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W.P.(MD)NO.8976 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 26.04.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8976 of 2023

S.Dhanalakshmi

... Petitioner

Vs.

1. The Office of the Principal Accountant General,
Door No.361, Anna Salai, Chennai – 600 018.
2. The Conservator of Forests,
Thanjavur Region, Thanjavur.
3. The District Forest Officer,
Thiruvarur Division,
Thiruvarur, Thiruvarur District.
4. The District Welfare Officer
for Differently abled,
Thiruvarur.
5. The District Welfare Officer
for Differently abled,
Thanjavur District.
6. The District Collector,
Thanjavur District.

... Respondents



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order bearing No.P-21/3/12125195/ADK dated 29.06.2022 passed by the 1st respondent and quash the same as illegal and consequently directing the 1st respondent to sanction the pensionary benefits to the petitioner's family.

For Petitioner : Mr.P.Muthuvijayapandian

For R-1 : Mrs.S.Mahalakshmi

For R-2 to R-6 : Mr.R.Raghavendran,
Government Advocate.

* * *

ORDER

Heard the learned counsel on either side.

2.The petitioner's husband Shri.V.Sathiyakumar was working as Superintendent in the Forest Department. On 17.03.2018, he met with a very serious road accident. He sustained grievous injuries on his head and all over the body. He has been reduced to a vegetative state. He is now 100% disabled. He is tube-fed. The petitioner is unable to converse. He is however watches television. The petitioner who is present in



person informs me that her husband responds to comedy scenes featuring the noted actor Vadivelu. Art can alleviate misery and this is one such instance.

3.The petitioner is constrained to come to this Court because of the stand taken by the first respondent. The pension proposal in respect of Sathiyakumar has been returned for the reason that the petitioner has not been able to obtain guardianship certificate. Shri Sathiyakumar joined the Forest Department in the year 1998. He was retired on medical grounds on 25.10.2019. However, till date, the terminal benefits have not been disbursed.

4.It is not as if the petitioner has been keeping quiet. She had earlier filed GWOP No.88 of 2020 on the file of the Principal District Judge, Thanjavur seeking to be appointed as her husband's guardian so as to enable her to receive his retirement and other benefits from the department. The learned Principal District Judge vide order dated 12.08.2022 dismissed the OP on the ground that the OP is not maintainable. The learned Judge however had observed that while the Court did not doubt the genuineness of the petitioner's claim and also the condition of her husband, it lacked jurisdiction to grant relief.



5.My attention has been drawn to the order dated **06.01.2016** passed by a learned Judge of this Court (The Hon'ble Mr.Justice M.M.Sundresh as His Lordship then was) in ***W.P.No.28435 of 2015 (Sairabanu Mohammed Rafi V. State of Tamil Nadu, Chennai and two others)***.The husband of the writ petitioner therein was in a comatose condition. Exercising jurisdiction under Article 226 of the Constitution of India, the writ Court itself ordered that the petitioner shall be appointed as guardian of her husband.

6.My attention has also been drawn to the order dated **24.01.2023** made in ***W.P.(MD)No.18042 of 2022 (G.Babu V. The District Collector, Madurai and two others)***. In the said order, I had held that the Local Level Committee under the Central Act 44 of 1999 has the power to appoint guardian even if the person concerned is suffering only from a single disability. Of course, Section 14 of the Central Act 49 of 2016, provides for appointing guardian by the District Court or any designated authority. But then, it provides for appointing only limited guardian. The learned standing counsel for the first respondent states that in the Pension Rules, there is no provision to enable a guardian, let alone a limited guardian, to receive pension of the disabled retired employee.



7.In view of the unimpeachable materials placed before me, particularly in view of the finding made by the learned Principal District Judge, Thanjavur, in GWOP No.88 of 2020, the petitioner is appointed as guardian for her husband Shri.V.Sathiyakumar for all purposes. She is also entitled to receive pension and all the other retirement benefits from the respondent department. The petitioner is permitted to approach the third respondent with a copy of this order. The third respondent shall forward the petitioner's pension proposal along with this order to the first respondent through the second respondent. The entire paperwork and passing of orders shall be completed within a period of four weeks from the date of receipt of a copy of this order. The first respondent as well as the department shall disburse the benefits payable on account of Shri.V.Sathiyakumar to the petitioner within a period of eight weeks thereafter. The petitioner is entitled to receive the monthly pension of Shri.V.Sathiyakumar.

8.The purpose of appointing guardian is to enable him or her to act on behalf of and for the benefit of the ward. The ward may be minor or disabled person. Such a person is entitled to transact on behalf of the ward and that would include the right to receive pension and retirement



benefits. If the guardian cannot do so, it is the employee who will be deprived. That will defeat the very purpose of appointing a guardian.

9. Section 14 (2) of Central Act 49 of 2016 reads that every guardian appointed under any provision of any other law for the time being in force, for a person with disability shall be deemed to function as a limited guardian. It is obvious that Section 14(2) refers to guardians appointed under any other legislation. It cannot include a guardian appointed by writ court under Article 226 of the Constitution of India. The condition of Shri Sathiyakumar cannot be remedied. He cannot recover his original faculties. He cannot act on his own. Therefore, appointment of the petitioner as guardian is not a limited one.

10. This writ petition stands allowed. No costs.

26.04.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU/skm

Note : Issue order copy on 13.06.2023.



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G.R.SWAMINATHAN,J.

PMU/skm

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