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W.P.No.24838 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	7/12/2023
Delivered on	9/7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.24838 of 2014
a n d
M.P.No.1 of 2014

Mullaiyammal ... Petitioner

Vs

1. The Director
Salim Ali Centre for Ornithology and
Natural History
Annaikatty Post
Coimbatore 641 108.
2. The Junior Administrative Officer
Salim Ali Centre for Ornithology and
Natural History
Annaikatty Post
Coimbatore 641 108.
3. The Finance Officer
Salim Ali Centre for Ornithology and
Natural History
Annaikatty Post
Coimbatore 641 108.

4. Subha ... Respondents



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2. The facts in brief as per the affidavit are as under:-

The petitioner, who is aged 80 years, lost her husband in the year 2010. She has two daughters and one son. Her son by name Dr.S.Bhupathy, was working as Principal Scientist and Head Division of Conservation Ecology, at respondent No.1. On 28/4/2014, when he was indulged in Research work at Agasthyamalai Hills, State of Kerala, he slipped from the hills, received grievous injuries and died.

3. The petitioner's son used to take care of monthly expenses of petitioner towards food, medical expenses, etc. On 16/4/2014, the petitioner submitted a representation to the first respondent requesting not to disburse the pensionary and other death benefits of her son, to the wife of her deceased son/fourth respondent alone and sought for 1/4th share along with others.

4. The fourth respondent, who is the wife of the deceased has stated to have abandoned the petitioner. The petitioner has issued Lawyers



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Notice on 23/6/2014 to the first respondent centre with a request to disburse the share in the death-cum-pensionary benefits of her son. On 3/7/2014, first respondent centre has issued reply by way of impugned order informing the petitioner that already 100% monetary benefits of the deceased were disbursed in favour of fourth respondent as per the nomination made by him in the service records. The first respondent, without considering the objections of the petitioner dated 16/4/2014 has disbursed all the service benefits of the deceased to the fourth respondent. If there is a dispute in respect of claiming of death-cum-pensionary benefits, third respondent should have directed the claimants to get the succession certificate as per Hindu Succession Act. The first class legal heir is having right to get equal share in the service-cum-death benefits of the deceased employee. But the petitioner was not given any share and the benefits were disbursed as per the nomination without informing the petitioner. After the death of her son, nobody is taking care of her, thereby sought for the relief as prayed for.

5. Third respondent has filed the counter affidavit on behalf of the respondents 1 to 3 stating that Salim Ali Centre for Ornithology and



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Natural History is a Centre of Excellence under Ministry of Environment, Forests & Climate Change, Government of India. The petitioner's son was appointed in Salim Ali Centre for Ornithology and Natural History, Anaikatty Post, Coimbatore on 29/8/1994. He expired in an accident, while undertaking the research works at Agasthyamali hills.

6. It is further stated in the affidavit that as per Rule 53 of the Central Civil Services Rules, 1972, every employee should make a nomination in the prescribed form conferring on one or more persons the right to receive the Death/Retirement Gratuity amount in the event of his death in service or after retirement before receiving retirement gratuity. As per the said Rule, if the Government employee has a family, nomination shall not be in favour of any person or persons other than the members of his family.

7. It is mentioned in the counter affidavit that the son of the petitioner has nominated his wife the fourth respondent on 28/7/2009 to receive the death benefits. His wife by name Ms.B.Subha first in the order of hierarchy, as per Rule 50 (vi) of the said Rules. Gratuity payable under Rule 50 shall be paid to the person or persons on whom the right to



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receive the gratuity is conferred by means of a nomination under Rule 53.

It is mentioned further in the counter affidavit that the petitioner who is the mother of the deceased stand in seventh position in the list of hierarchy, as per Rule 50 of the Rules. As per Rule 52 of the said Rules, when a Government servant dies, while in service, without any nomination, death gratuity and retirement gratuity shall be paid basing on the succession certificate granted by the Court.

8. It is further mentioned in the counter affidavit that the wife of the deceased employee has approached the first respondent on 26/5/2024 to release the death benefits of her husband to meet the expenses of her two children. Since the deceased employee has chosen his wife as nominee and did not chose the petitioner as one of the nominee, benefits were paid to his wife. Since the deceased employee has nominated his wife, first respondent did not ask the fourth respondent to produce the succession certificate, which is required when there is no nomination made by the employee.

