. When a person objects to the payment of pension and that objection is accepted by the Board, they should have at least paid the family pension to the wife. For reasons best known and not explained in the counter to the writ petition, the Board neither paid the wife nor the son as afore stated and they have retained the amount with them, which amounts to unjust enrichment to itself.

8. The labour Court had allowed the Computation Petition on the ground that since Elumalai got married on 04.06.2003, he is not entitled to pension as per the Tamil Nadu Pension Rules and that the full family pension should have been paid only to C.Kantha. It is seen from the Board Proceedings No.67 dated 20.04.1990 that sons are entitled to get family pension until they attain the age of 25 years. The Board Proceedings further clarifies that the daughters will be entitled to family pension till the date of their wedding. Insofar as Bakkiam and Kuppu are concerned, there is no liability on the Electricity Board towards the



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daughters. It is only the amount of 50% of family pension which has been retained which is the subject matter of the issue.

9. Going through the Board Proceedings, I am satisfied that Elumalai was entitled to receive pension till the date when he attained the age of 25. The Board having unfairly retained the amount and the Board Proceedings being clear, I modify the order of the labour Court to the effect that the Board shall pay 50% of the family pension from 05.06.2003 to 19.06.2009 to the 1st respondent together with simple interest at the rate of 12% per annum. The 1st respondent will receive this amount only as trustee for Elumalai and will not be entitled to appropriate the amount to herself.

10. With the above modification, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

V. LAKSHMINARAYANAN, J.



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To

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