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W.A.No.3824 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:27.09.2023

Delivered on: 19.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3824 of 2019
and W.P.No.11155 of 2020

W.A.No.3824 of 2019

1. Adlin Mannah

2.Mr.Raja Pandian

3.Mrs.Raja Pandian

.. Appellants

Vs.

1.Victoria Aruldoss

2.Tahsildar
Parutipattu Village
Tiruvallur District
Poonamallee-600 056

3.The Registrar (Birth &Deaths)
Department of Public Health
Corporation of Chennai
Chennai-600 003



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4. Medical Director
Railway Hospital
Perambur,
Chennai-600 023

5. A. Sunil Franklin

6. Tahsildar
No.1, Palli Arasan Street
New Avadi Road
Ayanavaram
Chennai-600 023

7. Abishekam

.. Respondents

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P.No.13825 of 2019 dated 01.10.2019.

For Appellants : Ms.N.R.Jasmine Padma
for
Mr.L.Chandra Kumar

For Respondents : Ms.T.Hemalatha
for
Mr.C.Daniel & Gladys Daniel for R1 & 5

Mrs.P.T.Ramadevi, Standing Counsel for R3

Mr.U.M.Ravichandran, Spl.G.P for R 2 and 6

Not ready notice Reg R7

Mr.M.T.Arunan for R4

W.P.No.11155 of 2020

Victoria Aruldoss

.. Petitioner



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Vs.

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1.The Secretary Railway Board
Federation of Railway
Officer's Association Office
256-A, New Delhi-110 001

2.The General Manager's Office
Southern Railway-Personnel Branch
Chennai-600 003

3.The Dean
Perambur Railway Hospital
Police Salai, Ayanavaram
Chennai-600 023

4.Adlin Mannah

5.Central Administrative Tribunal
High Court Campus
Madras High Court Buildings
Chennai-600 104

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to quash the order of the 5th respondent dated 28.02.2020 in OA/310/00185/2019 and direct respondent Nos.1 to 3 to make payment of terminal benefits of the petitioner's late son Anil Lionel to the petitioner.

For Petitioner : Mrs.T.Hemalatha
for
Mr.C.Daniel& Gladys Daniel

For Respondents : Ms.N.R.Jasmine Padma
for
Mr.L.Chandrakumar for R4



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No Appearance for R2 and 3

Not ready notice Reg R1

COMMON JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

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The wife of deceased railway employee, aggrieved by the order of Writ Court in W.P.No.13825 of 2019 dated 01.10.2019 is the appellant before us.

2. The mother of the deceased railway employee, as writ petitioner, sought for issuance of a writ of certiorari to quash the proceedings dated 10.11.2015 on file of the first respondent, Tahsildar, Paruthipattu Village Tiruvallur District. The case of the writ petitioner is that her son was employed in the railways and he died in harness. The petitioner suspected the death to be unnatural and according to the petitioner, her daughter-in-law murdered her son and therefore the terminal benefits payable by the department ought not to be given to the wife of the deceased railway



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employee. It is also the case of the writ petitioner that criminal proceedings were pending at her instance in M.P.No.1232 of 2018 on the file of the XI Metropolitan Magistrate Court, Saidapet, challenging the closure report of CBCID dated 25.04.2018. According to the writ petitioner, the 4th respondent, namely, her daughter-in-law was disentitled to receive the terminal benefits. The further allegation of the petitioner is that a fabricated legal heirship certificate was produced by the 4th respondent suppressing a class II legal heir, namely, one Mr.Sunil Franklin who is the brother of the deceased Dr.Anil Lionel and has survived him. The writ petition challenges the order issuing the legal heirship certificate.

3. Before the Writ Court, the 4th respondent, wife of the deceased railway employee filed a counter denying the claims and allegations of the writ petitioner. The 4th respondent denied the allegation that she had murdered her husband and even according to the investigation it was concluded that her husband committed suicide by inflicting self-injury using a kitchen knife that was used for cutting vegetables. The 4th respondent has further stated that even the CBCID, Chennai investigated the matter and closed the case, dropping further action. According to the 4th



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respondent, she was the only person eligible to avail all terminal benefits.

In so far as the legal heirship certificate, the 4th respondent had applied to the Tahsildar, Paruthipattu Village, Poonamalle as the 4th respondent was residing at Avadi with her relatives after the demise of her husband and therefore there was no fabrication or forgery as alleged by the petitioner. Infact, according to the 4th respondent, the legal heirship certificate contains not only her name but also the petitioner's name, being the mother of the deceased railway employee.