9. Heard Mr.R.Singaravelan, learned Senior Advocate for the petitioner, Mr.V.Vijayakumar, learned counsel for the respondents 1 to 3



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and Mr.B.Gopalakrishnan, learned counsel for the fourth respondent and perused the materials available on record.

10. It is submitted by the learned Senior Advocate for the petitioner that the petitioner is a first class legal heir to her deceased son and thereby, as per Hindu Succession Act, she should get share in the pensionary benefits, thereby even though the nomination has been made by his deceased son, in favour of fourth respondent, still the petitioner is entitled for the share as per Law.

11. This writ petition is filed aggrieved by the reply given by the first respondent stating that 100% monetary benefits of the deceased were disbursed as per the nomination made by him. That means, as on the date of filing of the writ petition, all the monetary benefits of petitioner's son were disbursed to the fourth respondent. Therefore, at this stage, direction as sought for by the petitioner, directing to disburse the death benefits of petitioner's son in favour of the petitioner, cannot be ordered and that relief sought for has become infructuous.



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12. As per Rule 53, the son of the petitioner S.Bhupathy has nominated his wife Mrs.B.Subha, the fourth respondent on 28/7/2009, one of the family members who also stand first in the order of hierarchy, to receive the amount that may stand to his credit in respect of death gratuity and retirement gratuity. The respondents 1 to 3, following the said Rules, granted death benefits to the fourth respondent. Nowhere in the Rules, it is mentioned that in case, if mother of the deceased is surviving along with widow and other family members, the death benefits have to be disbursed to all of them. Therefore, the contention of the petitioner that since she is also one of the Class I heirs she also should get her share in the death benefits cannot be accepted.

13. The other submission made by the petitioner is that since she has submitted a representation to the first respondent on 16/4/2014 and sent a Lawyers Notice on 23/6/2014, first respondent should not have disbursed the benefits to the fourth respondent and should have demanded them to get succession certificate.

14. It is true that the petitioner has submitted a representation on 16/4/2014, however, basing on the nomination given by the deceased



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employee, benefits were disbursed to his wife. In case, if there is no nomination given by the employee, if there are more than one claim and if there is a issue as to who has to receive the benefits of the deceased employee, then as rightly submitted by the learned counsel for the petitioner succession certificate can be demanded. However, since there is a nomination made by the Government employee, there is no dispute as to who shall receive the retirement benefits and hence the respondents 1 to 3 did not ask the fourth respondent to get the succession certificate.

15. As per the Central Civil Services (Pension) Rules, 2021, the Scheme for providing pension on the death of an employee is clearly formulated. Section 45 of the said Rules speak about the retirement gratuity and death gratuity. The explanation to sub-Section 45 explains as to the definition of a family, which runs as under:-

“45 (1).

(2).....

(3).

(4).

(5).



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(6).

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



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(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;

(ix). Unmarried sisters, widowed sisters and divorced sisters including stepsisters;

(x). married daughters and

(xi). Children of a pre-deceased son

16. As per the above definition, mother who is the petitioner herein comes under (vii) in the hierarchy whereas wife is shown as No.(i) in the hierarchy.

17. Rule 50 gives a detail as to how the family pension has to be given to the family members. Sub-Section 6 of Section 50 is relevant to



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the facts of this case, which runs as under:-

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“The family pension shall be payable to the members of the family of the deceased Government servant or pensioner in the following order, namely:-

(i). subject to provisions of sub-rule (8), widow or widower, (including a post-retiral spouse and judicially separated wife or husband),

(ii). Subject to provisions of sub-rule (9), children (including adopted children, step children and children born after retirement of the pensioner)

(iii). Subject to provisions of sub-rule (10), dependent parents (including adoptive parents) of the deceased Government servant or pensioner,

(iv). Subject to provisions of sub-rule (11), dependent siblings (i.e. Brother or sister) of the deceased Government servant or pensioner,



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suffering from a mental or physical disability.

