



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2023

Pronounced on : 29.09.2023

CORAM

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

WP(MD)No.10648 of 2023

J.Nivetha

... Petitioner

Vs.

1.Branch Officer,
Office of the Principal Accountant
General (A&E), Tamil Nadu,
No.361, Anna Salai,
Chennai – 600 018.

2.The Educational Officer,
Madurai Corporation,
Madurai – 625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings P25/12524220/ADK dated 28.10.2022 passed by the first respondent and quash the same as illegal and consequently direct the respondents to release to the petitioner, the Death cum retirement Gratuity benefits and other terminal benefits of the petitioner's mother S.M.Jacintha Sahaya Selvi on the basis of the petitioner's representation dated 06.04.2023.



WEB COPY

For petitioner : Mr.D.Gurusamy

For Respondents : Mr.P.Gunasekaran, standing counsel
for R1

Mr.S.Vinayak, standing counsel for R2

ORDER

Heard both sides.

2.The marriage between the petitioner's parents took place on 07.02.1993 as per Christian rites and customs. The petitioner was born on 06.01.1994. She was their only child. The relationship between the petitioner's mother and father broke down. Her father filed IDOP No.12 of 1997 before the Family Court, Madurai under Section 22 of the Divorce Act, 1869. Judicial separation was granted on 09.01.1998. They were living apart ever since. There was no re-union. The petitioner's mother passed away on 14.07.2020. There has been no contact between the petitioner and her father for the past twenty three years. The petitioner got married on 10.02.2019. The petitioner's mother joined R.C School, Melur, Madurai District as Secondary Grade Teacher on 15.03.2000. She got relieved on 11.12.2006 and joined Kachirayanpatti Panchayat Union School on the same day. She was transferred to Thathaneri Corporation Primary School, Madurai



Corporation School on 01.06.2009. She passed away while in service. The petitioner had been nominated by her mother in her P.F account as well as in the service register. The petitioner's name alone is figuring as family member. The petitioner applied for death benefits payable on account of her mother's demise. However, the first respondent has taken a stand that details must be furnished regarding the living status of her father. Challenging the stand of the first respondent, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to set aside the impugned communication and allow the writ petition as prayed for.

4.The learned standing counsel appearing for the first respondent submitted that the impugned proceedings deserve to be sustained. He pointed out that the petitioner's mother has not obtained divorce from her husband. IDOP No.12 of 1997 filed by the petitioner's father was only for judicial separation. The court had granted decree of judicial separation only for a period of two years. Therefore, the first respondent was justified in seeking to know the living status of the petitioner's father. He called upon this Court to sustain the impugned communication and dismiss the writ petition.



5.I carefully considered the rival contentions and went through the materials on record. The following facts are beyond dispute:

a) The petitioner's mother remained in judicial separation vide order dated 09.01.1998 in IDOP No.12 of 1997 on the file of the Family Court, Madurai. Though it was only for a period of two years, the separation had continued and there was no reunion between the husband and wife

b) The petitioner alone has been mentioned as nominee in the petitioner's mother's P.F account as well as in the service register.

c) The Tahsildar, Madurai West had issued legal heir certificate in favour of the petitioner alone.

Section 24 of the Divorce Act, 1869 is applicable to the case on hand. It reads as follows :

"24. Separated wife deemed spinster with respect to after-acquired property.—In every case of a judicial separation under this Act, the wife shall from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her. Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead: Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate."



6.The petitioner is entitled to invoke the aforesaid provision. The impugned communication does not take into account Section 24 of the Divorce Act, 1869. The petitioner claims that she has not heard from her father for the past twenty three years. If the petitioner's father was really available or was in touch with the petitioner's mother, he would have certainly lodged claim by now. It is not as if the benefits are sought to be disbursed on the next day of the death of the petitioner's mother. More than three years have elapsed. In these circumstances, it would be safe to apply Section 24 of the Act. The impugned communication is set aside. The first respondent is directed to sanction disbursement of the petition-mentioned benefits to the petitioner. The question of paying interest does not arise. The respondents will ensure that the petitioner gets the benefits within a period of twelve weeks from the date of receipt of copy of this order.

7.This writ petition is allowed. No costs.

29.09.2023

Index : Yes / No
Internet : Yes/ No
skm



WEB COPY



G.R.SWAMINATHAN, J.

skm

WP(MD)No.10648 of 2023

29.09.2023