



W.P.No.21786 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.03.2024

Coram:

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.21786 of 2017

and

W.M.P.Nos.22800 of 2017 & 37865 of 2018

N.Krishnammal

.. Petitioner

/versus/

1.Government of Tamil Nadu,
Employment and Training Department,
Fort St.George,
Chennai 600 009.

2.The Director,
The Directorate of Employment and
Training Department,
Guindy, Chennai 600 032.

3.The Principal,
Government Polytechnic (Women),
Salem 636 008.

4.K.Surya

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in Memo



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No.14323/Retd 2/2016, dated 24.08.2016 on the file of the second respondent herein and the consequential proceedings in letter in Na.Ka.No.1000/A/2013, dated 12.09.2016 on the file of the third respondent and to quash the same and to directing the second and third respondents to grant all the terminal benefits together with employment to the petitioner, on compassionate grounds, in the third respondent Directorate, relating to the service of the deceased E.Krishnamurthy, in the third respondent Polytechnic within a time frame as may be fixed by this Honourable Court.

For Petitioner	:M/s Santhana Ishwarya for M/s P.Raja
For R1 to R3	:Mr.Alagu Goutham, GA
For R4	:Mr.Tanya Jecinatha for Mr.Puhazh Gandhi

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents 1 to 3 and the learned counsel appearing for the fourth respondent.

2. The case of the petitioner is that the petitioner's husband one Mr.E.Krishnamurthy, who worked in the 3rd respondent Polytechnic as



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Assistant Training Officer, died in harness of 22.05.2013 leaving behind the petitioner, his 8 years old son, mother-in-law of the petitioner and his daughter (i.e) 4th respondent herein, who was born to the deceased husband of the petitioner through his 1st wife Tmt.R.Meena. Later, the petitioner's mother-in-law also died on 22.01.2014 and the present petitioner, her son and daughter of the 1st wife of the deceased employee are the legal representatives. The deceased husband of the petitioner filed a petition for divorce against Tmt.R. Meena (i.e.) the mother of the 4th respondent herein in O.P.No.9 of 1997 on the file of the Principal Sub Judge, Nagercoil and obtained a decree of divorce on 18.06.2003 itself and later, he married the petitioner and blessed with one son by name K.Govinath. The petitioner has studied up to X standard. She is not employed anywhere and he has no source of income either to feed herself and her minor son or to take care of her minor son.

3. The name of the petitioner and her son have been mentioned as nominees in the service records of the deceased husband. The petitioner



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was called for by the 3rd respondent vide, letter dated 25.11.2013 to submit application for family pension, general provident funds and other monitory benefits pertaining to the deceased husband of the petitioner. She applied for terminal and other monitory benefits and also for appointment on compassionate grounds to the 3rd respondent Directorate, as her son is a minor, aged only 8 years. Though the petitioner has submitted her application on 02.09.2014 and 16.12.2014, there is no action taken by the 3rd respondent. The petitioner once again sent the application on 06.06.2015. The petitioner has received a letter dated 23.9.2015 from the 3rd respondent stating that as there is a rival claim from the mother of the 4th respondent with respect to the terminal benefits of the deceased husband and there is no proper application for employment on compassionate ground either from the petitioner or from the mother of the 4th respondent and communication was sent to the 2nd respondent, dated 12.09.2014 for further action and directions. Subsequently the 2nd respondent has sent a memo in proceedings No.14323/Retd 2/ 106, dated 24.08.2016 to the 3rd respondent stating



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that as there is an interim order of maintenance has been granted in favour of the 4th respondent and her mother, there would be a legal problem in apportioning and disbursing the benefits to the legal representatives of the deceased husband and also advised that both the parties have to approach any Court to obtain appropriate orders with respect to this issue. Against the said proceedings, the petitioner constrained to file this writ petition.

