BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2023

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.(MD).No.23181 of 2019
and
W.M.P.(MD).No.19903 of 2019

U.Ravi .. Petitioner

Vs.

1.The Principal Accountant General,
361, Anna Salai,
Chennai-18.

2.The District Social Welfare Officer,
Ramanathapuram District.

3.The Block Development Officer,
Paramakudi Panchayat Union,
Paramakudi,
Ramanathapuram District.

4.V.Venugopal .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for records in proceeding No.P19/5/11916187/ADK dated 29.08.2019 on the file of the 1st respondent and quash the same, consequently direct the 1st respondent to sanction the Death Cum Retiral Gratuity of the deceased Tmt.Sivakali in favor of the petitioner.

For Petitioner	:	Mr.S.Kumar
For R-1	:	Mr.P.Gunasekaran
For R-2 & R-3	:	Mr.S.Shanmugavel Additional Government Pleader
For R-4	:	Mr.J.Barathan

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The Writ Petition on hand has been instituted questioning the validity of the order dated 29.08.2019 passed by the Accountant General of Tamil Nadu holding that the nomination of the brother of the deceased employee becomes invalid in view of the Rule 48(4) of the Tamil Nadu Pension Rules, 1978.

2. In nutshell, one late Tmt.Sivakali served as Rural Welfare officer in the office of the third respondent. She married the fourth respondent Mr.V.Venugopal. Due to misunderstanding, they were living separately.

But there was no legal divorce. Further, there was no dissolution of marriage through a competent court of law. The deceased employee Sivakali nominated the name of her brother in her service records for the purpose of receiving the pensionary benefits. Relying on the said nomination, the petitioner claimed that he is entitled to get all the service benefits of the deceased employee Sivakali.

3. The service records along with the particulars were sent to the Accountant General of Tamil Nadu for verification and to sanction pension. During scrutiny of the documents, the Accountant General of Tamil Nadu found that the name of the spouse of the deceased employee Sivakali was not nominated and there was no dissolution of marriage between the couple.

4. A Government servant is not entitled to nominate any other person as nominee during the lifetime of his/her spouse. In the present case, late Sivakali has married the fourth respondent Venugopal admittedly and therefore, he became the legal heir for the purpose of receiving the pensionary benefits as per Tamil Nadu Pension Rules, 1978. The Accountant General, relying on Rule 48(4) of the Tamil Nadu Pension

Rules, 1978, held that the nomination of the brother of the deceased employee by her is invalid and cannot be acted upon and consequently, the spouse of the deceased employee Sivakali is entitled to receive the pensionary benefits in accordance with the Pension Rules.

5. Regarding the Death-cum-Retirement Gratuity, Rule 45(5) of the Rules, which reads as under:

> *"(5) For the purposes of this rule and rule 46, 47 and 48 'family' in relation to a Government servant means.*
>
> *(i) Wife or wives, including judicially separated wife or wives in the case of a male Government servant.*
>
> *(ii) husband, including judicially separated husband in the case of a female Government servant.*
>
> *(iii) [sons including step sons, adopted sons and sons born through illegitimate wife.*
>
> *(iv) unmarried daughters including step daughter, adopted daughters and unmarried daughters born through illegitimate wife.*
>
> *(v) widowed daughters including step daughters, adopted daughters and widowed daughter born through illegitimate wife.]*

(vi) father, including adoptive parents in the case of individuals whose personal law permits adoption.

(vii) mother [and step mother], including adoptive parents in the case of individuals whose personal law permits adoption.

(viii) brothers below the age of eighteen years, including step brothers.

(ix) unmarried sisters and widowed sisters, including step sisters.

(x) married daughters, and

(xi) Children of pre-deceased son."

6. Rule 46 states person to whom gratuity is payable. Subsection (1)(b) contemplates that 'if there is no such nomination or if nomination made does not substitute, the gratuity shall be paid in the manner indicated below'.

7. Therefore, two circumstances are contemplated. If there is nomination as per the Rules, then, it is to be honoured. If any nomination which all are not in accordance with the provisions of Rules, then, such nomination ought to be ignored. This being the scope of Rule 46 of the Rules, let us now consider Rule 48 of the Rules. Rule 48 contemplates

nomination. The manner in which the nomination are to be given by the Government employees are prescribed.

8. Cogent reading of the above provisions of the Rules would reveal that even in the case of nomination, the eligibility with reference to the nomination, conditions are to be verified and accordingly, terminal benefits are to be settled.

9. Thus, it is crystal clear that family pension cannot be shared between the nominees, even in the case of nomination in favour of any other person, other than the spouse. Thus, spouse alone can be nominated for the purpose of family pension.

10. In view of the provisions of the Tamil Nadu Pension Rules, 1978 discussed above, the Accountant General of Tamil Nadu has decided the issues in a right perspective and in consonance with the provisions of Pension Rules and there is no infirmity as such. Accordingly, the impugned proceedings issued by the Accountant General of Tamil Nadu stands confirmed. Consequently, the Writ Petition stands dismissed. There shall

be no order as to costs. Consequently, connected connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
17.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

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and
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