4. The Writ Court, after hearing the parties found that there was some foul play in issuance of the legal heirship certificate and directed the jurisdictional police officer to enquire into the matter and take appropriate action against the erring persons involved in the offence of creating false documents, by adopting the due process of law. In so far as the terminal benefits, the Writ Court directed the petitioner and the 4th respondent to agitate their respective claims and contentions in the pending OA.No.185 of 2019 before the Central Administrative Tribunal, Madras Bench.

5. Aggrieved by the said order of the Writ Court, the 4th respondent in



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the writ petition i.e. the wife of the deceased railway employee, along with her parents who were cited as respondents 5 and 6 in the writ petition, have preferred the present writ appeal on the grounds that the Writ Court failed to see that an appeal was provided against an order of the Tahsildar issuing legal heirship certificate, before the Revenue Divisional Officer and a further revision also lies to the District Collector. According to the appellants, the writ petition is therefore not maintainable in view of the alternate remedy available to the writ petitioner. It is also contended by the appellants that the brother of the 1st appellant's husband is not a legal heir and the Writ Court passed the impugned final order without dealing with the prayer sought for by the writ petitioner. According to the appellants, a status report was also filed by the Tahsildar before the Writ Court stating that the records have been transferred to Tahsildar, Avadi in view of formation of a new taluk, namely Avadi Taluk. According to the appellants, the Writ Court has not considered the contradictory stand taken by the Tahsildar, one in the status report and other in the counter affidavit.

6. We have heard Mrs.V.R.Jasmine Padma for Mr.L.Chandrakumar, counsel for the appellant and Ms.T.Hemalatha for Mr.C.Daniel & Gladys



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Daniel, counsel for respondents 1 and 5 and Mrs.P.T.Ramadevi, standing counsel for the Corporation and Mr.U.M.Ravichandran, Special Government Pleader for respondents 2 and 6. We have perused the records and also the order of the Writ Court.

7. Though the prayer in writ petition was challenging the legal heirship certificate issued by the 1st respondent, the Writ Court has disposed of the writ petition with two directions, namely, one, to the writ petitioner and appellants herein to agitate their claim in O.A.No.185 of 2019 before the Central Administrative Tribunal, Madras Bench and two, direct the jurisdictional police officer to investigate and take action in respect of creation of false documents.

8. First and foremost, we would like to clarify that the parties are battling out their disputes on a totally erroneous premise. Under the Indian Succession Act, 1925 applicable to Indian Christians, there is no concept of class I and class II legal heirs. In terms of Sections 32 & 33(c) of Indian Succession Act, the mother of the deceased Indian Christian is not a legal heir entitled to a share in the property of her son. Only in the absence of



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the spouse and children of the deceased, the parents of the deceased would be treated as heirs in so far as devolution of intestate property of Indian Christian is concerned. Section 32 and 33 (a) of the Indian Succession Act 1925 is usefully extracted:

“32. Devolution of such property.— The property of an intestate devolves upon the wife or husband, or upon those who are of the kindred of the deceased, in the order and according to the rules hereinafter contained in this Chapter.

33. Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred.—Where the intestate has left a widow—

(a) if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules hereinafter contained;

9. Thus, the mother of deceased Indian Christian is not entitled to succeed to the property of her deceased son who had died intestate. The rules of distribution set out in Sections 41 to 49 deal with cases where there are no lineal descendants. Therefore, the mother of a deceased Indian



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Christian become entitled to share of her deceased son who dies intestate only in the absence of heirs mentioned in Sections 32 and 33(a).

10. Here admittedly in the present case, the legal heirship certificate issued by the 1st respondent contains not only the name of the wife but also the mother. The challenge is laid to the said legal heirship certificate on the ground that it has been obtained fraudulently by the wife of the deceased and that the name of the surviving brother of the deceased is excluded in the legal heirship certificate with ulterior motives, which are attributed to the wife of the deceased.

11. We have seen the counter affidavit as well the status report filed by the Tahsildar who had issued the legal heirship certificate. In the status report, it is stated by the deponent, the then Tahsildar, Poonamalle Taluk that the legal heirship certificate had been issued by the Tahsildar, Poonamalle originally and after the formation of Avadi Taluk, the records pertaining to village concerned namely Paruthipattu have been transferred and sent to Tahsildar, Avadi. However, in a counter affidavit filed before the Writ Court, the very same deponent has stated that she took charge as



