



WEB COPY



W.P.No.7882 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2023

PRONOUNCED ON : 24 . 04.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.7882 of 2015
and M.P.No.1 of 2015

K. Anbarsu

...Petitioner

versus

1. The Chairman
TANGEDCO,
Anna Salai, Chennai-2.

2. The Superintending Engineer,
Chennai Electricity Distribution Circle/South
TANGEDCO,
K.K. Nagar, Chennai-600 078.

3. The Deputy Chief Internal Audit Officer,
Board Office Audit Branch,
NPKKR Maaligai, 1st Floor,
No.144, Anna Salai,
Chennai-600 002.

... Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 2nd and 3rd respondents not to insist upon the Guardianship Certificate



W.P.No.7882 of 2015

and consequently sanction Family Pension to petitioner (Mentally Retarded) till the petitioner life, with arrears from January 2008.

For Petitioner : Mr.R.Kumaravel

For Respondents : Mr.David Sundar Singh
Standing Counsel

ORDER

This Writ Petition is filed seeking for Writ of Mandamus directing the 2nd and 3rd respondents not to insist upon Guardianship Certificate and consequently sanction family pension to petitioner (Mentally Retarded) till the petitioner life, with arrears from January 2008.

2. This Writ Petition is filed on behalf of the petitioner by his next friend K. Malarvannan stating that he is not having any personal interest or benefit in the prayer sought for.

3. The brief facts as per the affidavit enclosed to this Writ Petition are as under:

The petitioner/Mr.K.Anbarasu is mentally retarded person right from his birth. The petitioner has no parents. The petitioner K.Anbarasu



W.P.No.7882 of 2015

WEB COPY

is residing with his brother, next friend by name K. Malarvanan.

4. The petitioner father by name Late.J. Kannappan was employee of the first respondent. He retired from service 31.07.1993 and has received pension till June 2007. Petitioner's father died on 06.06.2007 and his mother also died on 24.06.2007. The petitioner is affected with moderate level of mental retardation right from his childhood.

5. The second respondent/ the Superintending Engineer, Chennai Electricity Distribution Circle/South has examined the petitioner and realized that petitioner cannot live without the support of another person and requires constant medication. Second respondent has sanctioned tentative family pension vide proceedings in Lr.No.002975/ADM.II/A1/F.Pen/2014, dated 10.04.2014 with precondition that authorization of the third respondent is required.

6. The third respondent is the authorised officer to sanction family pension. He has informed through the second respondent that the petitioner shall produce the Guardianship certificate from competent



W.P.No.7882 of 2015

authority under the Guardianship and Wards Act 1890 as per the letter dated 23.07.2014. The petitioner's brother who is working as Packer in Co-operative Department and has no financial means to take care of the petitioner by spending Rs.8,000/- per month. Arrears of pension to the tune of Rs.25,000/- is deposited to petitioner's bank account on 17.11.2007. Subsequently, family pension was not received by the petitioner as the certificate as required by the third respondent had not been produced. The petitioner has personally represented the respondents requesting to release the family pension without insisting for guardianship certificate under the Guardianship and Wards Act 1890. Since the respondents have been compelling the petitioner to produce the certificate, this Writ Petition is filed seeking for a direction to the respondents not to insist for the guardianship certificate for releasing the family pension.

7. Second respondent/the Superintending Engineer, Chennai Electricity Distribution Circle, South/TANGEDCO, has filed counter on behalf of the respondents and contended that the petitioner cannot claim to be guardian without a guardianship certificate as per the following Tamil Nadu Pension Rules 1978 and the learned counsel relied on the



W.P.No.7882 of 2015

WEB COPY

following provisions of the said Rules:

“49{6}{iv} & {v} Tamil Nadu Pension Rules 1978:

[iv] “Before allowing the family pension for life to any such son or daughter the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child.

49{6}{ix} Tamil Nadu Pension Rules 1978

“In the case of mentally retarded son or daughter, the family pension shall be payable to a person nominated by the Government servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Officer by such Government servant or pensioner during his life time, to the person nominated by the spouse of such government servant of family pensioner, as the case may be, later on.”

[v] “ The person receiving the family pension as guardian of such son or daughter shall produce



W.P.No.7882 of 2015

every three years a certificate from a medical officer not below the rank of a Civil Surgeon. Hence the contention is viable to be rejected.

