



W.P.No.12544 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.12544 of 2024

Rajendiran

... Petitioner

Vs.

1. Government of Puducherry,
By its Secretary Judicial Department,
Puducherry.

2. Government of Puducherry,
By its Director,
Directorate of Account And Treasuries,
Puducherry.

3. The Principal District Munsif,
Judicial Department, Puducherry.

4. The Registrar General,
Madras High Court,
Chennai-104.

... Respondents



W.P.No.12544 of 2024

WEB COPY

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, calling for the records of the 3rd respondent in No. 20/ JUD/ HO/ PDM/ 2024 dated 12.01.2024 and quash the same and consequently direct the respondents to disburse death gratuity, leave encashment and other retirement benefits of deceased A.Segar to the petitioner.

For Petitioner : Mr.J.Srinivasa Mohan for
M/s.TVJ Associates

For Respondents : Mr.J.Kumaran,
Additional Government Pleader
(Puducherry) (for R1 & R2));

: Ms.N.K.Kanthimathi (for R3 & R4).

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The proceedings of the learned Principle District Munsif Puducherry dated 12.01.2024 rejecting the request of the writ petitioner to receive death gratuity and leave encashment of the deceased employee Mr.A.Segar is under challenge in the present writ petition.



W.P.No.12544 of 2024

2. The writ petitioner is the brother and Mr.A.Segar who served as a Multi Tasking Staff as Copyist/Amin in Munsif Court Puducherry. The employee Mr.A.Segar died on 29.11.2022. Admittedly the employee Mr.A.Segar, was a divorcee and originally he had nominated his father in his service records and after the death of his father, the employee nominated the writ petitioner, who is the brother of the employee. The nomination was accepted and the name of the petitioner was incorporated in the service records.

3. After the demise of the employee, the petitioner submitted an application for disbursal of his service benefits. He had already received the General Provident Fund (G.P.F.) amount on 16.02.2023. Thereafter, he requested authorities to disburse the Gratuity and Earned Leave encashment as admissible to the deceased employee. The Judicial Department recommended the same. However, the file was returned by the Directorate of Accounts and Treasuries Puducherry on the ground that the writ petitioner, who is the brother of the deceased employee, is not eligible to receive the Gratuity and Earned Leave benefits in view of the Rule 46(2) of CCS (Pension) Rules, 2021.



W.P.No.12544 of 2024

4. In tune with the objections raised by the Directorate of Accounts and Treasuries Puducherry, the learned Principle District Munsif, Puducherry passed the impugned order. Thus, the present writ petition came to be instituted.

5. Mr.J.Srinivasa Mohan, appearing on behalf of the petitioner, would contend that there is no prohibition to nominate the brother to receive the retirement benefits of an employee. In the absence of any such prohibition under the Pension Rules and after accepting the nomination and making entries in the service records, now the respondents cannot turn around and refuse to settle the benefits to the nominee. The definition of “Family”, as defined under explanation to Rule 45(6), enables to nominate the brother and there is no reason to deny disbursal of the Gratuity and Earned Leave benefits. Thus, the decision of the respondent is perverse and not in accordance with the Pension Rules. The rule, relied on by the respondent are wrongly understood and the writ relief is to be considered.

6. The learned counsel appearing on behalf of the 3rd and 4th respondents, Tmt.N.K.Kanthimathi, would oppose by stating that the Rule 46(2) of the CCS (Pension) Rules, has direct application on the facts of the



W.P.No.12544 of 2024

case on hand. After accepting the nomination in favour of the writ petitioner and after the demise of the employee, the Judicial Department came to know that the deceased employee has a son namely Rajavel. When the son of the deceased employee is alive, the employee cannot nominate his brother which is falling beyond the definition as contemplated under Rule 46(2) of the CCS (Pension) Rules, 2021. Thus, the claim of the writ petitioner was rejected and there is no infirmity.

7. The issue to be considered in the present writ petition is whether the nomination made by the deceased brother of the writ petitioner is valid and in consonance with the provisions of the pension rules or not.

8. The facts are not disputed between the parties. The employee, initially nominated the name of his father and after the death of his father, he has nominated his brother/ writ petitioner herein. The nomination submitted by the deceased employee was accepted and the name of the writ petitioner was entered in the service records of the deceased employee. After the death of the employee, the Judicial Department came to know that he has a son. When the son is very much alive, the nomination made is found to be invalid and thus, the impugned order came to be passed.



W.P.No.12544 of 2024

WEB COPY

9. Rule 45 of the CCS (Pension) Rules provide Retirement Gratuity and Death Gratuity. Explanation to Rule 45(6) reads as under:

“Explanation.- For the purposes of this rule and rules 46, 47, 48 and 49, '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 stepsons and adopted sons;*
- (iv) unmarried daughters including stepdaughters and adopted daughters;*
- (v) widowed or divorced daughters including stepdaughters and adopted daughters;*
- (vi) father including adoptive parents in the case of individuals whose personal law permits adoption;*
- (vii) mother including adoptive parents in the case of individuals whose personal law permits adoption;*
- (viii) brothers including stepbrothers who are suffering from any disorder or disability of mind including the mentally retarded or physically crippled or disabled without any limit of age and brothers, including stepbrothers, below the age of eighteen years, in other cases;*



W.P.No.12544 of 2024

WEB COPY

(ix) *unmarried sisters, widowed sisters and divorced sisters*

including stepsisters;

