



W.P.No.16521 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.16521 of 2024

Senthamarai

..

Petitioner

Vs.

1. Murthy

2. The Pay Drawing Officer
RTO (Regional Transport Office)
at Anna Nagar North West
Chennai – 102.

..

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus, directing the second respondent to consider and dispose of the petitioner's representation dated 07.06.2024 and in the interest of justice.

For the Petitioner : Ms.E.Angayarkanni

For the Respondents : Mr.C.Jayaprakash
for R2

ORDER

This writ petition is filed to direct the second respondent to consider and dispose of the petitioner's representation dated



W.P.No.16521 of 2024

07.06.2024 in the interest of justice.

WEB COPY

2. A perusal of the said representation, it can be seen that the petitioner is the wife of the first respondent. The first respondent is working as a Junior Assistant in the second respondent office. There is arrears of Rs.23,52,800/- in respect of the maintenance to be paid as on date. Even though a portion of the salary is now being paid, the first respondent is now retiring from service with effect from 30.06.2024. It is represented that already the petitioner has approached to attach the permissible retirement benefits by filing CrI.M.P.SR.No.179 of 2024 in DVC.No.183 of 2017, but before numbering the same, if the entire amount is disbursed by 30.06.2024, she will be put to grave prejudice and therefore, she has made a representation to withhold the payment of the sum due to the petitioner.

3. The learned counsel appearing on behalf of the petitioner would rely upon the judgment of this Court in the case of



W.P.No.16521 of 2024

P.Amudha vs. Gunasekaran¹ to point out the relevant paragraphs, which says that the wife, who is in distress in respect of the Court order before the appropriate Civil Court, should not be heartlessly left unprotected and the Court should come to the aid of such applications. The relevant portion of the said order reads thus:

"the issue for consideration is whether the maintenance allowance granted to the wife can be attached in view of Bar under Section 60(1)(g) of Civil Procedure Code and Section 11 of Pension Act, 1871.4 of 11 Crl.R.C.No.1501 of 2022

8. On consideration of the judgment of Bombay High Court, which is relied on by the learned counsel for the petitioner, in paragraph 4 of the said judgment, the Hon'ble Judge observed that the maintenance allowance granted to the wife cannot be considered as a debt and she is not a creditor. Hence, exemption under Section 11 cannot be granted to the husband.

Therefore, such interpretation will not advance justice and adversely, affect the measure of social justice to protect women. 13. The maintenance allowance granted to wife is a measure of social

1 2022 SCC OnLine Mad 6967



WEB COPY



W.P.No.16521 of 2024

justice, specifically enacted to protect and inhibit neglect of the women. Further, it is aimed to prevent vagrancy and destitution in the light of the mischief to be avoided, the justice to be advanced.

14. Lawful claim due to a woman in distress should not be denied heartlessly and lawlessly. 15. The conscience of social justice, the cornerstone of our constitution will be protected. Therefore, I hold that the maintenance 9 of 11 CrI.R.C.No.1501 of 2022 allowance granted to wife cannot be considered as a debt and she is not a creditor. Hence, exemption under Section 11 of the Pension Act 1871 as well as the exemption provided in Section 60(1)(g) of Civil Procedure Code, cannot be granted to husband. Hence, the order passed by the learned Judicial Magistrate is unsustainable and it is liable to be set aside. 16. Accordingly, this Criminal Revision is allowed."

Therefore, the learned counsel for the petitioner would pray that this Court should interfere.

4. *Mr.C.Jayaprakash*, learned counsel accepts notice on behalf of the second respondent. In view of the nature of the order



W.P.No.16521 of 2024

passed, the writ petition is disposed of at the admission stage itself without issuing notice to the first respondent.

5. I have considered the submissions made on behalf of the petitioner and have perused the material records of the case.

6. It is a matrimonial dispute and it is true that the petitioner has got the order of the concerned Court under the Domestic Violence Act, 2005, for payment of maintenance. According to her, a sum of Rs.23,52,800/- is due which includes the future maintenance arrears also. It is stated that already there is an attachment order as far as a portion of the salary is concerned, however, so far, only meager amount has been realised and only a sum of Rs.70,000/- has been recovered. If without recovery of the balance sum, if the petitioner takes home all the retirement benefits, thereafter, nothing would be left for the petitioner to claim her arrears.

7. As far as the service benefits are concerned, it is the



W.P.No.16521 of 2024

property of the first respondent as long as he is alive. It is true that if he defies the Court order, the Court should normally aid the person in whose favour the order of the Court exists. But, however, there is no express Service Rule and when there are no powers for the official respondent to withhold the amount, this Court cannot direct the official respondent to consider the representation. Unless a semblance of right is shown, this Court would not be right in directing the second respondent to dispose of the representation. The only legal and correct course open to the writ petitioner is to expedite the said execution petition filed by her for attachment of the retirement benefits.

8. It is true that Section 60 of the Code of Civil Procedure, 1908, lays down an embargo on attaching certain amounts such as gratuity. Also, it can be seen even in the judgment relied upon by the learned counsel for the petitioner in **P.Amudha** (*supra*) that not all the amounts paid to retirement benefits are prohibited under the Code of Civil Procedure, 1908. Certainly, there are certain amounts such as arrears, leave encashment, which are specifically



W.P.No.16521 of 2024

mentioned under Section 60, which are attachable by the Civil Court.

9. In view thereof, it is for the petitioner to pursue the said application filed by her before the Additional Mahila Court, Egmore, Chennai. However, considering the very short span of time, so as to enable the petitioner to move the Court, this Court prohibits the second respondent from disbursing the amount only until 10.07.2024. It is for the petitioner to obtain such prohibitory orders before 10.07.2024 and if there are no such orders produced before the second respondent, the second respondent will be free to disburse the amount to the first respondent in accordance with law.

10. The writ petition, accordingly, stands disposed of. There shall be no order as to costs. Consequently, W.M.P.No.18113 of 2024 is closed.

25.06.2024

Index : Yes/No



W.P.No.16521 of 2024

WEB COPY

Note: Issue order copy on 26.06.2024

drm

To:

1. The Pay Drawing Officer
RTO (Regional Transport Office)
at Anna Nagar North West
Chennai – 102.



WEB COPY



W.P.No.16521 of 2024

D.BHARATHA CHAKRAVARTHY,J.

(drm)

W.P.No.16521 of 2024

25.06.2024