8. Learned counsel for the respondent has further contended that as per rule 49[6]{iv} the nature of handicap has to be issued by a Senior Civil Surgeon of the Rajiv Gandhi Govt, General Hospital Chennai-600003, and that as per rule 49[6]{ix}, the deceased employee had nominat his spouse, K.Rajakumari, who in turn did not nominated any person and died on 24.06.2007. Hence, in the event of no further nomination, the respondent board cannot sanction the family pension to any legal heir unless he possess the Guardianship Certificate.

9. Heard both sides and perused the records.

10. The petitioner has filed copy of the certificate issued by the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai dated 23.12.2013, to show that on observing of the behaviour of the petitioner, it was found the petitioner requires supervision for self help skill and finally stated that the petitioner has been suffering from mental



W.P.No.7882 of 2015

retardation at moderate level.

WEB COPY

11. The petitioner is contesting the proceedings dated 23.07.2014 in respect of direction given to the petitioner to produce guardianship certificate obtained from competent Court under the Guardianship and Wards Act 1890. In respect of guardianship certificate is concerned, the orders of the third respondent dated 23.07.2014 are erroneous on the face of it, as guardianship certificate cannot be given under the Guardianship and Wards Act 1890 in respect of the persons who attained the majority. Under the said act, the guardianship certificate can be given only to the minors. Admittedly, the petitioner is not a minor and he has attained the age of majority. Therefore, the certificate as demanded by the third respondent under the Guardianship and Wards Act 1890 cannot be given. On this ground itself the part of the proceedings dated 23.07.2014 can be set aside.

12. Then the question comes what is the way out in the circumstances where petitioner cannot handle anything personally on account of his moderate mental disorder and that somebody should assist



W.P.No.7882 of 2015

him to attend his works. The provisions of the Rights of Persons with Disability Act 2016 also will not help the petitioner.

13. Section 2(s) of the Rights of Persons with Disability Act 2016 runs as under:

“2(s) “person with disability” means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;”

14. Section 2(t) of the Rights of the Persons with Disability Act 1916 runs as under:

2(t) “person with disability having high support needs” means a person with benchmark disability certified under clause (a) of sub-section (2) of section 58 who needs high support;”

15. On combined reading of above Sections 2(s) and 2(t) the



W.P.No.7882 of 2015

Rights of the Persons with Disability Act 1916, though there is a definition of the person with disability, there is no provision for giving guardianship certificate under the Rights of the Persons with Disability Act 1916.

16. National Trust for welfare of persons with autism, cerebral, Mental retardation and multiple disabilities Act 1999 (herein after called National Trust Act) is one solution for the persons like petitioner.

17. Section 2(g) of National Trust Act defines mental retardation which runs as under:

“2 (g) "Mental Retardation" means a condition of arrested or incomplete development of mind of person which is specially characterised by sub-normality of intelligence;”

18. The petitioner falls under the definition of person with mental retardation under the National Trust Act. The preamble of this Act go to show that it is enacted to constitute a body at national level for welfare of the persons with autism, cerebral palsy, mental retardation and multiple disabilities act, 1999(National Trust Act, 1999) and matters connected



W.P.No.7882 of 2015

WEB COPY

therewith. Section 3 of the act provides for constitution of a national trust for welfare of autism, cerebral palsy, mental retardation and multiple disabilities. Section 13 of the Act provides for constitution of local committees under which the District Collector under the said provision local level committee shall consist of District Collector, representative of a registered organisation and a person with disability as defined under clause t of Section 2 of persons with disabilities Act, 1995. The locals committee will meet once in three months or any other intervals as per the requirement. Section 14 of the National Trust Act reads as under:

“14. Appointment for guardianship .-(1) A parent of a person with disability or his relative may make an application to the Local Level Committee for appointment of any person of his choice to act as a guardian of the persons with disability.

“(2)Any registered organisation may make an application in the prescribed form to the Local Level Committee for appointment of a guardian for a person with disability:Provided that no such application shall be entertained by the



W.P.No.7882 of 2015

Local Level Committee, unless the consent of the guardian of the disabled person is also obtained. (3) While considering the application for appointment of a guardian, the Local Level Committee shall consider- (a) whether the person with disability needs a guardian; (b) the purposes for which the guardianship is required for person with disability. (4) The Local Level Committee shall receive, process and decide applications received under sub-sections (1) and (2), in such manner as may be determined by regulations: Provided that while making recommendation for the appointment of a guardian, the Local Level Committee shall provide for the obligations which are to be fulfilled by the guardian. (5) The Local Level Committee shall send to the Board the particulars of the applications received by it and orders passed thereon at such interval as may be determined by regulations.”

