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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

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THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.14446 of 2016

1.P.Kumar

2.G.Kirthyvarman @ Kirthy ... Petitioners

Vs.

1.The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Social Welfare and Nutritious,
Meal Programme Department,
Fort St.George, Chennai – 9.

2.The Commissioner/Director,
Integrated Child Development Services,
Pammal Nallathambi Street,
Taramani, Chennai 113.

3.The District Project Officer,
Integrated Child Development Services,
District Nutritious Scheme Office,
Kancheepuram District.

4.The child Development Scheme Officer,
Kancheepuram (Rural),
Kanchipuram District. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarifed Mandamus, calling for the records in Na.Ka.No.929/2008, dated 31.12.2014 on the file of the fourth respondent and

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quash the same, consequently direct the second respondent to pay the death cum terminal benefits of the deceased Mrs.Pankajammal to the petitioners.

For Petitioner : Mr.T.Thiyagarjan

For Respondents : Mr.R.Kumaravel, AGP

ORDER

This writ petition has been filed challenging the proceedings, dated 31.12.2021 of the fourth respondent and consequently, directing the second respondent to pay the death cum terminal benefits of the deceased employee, Mrs.Pankajammal to the petitioners.

2. The deceased Pankajammal was employed as Assistant in Anganvadi Centre at Orikkai. She was married to one Mr.Arumugam and they had no issues. The first petitoner is the brother of the deceased Pankajammal. When the second petitioner was young, his parents died and hence he was brought up by the deceased Pankajammal and her husband. The deceased Pankajammal (herein after referred to deceased employee) was staying with the second petitioner till her death on 19.07.2008. The husband of the deceased employee predeceased her. The deceased employee while in service nominated the petitioners as nominees in her service register, as she had no Class I legal heir. According to the petitioners, as class II legal heirs of the deceased employee,

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they were entitled to receive the Family benefit fund, general provident fund and death cum retirement benefits of the deceased employee. When the petitioners approached the fourth respondent for disbursal of the terminal benefits of the deceased employee, the fourth respondent vide order dated 19.05.2009, directed the petitioners to produce the legal heirship certificate. Thereafter, the petitioners approached the concerned Tahsildar, who informed that he had no authority to issue class II legal heirship certificate. The petitioners therefore approached the Sub Court, Kancheepuram for succession certificate by filing S.C.O.P.No.105 of 2009. On 08.04.2010, the Sub Court, Kancheepuram issued the succession certificate to the petitioners entitling them to receive the death cum retirement benefits and other benefits to the tune of Rs.1,70,000/- Thereafter, the petitioner sent a representation, dated 07.07.2010, to the fourth respondent along with the copy of the succession certificate issued by the Sub Court, Kancheepuram. The fourth respondent rejected the petitioner's represenation vide proceedings, dated 27.07.2011, on the ground that the petitioners could not be considered as the legal heris of the deceased employee. The petitioners thereafter sent a legal notice on 03.11.2011, and other notice in the year 2014 to the fourth respondent and the fourth respondent vide impugned order, dated 31.12.2014, rejected the claim of the petitioners. Aggrieved by the same, the petitioner filed the above writ petition for the

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aforesaid relief.

3. The respondents filed a detailed counter. The respondents admitted that the deceased employee nominated the petitioners in the nomination form in Form No.II, but as the petitioners were not class I legal heir of the deceased employee, as per the Rules, they were not entitled to the benefits. The respondents relied on Rule 9 of the Government Servants Family Benefit Fund Rules and G.O.Ms.No.690 Finance (Pension) Department, dated 24.10.1981 in support of their case. The respondents therefore submitted that as the impugned order was passed in consonance with Rule 9 of the Government Servants Family Benefit Fund Rules and G.O.Ms.No.690 Finance (Pension) Department, dated 24.10.1981, the same did not call for interference.

4. The learned counsel for the petitioner submitted that at the instance of the fourth respondent, the petitioner had approached the Sub Court, Kancheepuram for succession certificate. The Sub Court, Kancheepuram vide order, dated 08.04.2010, in S.C.O.P.No.105 of 2009, issued the succession certificate to the petitioners. Based on the succession certificate, the petitioners approached the fourth respondent for death cum terminal benefits of the deceased employee but the fourth respondent wihtou any justifiable reasons

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rejected the same. The learned counsel for the petitioner submitted that the petitioners were entitled to the terminal benefits of the deceased employee not only as the class II legal heirs of the deceased employee, but also because they were nominated as nominees in Form No.II by the deceased employee.

5. Per contra, the learned Additional Government Pleader for the respondents submitted that the petitioners were directed to approach the concerned Tahsildar to obtain a legal heirship certificate but they failed to obtain the same from the Tahsildar and therefore, the petitioners' claim was not considered. The learned Additional Government Pleader though conceded that the succession certificate obtained from competent Court entitled the petitioners to receive the terminal benefits of the deceased employee, but as the Rules did not permit the grant of terminal benefits to the petitioners, the same was rightly rejected vide impugned order.

