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W.A.No.558 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.558 of 2020
and C.M.P.No.7927 of 2020**

1.The Additional Director of Survey and Land
Records, Department of Survey and Settlement
Survey House, Chepauk, Chennai 600 005.

2.The Assistant Director
Survey and Land Records Department
District Survey Unit, Erode-11.

... Appellants

-Vs-

Mrs.M.Dhanam
W/o Late Mr.V.Mani

... Respondent

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in
W.P.No.29465 of 2013 dated 31.10.2017.

For Appellant : Mr.K.V.Sajeev Kumar
Special Government Pleader

For Respondents : Mr.M.Maharaja

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order passed by the writ Court
dated 31.10.2017 in W.P.No.29465 of 2013.



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2. The respondent was the writ petitioner, whose husband was working in the appellant Department and he died while in service. Thereafter, in order to get the terminal as well as pensionary benefits and also to seek for compassionate appointment to the daughter of the writ petitioner / respondent viz., one Meena, the respondent had given a representation on 28.07.2013 to the appellant Department and since the same has not been considered and the terminal and pensionary benefits has not been disbursed, she has filed the writ petition.

3. The learned Judge who heard the writ petition has passed a detailed order dated 31.10.2017, which is impugned herein, wherein, insofar as the plea that has been raised by the respondent / writ petitioner to get compassionate appointment is concerned, the learned Judge negated the same by dismissing the writ petition. However, the learned Judge had given a direction to the appellant Department to take immediate steps for the settlement of the terminal and pensionary benefits to the writ petitioner.

4. Even though the writ petition was dismissed with regard to the plea for compassionate appointment, the respondent / writ petitioner did not prefer any appeal against the order passed by the writ Court. Therefore, it seems that the respondent / writ petitioner was satisfied with the order passed by the writ Court with regard to the direction given to the appellant Department to pay pensionary and terminal benefits.



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5. However, this appeal has been directed by the appellant Department and they have filed this appeal, probably for the reason that the direction was given by the learned Judge in Para 41 of the order of the learned Judge to take immediate steps for settlement of pensionary and terminal benefits to the writ petitioner.

6. Heard the learned Special Government Pleader appearing for the appellant Department and Mr.M.Maharaja, learned counsel appearing for the respondent.

7. We have perused the order passed by the learned Judge. Insofar as the reasoning that has been given by the learned Judge for rejecting the writ petition, particularly with regard to the prayer of compassionate appointment is concerned, we are in agreement with the views taken by the learned Judge.

8. At the same time, insofar as the direction that has been given by the learned Judge with regard to the pensionary and terminal benefits payable to the writ petitioner is concerned, in fact it was in consonance with the stand taken by the appellant Department / respondents before the writ Court, wherein, in the counter affidavit filed by them, the following has been stated:

" 8. As regards to Para No.14, 15 and 16 of the affidavit, it is submitted that the proposals for payment of family pension and other dues were sent to the Accountant General, Tamil Nadu by the 2nd respondent. The



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proposals were examined by the Accountant General and the A.G., returned the proposals in his letter No.5/V/M823-923/FP/01-02/ADK/2728 dated 09.01.2002 stating that as per the District Munsif Court order, Erode No.9.1.2001 arrears of pension and pension is payable to 2nd wife Dhanam and out of the remaining pensionary benefits only 60% is payable to 1st wife and her children and remaining 40% to the 2nd wife and her children and that as per Court order is not in consonance with the Tamil Nadu Pension Rules, necessary Government Order may be obtained for sanction of pensionary benefits based on the court order. The Accountant General had also observed that as per Tamil Nadu Pension Rules, the family pension is payable only to the 1st wife and in case of two wives, family pension is payable in equal to share to 1st wife and eligible children of 2nd wife. In view of this position, necessary proposals have been sent to the Government for the payment of family pension and other dues to the petitioner herein the matter is under examination of the Government."

9. On a perusal of the same, we find that the deceased employee got two wives and that they have already approached the Civil Court and got some orders as to how the terminal and pensionary benefits has to be shared among them. However, subsequently the first wife died on 25.06.2005 and the only surviving is the second wife, who is the writ petitioner / respondent herein.

10. It is also the stand of the appellant department that, if two wives are surviving, the family pension benefits would be shared equally by both the wives. If that being so, since the first wife is no more and the second wife ie., the writ petitioner alone is surviving, there can be no doubt to come to a conclusion that she



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is entitled to get the entire family pension payable to the widow of the deceased employee. However, insofar as the terminal benefits are concerned ie., Death-cum-Retirement Benefits (DCRG) of the deceased employee is concerned, that has to be shared among the legal heirs, where the children of both the wives, whoever is alive are entitled to get equal share and therefore, that kind of disbursement can be made by the appellant Department.

11. Since the very appellant Department itself has taken the stand, which is reflected in Para 8 of the counter affidavit, as has been quoted herein above, we do not find any merit in the present appeal to interfere with the order passed by the learned Judge who has given a direction to take immediate steps to settle the terminal and pensionary benefits to the writ petitioner.

12. Accordingly, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. There shall be a direction to the appellant Department to comply with the order passed by the learned Judge in the impugned order within a period of two months from the date of receipt of a copy of this order.

(R.S.K.,J.) (K.B.,J.)
05.01.2024

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and
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