19. The duties of guardians so appointed are also enumerated under Section 15 and 16 of the National Trust Act and Section 17 of the



W.P.No.7882 of 2015

WEB COPY

said Act also provides for removal of guardian, in case, if he is not meeting the requirements mandated as per the Act. Chapter 8 of the National Trust Act deals with grants by the central government maintenance of funds, budget, accounting etc.

20. Basing on the provisions of the National Trust Act, it is clear that the Local committees headed by the District Collector is empowered to appoint a suitable person as a guardian. There is no bar for the petitioner's brother to be appointed as a guardian for the petitioner.

21. The central government has framed rules under Section 34 of the National Trust Act and rule 16(2) speaks about the procedure under which the application shall be made to the local level committee in the prescribed form for appointment of a guardian. Rule 16(2) provides for the confirmation of appointment of a guardian. As per Section 35 (1) and (2) of the National Trust Act., the board with prior approval of the central government has framed certain regulations called the board of trust regulations 2001 and it underwent amendments in the year 2006. As per the regulation 2011, 2012 and 2013, the details of persons who may



W.P.No.7882 of 2015

apply for guardianship is mentioned. They also speak about the procedure in case of death of guardian and they provide of procedure for applying for guardianship and subsequent steps to be followed.

22. On the perusal of the provisions referred above, it is clear that the petitioner who has been suffering from mental retardation can be assisted by his brother as next friend under the provisions of National Trust Act, provided the procedure under the rules regulations framed under the National Trust Act have to be followed.

23. This Court has confronted with similar situations in Original Petition No.62 of 2013 which was disposed of by this Court on 16.04.2013 wherein also similarly when the request was made to appoint a guardian under the Guardianship and Wards Act 1890 and the same was declined and suitable directions were given to the concerned District Collector to consider the request of the petitioner under the National Trust Act. The relevant portion of the said order reads as under:

“17. The Original Petition filed under Guardians and Wards Act, 1890 is not maintainable. However, the



WEB COPY



W.P.No.7882 of 2015

Original Petition is disposed of giving liberty to the petitioner to approach the District Collector, Chennai under Section 14 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, in Form A in terms of Rule 16(1) of The National for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Rules, 2000 for appointment of guardian of the person and property of Miss. G.Prabhavathy, alleged mentally retarded person. On receipt of the application, as assured by the learned Advocate General, the District Collector, Chennai, the Chairman of Local Level Committee will consider the same and take up the claim in accordance with the provisions of the Act and the Rules immediately.”

24. In view of the above, considering the circumstances discussed above, though the petitioner is not entitled for the grant of relief as sought for on account of the fact that guardianship certificate cannot be issued for majors under the Guardianship and Wards Act 1890, the petitioner is entitled for the relief of appointing the petitioner brother as guardian under the National Trust Act.



W.P.No.7882 of 2015

WEB COPY

25. In the result, this Writ Petition is disposed of with a liberty to the petitioner to make an application before the Chairman of Local Committee under the National Trust Act, 1999 for appointing the brother of the petitioner as guardian for petitioner enabling them to draw the pension which was already sanctioned in favour of the petitioner. On filing of such application by the petitioner, the District Collector who is Chairman of Local Committee under the National Trust Act, 1999 is directed to take up the application and dispose of the same as per provisions of National Trust Act, 1999 as quickly as possible not later than four weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

24.04.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
jai



WEB COPY



W.P.No.7882 of 2015

Dr.D.NAGARJUN, J.
jai

To

1. The Chairman
TANGEDCO, Anna Salai, Chennai-2.
2. The Superintending Engineer,
Chennai Electricity Distribution Circle/South
TANGEDCO, K.K. Nagar, Chennai-600 078.
3. The Deputy Chief Internal Audit Officer,
Board Office Audit Branch,
NPKKR Maaligai, 1st Floor,
No.144, Anna Salai,
Chennai-600 002.

Pre-Delivery Order

W.P.No.7882 of 2015

24.04.2024