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W.P.No.29908 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.29908 of 2023

K.Nalini

...Petitioner

Vs

1. The Transport Commissioner,
Ezhilagam,
Chepauk, Chennai – 600 005.

2. The Joint Transport Commissioner (Administration),
Ezhilagam, Chepauk, Chennai 600 005.

3. Sushmitha

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings in Na.Ka.No.16022/P1/2018 dated 13.09.2023 on the file of the 1st respondent herein, quash the same and consequently direct the 1st respondent herein to sanction and pay the family pension and other terminal benefits to the petitioner on account of death of her husband V.Karthikeyan, who worked as a Driver under the Respondents 1 and 2 herein, within a stipulated period.



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For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.S.V.Yamuna Devi
Special government pleader
for R1 and R2

ORDER

The petitioner is the wife of one Karthikeyan, who was working as a driver in the office of the State Transport Authority, Chennai. He expired while in service on 10.02.2018. Originally, the petitioner's husband had married one Devi alias Devasena and consequently, the marriage was mutually dissolved on 22.03.2005 through orders passed in HMOP No.153 of 2004 on the file of the Principal Subordinate Court, Thanjavur. Out of the wedlock, the 3rd respondent herein was born to them. After the dissolution of the marriage, the petitioner got married to the late employee on 22.05.2005.

2. The 3rd respondent herein has filed a suit in OS No.29 of 2019 before the Sub Court, Mannarkudi, seeking for declaration that she is one of the legal heir of late Karthikeyan, among other reliefs. The said suit is still pending.



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3. When the petitioner had given a representation dated 31.08.2023 to the 1st respondent herein seeking for family pension in her favour, the same came to be rejected by an order dated 13.09.2023 on the ground that the aforesaid suit in O.S.No.29 of 2019 is pending and that after evaluation of the legal heirs of late Karthikeyan, the family pension would be disbursed. Challenging the said order, the present writ petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that since the petitioner herein is a legally wedded wife, she is entitled for the family pension. According to him, the relief sought for in the suit does not include the death cum retirement benefits and therefore, the 3rd respondent is not entitled to any claim.

5. Per contra, the learned Special Government Pleader placed reliance on the counter affidavit and submitted that the petitioner is a legally wedded wife and could be entitled for family pension. According to her, though the name of the 3rd respondent has not been nominated by the petitioner's husband late Karthikeyan in his service record, that



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would not dis-entitle the 3rd respondent to receive the family pension since she is not a married daughter of the late employee. However, since the suit is still pending, the disbursement of a family pension can be made after the final judgement and decree passed in the said suit.

6. The fact that the 3rd respondent, being the daughter of late Karthikeyan and is also not married, is not disputed. The petitioner has also stated in her affidavit confirming them the 3rd respondent was born to the petitioner's husband and his first wife Devi alias Devasena. The marriage of the petitioner with the late employee had also taken place after the dissolution of the 1st marriage and this aspect is also not in dispute.

7. As per G.O Ms.No.782 Finance Department dated 15.10.1991, when a child is born out of the first wedlock of a Government employee and thereafter, he marries for the 2nd time, after a legal dissolution of the first marriage, both the daughter of the first wife, as well as the 2nd wife, would be equally entitled for the family pension.



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8. When the fact that the petitioner is the legally wedded wife and the 3rd respondent is an unmarried daughter born through the wedlock between the petitioner's husband and the Devi @ Devasenna, both of them would be equally entitled for the family pension.

9. In the counter affidavit filed by the respondents, it is stated that the 3rd respondent has not established herself to be the legal heir of the late Karthikeyan through the relevant revenue records. This suit filed by the 3rd respondent for declaration that she is the one of the legal heirs of the late Karthikeyan is also pending. While that being so, it would be appropriate that arrears of 50% of the Family Pension payable, can be kept in an interest fetching bank account, till the disposal of the suit. However, the remaining 50% of the Family pension together, with accrued arrears can be directed to be disbursed in favour of the petitioner herein since she is legally entitled to receive the same.

10. In the light of the above observation and finding, the impugned order in Na.Ka.No.16022/P1/2018 dated 13.09.2023 on the



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file of 1st respondent is hereby set-aside. Consequently, the following directions are issued :-

(a) There shall be a direction to the 1st respondent herein to forthwith pass orders disbursing 50% of the arrears of Family Pension of late Karthikeyan, in favour of the petitioner K.Nalini W/o.Late Karthikeyan and continue to pay 50% of the monthly family pension to her till her eligibility to receive the same.

(b) While passing orders as aforesaid in Clause (a), the remaining 50% of the arrears of family pension including the monthly pension to be payable thereafter, shall be deposited in a Nationalized Savings Bank Account that fetches interest, which the 3rd respondent herein would be entitled to withdraw, subject to the final decision to be taken in O.S.No.29 of 2019, on the file of Sub-Court, Mannargudi, till her eligibility to receive the same.



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(c) Such orders as aforesaid shall be passed atleast within a period of six weeks from the date of receipt of a copy of this order.

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Index: Yes/No

Speaking order/Non-speaking order
rka

To

1. The Transport Commissioner,
Ezhilagam,
Chepauk, Chennai – 600 005.
2. The Joint Transport Commissioner (Administration),
Ezhilagam, Chepauk, Chennai 600 005.



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M.S.RAMESH,J.

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