4. The learned counsel appearing for the petitioner submitted that the memo issued by the 2nd respondent, dated 24.08.2016 is highly vitiated and incorrect and it is liable to be set aside, as he miserably failed in understanding the concept of payment of terminal benefits and the employment on compassionate ground to the legal representative of the deceased employee. The learned counsel further submitted that though the petitioner's name is mentioned as nominee, in all the service records of the deceased employee, refusal to payment of terminal benefits and employment to the petitioner is totally untenable. He also contends that as per the provisions contained in the Pension Rules, all the legal



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representatives of the deceased employee are eligible for retired terminal benefits and also that, any divorced wife is not entitled to get any share in the terminal benefits of the deceased employee and the 2nd respondent failed to consider this aspect and the second and third respondents have passed orders rejecting the valid claim of the petitioner only on the ground that there was an interim order of maintenance dated 13.03.2003.

5. The learned counsel would submit that the second and third respondents failed to consider that the decree and judgment dated 18.6.2003 passed by the Principal Sub Judge, Nagercoil, dissolving the marriage between the deceased employee and the mother of the 4th respondent. The Learned counsel further submits that once a final order passed in O.P No 9 of 1997, all the petitions filed in the said proceedings would also be automatically deemed to be closed and the interim order passed during pendency of the Original Petition is not in existence. As such, the order dated 13.3.2003 passed for interim maintenance would not be given effect to.



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6. He further submitted that all the rival claims for the terminal benefits and for compassionate appointment was made only by the first wife of the deceased (i.e.) the mother of the fourth respondent, who has no legal right or entity to make such claim. The direction contained in the impugned order to approach Civil Court to get their rights adjudicated is unwarranted, especially when there is already a decree of divorce granted by the competent Court of Law. Finally, the learned counsel submitted that the fourth respondent has right and entitlement with respect to her share in the terminal benefits of the deceased employee alone and with respect to the employment on compassionate grounds, the petitioner alone is entitled to the same and the second and third respondents have failed to consider that aspect and sought to allow the writ petition.

7. On behalf of the respondent 1 to 3, a counter affidavit has been filed. It is averred in the said counter affidavit that as per the legal heirs certificate issued by the Tahsildar, Thovalai Taluk, Kanyakumari District, the following persons are legal heirs of the deceased employee



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Thiru.E.Krishnamurthy, that is:

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- (1)Tmt.Krishnammal, 2nd wife - widow
- (2)Thiru.Govinath, 2nd wife son -unmarried
- (3)Selvi Surya, 1st wife daughter -unmarried
- (4)Tmt.Bagavathy ammal-mother-widow(expired on 22.01.2014)

8. It is stated in the counter affidavit that as per the Government Order, the employment of compassionate ground can be given to any one of the legal heir, if the family is in indigent circumstances. In this case both petitioner and the 4th respondent have applied for compassionate ground appointment, but they have not produced integrated Certificate issued by the Tahsildar for appointment on compassionate grounds. In the letter dated 02.12.2015, Tmt.R.Meena (i.e.) the mother of the fourth respondent has informed that the petitioner has not given no objection letter and therefore, she could not be able to get integrated certificate from the Tahsildar. Under these circumstances, the third respondent requested the second respondent for clarification to proceed further in this matter.



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9. Accordingly, the second respondent office examined the papers submitted by the third respondent and found certain legal issues to be sorted out before taking necessary action towards the settlement of terminal benefits and for appointment on compassionate ground. In view of the above, the second respondent could not take decision and the third respondent advised the petitioner to get a proper order from the competent authority for settlement of the terminal benefits to the actual legal heirs.

10. The fourth respondent did not choose to file any counter affidavit.

11. When the case was posted for hearings on 09.01.2024, 12.02.2024, 22.02.2024, 04.03.2024 and 13.03.2024, the learned counsel on either side submitted that both the parties are going to settle the matter amicably out of the Court and to report the same, they sought time. As the parties could not settle the issue amicably, this Court intends to advise both the parties for amicable settlement and accordingly, they



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were directed to appear before this Court on 20.03.2024. The petitioner and the fourth respondent present before this Court on 20.03.2024. After hearing the petitioner and the fourth respondent, personally, this Court came to understand that there is no possibility for amicable settlement between them. Under these circumstances, this Court has no other option except to pass judicial order.