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Tahsildar, Poonamalle on 04.09.2019 and in the said counter affidavit the genuineness of legal heirship certificate is doubted by the Tahsildar on the ground that the signature in the certificate resembled a Tahsildar relieved from duty on 29.10.2015 itself. This stand of the Tahsildar has weighed in the mind of the Writ Court before issuing necessary directions to the police officials to enquire into the matter. At the outset, since the Writ Court has not decided the prayer originally sought for in the writ petition, having only directed the police officials to enquire into the genuineness of the legal heirship certificate and take action against the erring officials, we do not deem it a fit case to interfere with the said order of the Writ Court. The Tahsildar who has filed a counter affidavit as well as the status report filed before the Writ Court had taken diametrically opposite stands. In any event, the legal heirship certificate was only sought for by the 4th respondent to claim terminal benefits of a deceased husband from the railways department. Admittedly, the said legal heirship certificate would no longer have a bearing on the said issue since in W.P.No. 11155 of 2020, as we have today confirmed the order of the Central Administrative Tribunal, Madras Bench confirming the entitlement of the 4th respondent, namely wife of the deceased railway employee to receive all terminal



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benefits. With regard to genuineness of the legal heirship certificate, there is already a direction to the jurisdictional police officer to enquire into the matter. However, it is brought to our notice that, no further steps have been taken in view of the pendency of the writ appeal. The legal heirship certificate being issued by the Tahsildar is subject to appeal before the RDO with a further revision to the Collector.

12. In such view of the matter, if at all the appellant is still aggrieved by the issuance of legal heirship certificate containing her name and her daughter-in-law's name alone, omitting her other son's name, it is open to appellants to approach the RDO within 4 weeks from the receipt of the copy of this judgment.

13. In the event of such an application being made by the appellant, then the appellate authority namely the RDO shall enquire into the matter and pass suitable orders, in accordance with law, after giving sufficient opportunity to the parties including the petitioner as well as the 4th respondent. The appellate authority shall not reject the appeal filed by the appellant on the ground of delay provided the appeal is filed within a



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period of 4 weeks from the date of receipt of a copy of this Judgment.

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14. We also make it clear that the Tahsildar shall adhere and follow the personal laws of the parties concerned, namely the Indian Succession Act in the instant case since the parties are admittedly Indian Christians and shall decide the matter strictly in accordance with the Indian Succession Act, 1925.

With the above directions, the writ appeal is disposed of. There shall be no order as to costs.

W.P.No.11155/2020

15. The writ petitioner has filed the above writ petition challenging the order of the Tribunal in O.A.No.185 of 2019.

16. The brief facts that are necessary to decide the writ petition are as follows:-

Before the Tribunal, a legal heirship certificate was filed which according to the petitioner is a fabricated and forged document. According



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to her, when her daughter-in-law has been responsible for the murder of her son, she cannot claim the benefits under Railway Service Pension Rules. The petitioner filed W.P.No.13825 of 2019 and on 27.06.2017 this Court had held that the legal heirship certificate was fabricated and ordered a probe into the same. However, in the meantime, the tribunal had directed payment of terminal benefits to be given to the wife of deceased employee Dr.Anil Lionel.

17. The petitioner claims to be a widow, having raised two sons as a single parent, by serving as a lab technician for nearly three decades. One of her sons, Dr.Anil Lionel was appointed to serve the Southern Railways. Unfortunately, he died in harness on 06.10.2015. The marriage of the petitioner's son Dr.Anil Lionel was not a happy one and the petitioner has even suspected the death of her son to be a natural death. It is the further case of the petitioner that the criminal proceedings were pending against her daughter-in-law and anticipating that her daughter-in-law would claim all terminal benefits of her son, besides also attempting to get compassionate appointment, she objected to even considering payment of terminal benefits to the wife of the deceased, namely her daughter-in-law.



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However, the employer passed an order directing release of terminal benefits to her daughter in law. The same was under challenge before the Tribunal.

18. The grievance of the writ petitioner is that the order of the Writ Court in W.P.No.13825 of 2019 is pending in an appeal namely W.A.No.3824 of 2019 and further her protest petition was pending before the Magistrate Court at Saidapet and in such circumstances, the Tribunal ought not have directed release of the terminal benefits to the petitioner's daughter in law.

19. We have heard Ms. T.Hemalatha for Mr.C.Daniel & Gladys Daniel, counsel for the petitioner and Mrs. V.R.Jasmine Padma for Mr.L.Chandrakumar, counsel for the 4th respondent. We have also perused the records.

20. The counsel for petitioner would mainly focus her arguments revolving around the pending criminal case and therefore contend that the wife of the deceased employee who is suspected of committing a murder of



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her husband cannot become entitled to receive any terminal benefits and more so, when she had relied on a fabricated and forged legal heirship certificate to claim such benefits.