Explanation- For the purposes of this rule 'widow' and 'widower' shall mean a spouse legally wedded to the deceased Government servant or the pensioner.”

18. Sub-Rule 10 (a), (b) and (c) of Rule 50 of the said Rules, reads as under:-

“(10) (a) Where a deceased Government servant or pensioner is not survived by a widow or widower or a child eligible for family pension or if the widow or widower and all children ceased to be eligible for family pension, the family pension at the rate specified in sub-rule (2) shall be payable to the parents for life, if the parents were dependent on the Government servant or pensioner immediately before his or her death.



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(b). The family pension, wherever admissible to parents will be payable to the mother of the deceased Government servant or pensioner failing which to the father of the deceased Government servant or pensioner.

Explanation – Parents shall be deemed to be dependent on the Government servant if their combined income is less than the minimum family pension under sub-rule (1) of this rule and the dearness relief admissible thereon.

(c). It shall be the duty of parents to furnish a certificate to the Pension Disbursing Authority once in a year that they have not started earning, their livelihood and the family pension payable to parents shall be stopped if they start earning their livelihood.”

19. On a conjoint reading of both the Rules mentioned above, it is clear that when the Government servant is not survived by a widow or a family, pension shall be payable to the parents. In the instant case, the



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petitioner who is the mother of the deceased is seeking for the pension and other death benefits of her son along with fourth respondent but as per sub-Rule 10 of Rule 46, it is clear that where the widow or the child are not available, then, the pension shall go to the mother and as per Sub-Rule 6 and 8 of Rule 46, family pension shall go the widow. In the instant case, since widow of the deceased is alive, the petitioner who is the mother of the deceased cannot be granted pension and other death benefits of her son. Therefore, as per the Central Civil Services (Pension) Rules, 2021, the petitioner is not entitled for the pension either independently or along with fourth respondent.

20. One of the contentions of the learned counsel for the petitioner is that the petitioner being the mother of the deceased is a Class I heir, as per Section 8 of the Hindu Succession Act and thereby, she has got a share in the family pension and other death benefits. This contention of the learned counsel for the petitioner is not convincing. The petitioner admittedly is Class I heir, thereby entitled for succession of the properties belonging to the deceased, if any, under the Hindu Succession Act. However, the pension and other benefits cannot be treated as the properties which can be divided as per the Hindu Succession Act.



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Pension to be given to the family members as defined in the Central Services Pension Rules, 21 is different than that of the share of the properties of the deceased son.

21. The Hon'ble Supreme Court of India in the case decided between ***NITU Vs. SHEELA RANI AND ORS in Civil Appeal No.9823 of 2016 (Arising out of SLP (C) No.21187 of 2015)***, reported in MANU/SC/1108/2016, wherein at para Nos.18 and 19, it has held as follows:-

“18. It is pertinent to note that in this case the pension is to be given under the provisions of the Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it. Similar issue had arisen before this Court in the case of ***Violet Issaac (Smt.) v. Union of India*** (1991) 1 SCC 725 and after considering the relevant provisions, this Court came to the conclusion that family pension does not form part of the estate of the deceased and therefore, even an



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employee has no right to dispose of the same in his Will by giving a direction that someone other than the one who is entitled to it, should be given the same. In the instant case, as per the provisions of the Scheme, the appellant widow is the only family member who is entitled to the pension and therefore, the respondent mother would not get any right in the pension. Of course, it cannot be disputed that if there are other assets left by late Shri Yash Pal, the respondent mother would get 50% share, if late Shri Yash Pal had not prepared any Will and it appears that late Shri Yash Pal had died intestate and no Will had been executed by him.

19. For the aforestated reasons, in our opinion, the High Court committed an error by giving a direction that the respondent mother should also get 50% share in the pension. In view of the aforestated legal position, the entire pension would be payable to the appellant widow.”



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22. In the case referred above also similar to that of the case on hand, mother has claimed the pension on the death of her son along with widow. But the Hon'ble Apex Court has held that mother is not entitled for pension when the widow is available.

23. In view of the discussion made above, petitioner has failed to make out any valid case for a direction to be given as sought for. This writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No

Dr.D.NAGARJUN,J
mvs.



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Pre-delivery order made in
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