6. I carefully considered the submissions of the learned counsel on either side and perused the available materials placed on record.

7. The undisputed facts are that the deceased employee was employed as Assistant in Anganvandi Centre, Orikkai, and that during her life time, she

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nominated the petitioners as nominees in her service register as she had no class I legal heir. While so, the employee died on 19.07.2008, and after her demise, the petitioners approached the fourth respondent for terminal benefits. Initially, the fourth respondent directed the petitioners to produce the legal heirship certificate from the Tahsildar. But when the petitioners approached the Thasildar, he informed them that he was not competent to issue class II legal heirship certificate. Thereafter, on the advise of the fourth respondent, the petitioners approached the Sub Court, Kancheepuram for succession certificate in S.C.O.P.No.105 of 2009 and the same was issued vide order, dated 08.04.2010. As the nominees of the deceased employee, based on the succession certificate issued by the Sub Court, Kancheepuram in their favour, the petitioners approached the fourth respondent for terminal benefits of the deceased employee. The fourth respondent vide impugned order rejected the petitioner's request stating that they were not entitled to the terminal benefits, as under the Rules, the petitioners were not eligible for the pensionary benefits of the deceased employee. Aggrieved by the rejection order of the fourth respondent, the petitioners approached this Court.

8. The respondents relied on Rule 9 of the Government Servants Family Benefit Fund Rules and G.O.Ms.No.690 Finance (Pension) Department, dated

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24.10.1981. The relevant extract of the said Government Order which incorporates Rule 9 of the Government Servants Family Benefit Fund Rules, reads as follows:

> *"ORDER:- In Rule 9 of the rules issued in the G.O. cited, it has been ordered in case a Government Servant dies while in service a lump sum under Family Benefit Fund will be paid to the Nominee, who shall be his wife/her husband/ minor child/ children/ mother/ father (in that order) or in the absence of the Nominee, to the legal heir of the deceased employee"*

A reading of the Rule shows that the family benefit funds of the deceased employee is payable to the nominee/nominees stated therein and in the absence of the nominee/nominees, to the legal heirs of the deceased employee. It is pertinent to note here that Rule specifically provides that in the absence of the nominee/nominees mentioned therein, the family benefit fund was payable to the legal heirs of the deceased employee. The term used in the Rule is legal heir of the deceased employee and not class II legal heir. Therefore the respondents cannot restrict the claim to class I legal heir only, excluding class II legal heir. When no such restriction is placed by the Rule which is wide enough to cover even class II legal heir, ergo, the reliance placed by the respondents on the said Rule is untenable.

9. Admittedly, the deceased employee did not leave class I legal heir. The

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deceased employee left behind the petitioners (ie) her brother and an adopted son (though no adoption deed is filed). The decased employee herself nominated them in Form No.II in the Service Register. Therefore, assuming that there may be some objection to the claim of the second petitioner as an adopted son, as far as the first petitioner is concerned, there can be no objection as he is undoubtedly a class II legal heir. Therefore, even as per the Rule, as class II legal heir of the deceased employee, the first petitioner would be entitled to family benefit fund of the deceased employee. That apart, as the Thasildar was not empowered to issue the legal heirship certificate for class II legal heir, the petitioners were advised to approach the Sub Court, Kancheepuram for succession certificate and the same was also obtained by the petitioners in S.C.O.P.No.105 of 2009, dated 08.04.201. When the petitioners produced the succession certificate, the respondents in all fairness ought to have settled the terminal benefits to them. But the respondents without any vaild reasons and a misconception of Rule 9 of the Government Servants Family Benefit Fund Rules, rejected the claim. Though the respondents relied on G.O.Ms.No.690 Finance (Pension) Department, dated 24.10.1981, the same has not been produced and even otherwise as Rule 9 of the Government Servants Family Benefit Fund Rules is very clear the said Government Order cannot override the Rule.

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10. Hence, I am of the view that the impugned order cannot be sustained and hence the same is set aside. The respondents are directed to settle the death cum terminal benefits of the deceased employee to the petitioners. In light of the fact that the petitioners are agitating the issue right from the year 2009, I am inclined to award interest at 6% on the said sum of Rs.1,70,000/-.

11. Accordingly, the writ petition stands allowed. The respondents are directed to settle the death cum terminal benefits of the deceased employee to the petitioners with interest of 6% per annum from today i.e.25.10.2024 till the date of payment within a period of 8 weeks, from the date of receipt of a copy of this order, failing which, the respondents shall pay interest at 12% per anum on the said sum of Rs.1,70,000/-. No costs.

25.10.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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N.MALA, J.

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