12. Having heard the submissions of the learned respective counsels and upon careful perusal of materials available on record, it is an admitted fact that the deceased employee Mr.E. Krishnamurthy, who worked as Assistant Training Officer in the third respondent Polytechnic died in harness on 22.05.2013. The petitioner is the second wife. He got married the petitioner after obtaining the decree of divorce dated 18.06.2003 in O.P.No.9 of 1997 on the file of the Principal Sub Court, Nagarcoil. The fourth respondent is the daughter of the first wife. The deceased employee died leaving behind the petitioner, his 8 years old son, his mother and the fourth respondent, who was the daughter of deceased employee through the first wife as legal heirs. The mother of



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the deceased employee also died on 22.01.2014. As such, there are only three legal heirs at present (i.e) petitioner, her minor son, and 4th respondent. Admittedly, the petitioner's name is mentioned as nominee in all the service records of the deceased employee. It is also an admitted fact that as per the relevant Rules, all the legal heirs of the deceased employee are eligible for terminal benefits and divorced wife is not entitled to get share in the terminal benefits of the deceased employee.

13. In the present case, as the deceased employee (i.e.) E.Krishnamurthy obtained a decree of divorce in O.P No.9 of 1997 on the file of the Principal Sub Judge, Nagarcoil and thereby, Tmt.R.Meena, who was the 1st wife of the deceased Krishnamurthy (i.e) the mother of the fourth respondent has no right to get a share in the terminal benefits. As rightly pointed out by the learned counsel appearing for the petitioner, the order of interim maintenance dated 13.03.2003, which was passed during the pendency of O.P.No. 9 of 1997 would not come in the way to settle the terminal benefits by the respondents, in view of the fact that the said interim order would merge with the final order. If there is any



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direction to pay the maintenance in the final orders passed in O.P.No. 9 of 1997, then only the first wife of the deceased employee will get the terminal benefits. Admittedly, in the present case, it appears that there is no such direction. As such, the stand of the second respondent that the order of interim maintenance dated 13.03.2003 would come in the way of the legal issue to settle the claim of the petitioner, is illegal and irrational. As such, the terminal benefits of the deceased employee has to be apportioned between the petitioner, minor son and daughter (i.e)the fourth respondent herein.

14. With respect to the compassionate appointment, in the considered opinion of this Court, the second and third respondents have to consider the indigent condition of the family members of the deceased employee, who died in harness. Even when there is a rival claims, it is the responsibility of the second and third respondents to examine the indigent condition of the petitioner and the fourth respondent and they have to take appropriate decision to provide compassionate appointment to the needy person. If one party to the litigation is in a better position to



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lead their life and the second party is living in indigent condition , the Competent Authority has to decide to whom that benefit of compassionate appointment to be provided. Without doing so, leaving the issue openly is not useful to any party and it will defeat the aim and object of the compassionate appointment.

15. Considering the facts and circumstances of the case and for the aforesaid reasons, this Court intends to pass the following order in the interest of justice.

(i)The second and third respondents shall settle the terminal benefits of the deceased employee E.Krishnamurthy in favour of the petitioner basing on the nomination particulars mentioned in the service records of the deceased employee

(ii)If there is any mention about the nomination of the fourth respondent also, the terminal benefits amount shall be apportioned between the petitioner, her minor son and the fourth respondent.



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(iii)The second and third respondents shall conduct appropriate enquiry to ascertain the indigent condition of the petitioner and the 4th respondent and provide appointment to the needy person.

16. With the above directions, this Writ Petition is disposed of.

17. Consequently, connected Miscellaneous Petitions are closed.

18. There shall be no order as to costs.

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Index:yes/no

Speaking order/non speaking order

Neutral citation:yes/no

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BATTU DEVANAND, J.

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