



W.P.(MD).No.22823 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.22823 of 2021

and

W.M.P(MD)No.19295 of 2021

M.Prabhavathy

... Petitioner

Vs.

1.The Divisional Engineer,
National Highways Department
(Construction and Maintenance Department),
Trichy-20.

2.The Assistant Divisional Engineer,
National Highways Department
(Construction and Maintenance Department),
Trichy-20.

3.The Assistant Engineer (West),
National Highways Department
(Construction and Maintenance Department),
Trichy-20.

4.The Accountant General (Pension),
Accountant General Office,
Chennai.

5.Mariyayi

6.Muthu Prapakaran

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent Nos. 1 to 4 to appoint the petitioner in a suitable post on compassionate grounds and also to disburse all the retirement benefits viz., gratuity, earned leave encashment, unearned leave, provident fund and family pension etc., to her in accordance with the registered will in document No.91 of 2021 dated 04.05.2021 within the period that may be stipulated by this Court by considering the petitioner's representation, dated 25.08.2021.

For Petitioner : Mr.M.Jerin Mathew
For R1 - R3 : Mr.N.Muthu Vijayan
Special Government Pleader
For R4 : Mrs.S.Mahalakshmi
For R5 & R6 : Mr.K.Arun Raj

ORDER

The present writ petition has been filed seeking direction to the respondent nos. 1 to 4 to appoint the petitioner in a suitable post on compassionate grounds and also to disburse all the retirement benefits viz., gratuity, earned leave encashment, unearned leave, provident fund and family pension etc., to her in accordance with the registered will in document No.91 of



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2021 dated 04.05.2021 within the period that may be stipulated by this Court by considering the petitioner's representation, dated 25.08.2021.

2. The petitioner's father one Ezhilarasan was employed as Gang Mazdoor (Salai Paniyalar) in a 3rd respondent office. While in service, he passed away on 14.05.2021. Hence, the petitioner made a representation on 25.08.2021 seeking the retirement benefits of her father and also compassionate appointment due to the sudden demise of her father. However, the same was not considered. Hence, this petition came to be filed.

3. However, at the time of arguments, the learned counsel for the respondents 5 and 6 submitted that the petitioner is married even before 11 years and she is not entitled to claim terminal benefits and compassionate appointment. Because, the 6th respondent is also entitled to seek compassionate appointment.

4. Per contra, the learned counsel for the petitioner submitted that the 5th respondent/mother of the petitioner deserted her father while he was alive and she went away with one Moorthy and residing with him and the 6th respondent brother also married as early as 2013 and he was living separately with his



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family. It is only the petitioner who took care of the petitioner's father while he was ailing of cancer during his final days and hence, the father considering the love and affection rendered by the petitioner towards her father, had executed a Will, dated 04.05.2021 bequeathing all the entire terminal benefits and compassionate appointment in favour of the petitioner and hence, the petitioner is entitled to seek for the same and the petitioner is not claiming the right for family pension. However, she is entitled to 1/3rd of the terminal benefits even de hors the registered Will executed by her father, she is entitled at least for 1/3rd of the terminal benefits and also for compassionate appointment.

5. The learned Counsel for the 4th respondent submitted that already the mother has received all the terminal benefits on 16.11.2021.

6. This Court is inclined to observe that there is a factual dispute between the concerned parties and hence, this Court directs the petitioner to work out her remedies whatever is available for her, before the competent Civil Court. The Civil Court is directed to dispose of the application made by the petitioner in terms of the registered Will, dated 04.05.2021 executed by her father in favour of the petitioner.



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7. With this observations, this Writ Petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

31.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To

- 1.The Divisional Engineer,
National Highways Department
(Construction and Maintenance Department),
Trichy-20.
- 2.The Assistant Divisional Engineer,
National Highways Department
(Construction and Maintenance Department),
Trichy-20.
- 3.The Assistant Engineer (West),
National Highways Department
(Construction and Maintenance Department),
Trichy-20.



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L.VICTORIA GOWRI, J.

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