(x) *married daughters; and*

(xi) *children of a pre-deceased son."*

10. The above provision would indicate that the definition has been provided in tune with the legal status of the family members. The Spouses are indicated in Serial No.(i) and (ii). Son and daughters are included in Serial No.(iii) and (iv), Serial No. (v) provides widowed or divorced daughters. Serial No. (vi) indicates father and Serial No.(vii) indicates mother. Pertinently with reference to the factual matrix on hand, sub-clause (viii) to Rule 46(6) explanation is relevant and the same unambiguously stipulates that ***"brothers including stepbrothers who are suffering from any disorder or disability of mind including the mentally retarded or physically crippled or disabled without any limit of age and brothers, including stepbrothers, below the age of eighteen years, in other cases."***

11. The above definition of the family would indicate that the brothers, below the age of 18 years, are eligible to be nominated. However, the brothers, who have crossed the age of 18 years and are hail and healthy, are not eligible to be nominated by the employee. But the brothers including step



W.P.No.12544 of 2024

brothers, who are suffering from any disorder or disability of mind, including mentally retarded or physical crippled or disabled, without any limit of age alone are eligible to be nominated by the employee. Only above category of brothers are falling within the definition of "Family". In other words, the brothers who have not attained the age of 18 years and the brothers and step brothers who are suffering from any disorder are included within the definition of "Family". But the brothers who have crossed the age of 18 years and are hail and healthy became ineligible to be nominated by the employee to receive the retirement benefits under the Pension Rules.

12. The above provision can be well understood in view of the conditions stipulated within the provision itself. The eligibility of the brothers alone are stipulated. As far as the sisters are concerned, Clause (ix) would indicate "*unmarried sisters, widowed sisters and divorced sisters including stepsisters*". No other special qualification has been added to the sisters to be nominated by the employees.

13. Therefore, it is amply clear from the above definition of "Family" that the brothers, who all are suffering from any disorder or disability of mind or the brothers below the age of 18 years alone are eligible to be nominated.



W.P.No.12544 of 2024

In the present case, admittedly the writ petitioner is aged about 62 years and at the time of nomination, he had crossed the age of 18 years and further he is hail and healthy.

14. Since the writ petitioner is not falling within the definition of “Family” as contemplated under explanation to Rule 45(6) of the CCS Pension Rules, the nomination made in favour of the writ petitioner itself is invalid and erroneously recorded in the service book of the deceased employee. Thus, the nomination ought not to have been accepted by the competent authorities.

15. In view of the above legal position as per the CCS Pension Rules, the nomination made in favour of the writ petitioner became null and void and violative of the provisions of the Pension Rules. In respect of earned leave benefits also, the petitioner is not falling within the definition of “Family”.

16. Rule 39(C) of the Central Civil Services Leave Rules, reads as under:

“39-C. Payment of cash equivalent of leave salary in case of death, etc., of Government servant

In the event of the death of a Government servant while



W.P.No.12544 of 2024

WEB COPY

in service or after retirement or after final cessation of duties but before actual receipt of its cash equivalent of leave salary payable under Rules 39,39-A and 39-B, such amount shall be payable-

(i) to the widow, and if there are more widows than one, to the eldest surviving widow if the deceased was a male Government servant, or to the husband, if the deceased was a female Government servant;

EXPLANATION.- The expression -eldest surviving widow? shall be construed with reference to the seniority according to the date of the marriage of the surviving widows and not with reference to their ages;

(ii) failing a widow or husband, as the case may be, to the eldest surviving son; or an adopted son;

(iii) failing (i) and (ii) above, to the eldest surviving unmarried daughter;

(iv) failing (i) to (iii) above, to the eldest surviving widowed daughter;

(v) failing (i) to (iv) above, to the father;

(vi) failing (i) to (v) above, to the mother;

(vii) failing (i) to (vi) above, to the eldest surviving married daughter;



WEB COPY



W.P.No.12544 of 2024

(DOPT Notification No. 11012/I/2009-Estt. (L), dated 01.12.2009)

(viii) failing (i) to (vii) above, to the eldest surviving brother below the age of eighteen years;

(ix) failing (i) to (viii) above, to the eldest surviving unmarried sister;

(x) failing (i) to (ix) above, to the eldest surviving widowed sister;

(xi) failing (i) to (x) above, to the eldest child of the eldest predeceased son.”

17. As per the above Leave Rules, the writ petitioner is not falling within its definition. Therefore, earned leave benefits also cannot be settled in favour of the writ petitioner. It is for the respondents to recover the excess amount, if any paid to the petitioner by following due process. As far as the son of the deceased employee is concerned, he is not a party to the present writ petition and the Judicial Department came to know about the existence of the son of the deceased employee only after the death of the employee, and therefore, they are not aware of his whereabouts. Thus, the son of the deceased employee is at liberty to work out his remedy in the manner known to law.



W.P.No.12544 of 2024

WEB COPY

18. With the above observations, the writ petition stands dismissed. No costs.

(S.M.S.J.,)

(C.K.J.,)

19.06.2024

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

1. Government of Puducherry,
By its Secretary Judicial Department,
Puducherry.

2. Government of Puducherry,
By its Director,
Directorate of Account And Treasuries,
Puducherry.

3. The Principal District Munsif,
Judicial Department, Puducherry.

4. The Registrar General,
Madras High Court,
Chennai-104.



WEB COPY



W.P.No.12544 of 2024

S.M.SUBRAMANIAM, J.

and

C.KUMARAPPAN, J.

(sha)

W.P.No.12544 of 2024

19.06.2024