21. Per contra, it is the stand of the department that family pension and other terminal benefits like gratuity are usually paid to the wife, sons, unmarried daughters, widowed daughters in equal shares and only where there are no such surviving members of the family, then it would become payable to the father, mother, brother, unmarried sisters, married daughters etc., placing reliance on Rules 70 and 71 of the Railway Service Pension Rules, 1993. The counsel for the 4th respondent would submit that the wife being the only surviving legal heir of the deceased, Dr. Anil Lionel was entitled to terminal benefits and according to the counsel for the 4th respondent there has been no forgery or fabrication of documents, much less the legal heirship certificate produced before the Tribunal. It is also further contended by the counsel for the 4th respondent that admittedly when the 4th respondent is the wife of the deceased railway employee, there was no necessity for her to indulge in fabrication or forgery of documents. Moreover according to the counsel for the 4th respondent, even the mother



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of the deceased has been shown as a legal heir in the certificate.

22. At the outset, we refer to the fact that the W.A.No. 3824 of 2019 which has been preferred against the order in W.P.No.13825 of 2019 is also being decided by us. In fact, the writ petition was tagged along with the writ appeal and directed to be posted before the Division Bench, as the issues in both the writ appeal as well in the writ petition is the same.

23. Admittedly, the parties are Indian Christians. The Department follows only the laws of succession of the parties when it comes to the issue of disbursement of terminal benefits. Section 33 of the Indian Succession Act, 1925 sets out that the surviving spouse and lineal descendants, namely the children are alone the legal heirs of a deceased Indian Christian. Only in the absence of any of these persons, namely the spouse or lineal descendants, the question of the estate opening to other legal heirs becomes relevant. Here admittedly the 4th respondent is the wife of Dr. Anil Lionel. This fact is not in dispute. Infact, there is a categorical admission of the said fact even in the affidavit in support of the writ petition and it is only the case of the petitioner that since the 4th respondent



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is suspected to have murdered the petitioner's son, she cannot take away the service and terminal benefits payable to the deceased railway employee. It is also the specific case of the department that wherever there is no nomination, the release of terminal benefits would be only to the surviving spouse and children equally. In the present case, the 4th respondent and her husband Dr. Anil Lionel were not blessed with any children and therefore as the wife, the 4th respondent is the only surviving legal heir of the deceased employee. The petitioner, even though is the mother of the deceased railway employee, does not get into the picture at all, to claim terminal benefits. Though the case of the petitioner is that there is a serious allegation against the 4th respondent of having murdered her own husband, the said issue is before the criminal court and admittedly even according to the petitioner she has only filed a protest petition and the criminal investigation was also closed as a case of "suicide".

24. Be that as it may, the status of the 4th respondent being the wife of the deceased railway employee is not disputed and she cannot be denied terminal benefits, merely on the ground that she is facing proceedings in the criminal court. In this regard, we have also perused the order of the



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tribunal. We do not see any reason to interfere with the order of the tribunal rejecting the claim of the writ petitioner on the ground that she is not entitled to receive the terminal benefits payable pursuant to the demise of her son, Dr.Anil Lionel. Moreover, it is the specific stand of the department that the petitioner is not eligible for any settlement dues.

25. The Tribunal has also relied on Rule 71 and 72 of Railway Service Pension Rules and finding that only a crime had been registered and the case having been referred as “suicide”, there was no prima facie material to disentitle the 4th respondent from receiving terminal benefits and proceeded to dismiss the OA filed by the petitioner, seeking to restrain the department from sanctioning the terminal benefits to the 4th respondent, pending disposal of investigation into the death of her son, Late Dr.Anil Lionel.

26. The petitioner, citing pendency of her protest petition has approached the tribunal to stop payment of terminal benefits to her daughter-in-law. We have already seen that in so far as Indian Christians, unlike in Hindu Law, a mother is not a legal heir and the 4th respondent



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namely the wife being the only surviving legal heir is alone entitled to receive the terminal benefits. The Railway Service Pension Rules also do not act a legal impediment for the payment of terminal benefits to the wife of a deceased railway employee. In such circumstances, we do not find any infirmity in the findings of the Tribunal.

27. In fine, as already discussed, the Writ Appeal is disposed of with directions issued in Paragraph Nos.13 and 14 and the writ petition is dismissed. There shall be no order as to costs.

(D.K.K.J) & (P.B.B.J)
19.10.2023

Internet : Yes
Index: Yes/No
Neutral Citation: Yes/No

To
1.The Tahsildar
Parutipattu Village
Tiruvallur District
Poonamallee-600 056

2.The Registrar (Birth &Deaths)
Department of Public Health
Corporation of Chennai
Chennai-600 003

3.The Medical Director
Railway Hospital
Perambur, Chennai-600 023



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4. The Tahsildar

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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(kpr)

Pre-delivery judgment in
W.A.No.3824 of 2019
and W.P.No.11155 of 2020

19.10.2023