



W.A.No.3085 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.3085 of 2024 and

CMP No.23376 of 2024

1. Anju. R.

2. Akash. R

3. Arjun.R

... Appellants

Vs.

1. R.Sheela

2. The Managing Director, Tamil Nadu Housing Board,
CMDA Building, E & C Market Road,
Koyambedu, Chennai 600 107.

3. The Executive Engineer/Administrative Officer,
Tamil Nadu Housing Board,
Besant Nagar Division, No.63,
Dr.Muthu Lakshmi Road,
Venkata Rathinam Nagar, Adyar,
Chennai 600 020.

4. Maragatham

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 20.08.2024 passed in W.P.No.8545 of 2023 and consequently, dismiss the said writ petition.

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For the Appellants : Mr.K.Indupriya
For the Respondents : Mr.D.Veerasekara,
Standing Counsel
for first and second respondent

JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

Assailing the order passed by the learned Single Judge in W.P.No.8545 of 2023, dated 20.08.2024, directing the Tamil Nadu Housing Board to disburse the terminal benefits of the deceased Rajasekar to the first respondent herein, instant writ appeal has been filed by the appellants, who are the daughter and sons of the fourth respondent herein.

2. The first respondent herein, namely Mrs.R.Sheela has filed the above writ petition to quash the impugned order passed by the Tamil Nadu Housing Board dated 14.02.2019, asking her to get the succession certificate from the competent court, in order to disburse the terminal benefits of the deceased Rajasekar. Since the first respondent as well as the



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fourth respondent herein had claimed the terminal benefits, in the capacity as wife of the deceased Rajasekar, the Board had passed the said impugned order. The first respondent/ writ petitioner has claimed in the writ petition that, she is the legally wedded wife of the deceased Rajasekar and in the Service Register also, the deceased had nominated her as nominee to receive the death cum terminal benefits in case of his death. Hence, it is contended by the first respondent that she is entitled to get the said benefits, without producing such succession certificate, as sought for by the Board, because the competent authority had already issued the legal heirship certificate in favour of her and her only daughter Priya. Learned Single Judge, after hearing both side and detailed discussion, has passed the order, as stated supra; and also directed the fourth respondent herein to workout her remedy independently before the civil court in accordance with law. The said order is impugned herein.

3. According to the appellants, the fourth respondent, namely Maragatham and the deceased Rajasekar had been living together as husband and wife for the past 30 years and out of their wedlock, the



appellants born to them. It is the further case of the appellants that in the community certificates and the Transfer Certificates issued in favour of them, name of Rajasekar has been shown as their father. It is their contention that legal heirship certificate also issued by the competent authority, showing the name of the fourth respondent and the appellants herein as legal heirs of the deceased Rajasekar. However, without considering their case in proper perspective, learned Single Judge has passed the impugned order and hence, the same is liable to be set aside.

4. It is not the disputed fact that the deceased Rajasekar had nominated the first respondent herein in the capacity as wife in the service register to receive his terminal benefits. At this juncture, it is worthwhile to refer that one of us (DKKJ), while discussing the matter in W.P.No.2934 of 2010 dated 16.10.2021, discussed the issue of disbursement of terminal benefits to the nominee and held as follows.

14. The Hon'ble Supreme Court in ***Sarabati Devi's*** case (cited supra) [***Sarabati Devi v. Another v Usha Devi [CDJ 1983 SC 144]***] held that *nomination only indicated the hand which is authorized to receive the amount, on the payment of which the insurer get a valid discharge of its liability under the policy and the amount, however, can*



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*be claimed by the heirs of the assured in accordance with the Law of Succession governing them. The decision of this Court in **Vidyaa Hari Iyer's** case cited supra [**Vidyaa Hari Iyer v. M/s.Sundaram Finance Limited [CDJ 2020 MHC 4925]**] emphasis the dictum that *the nominee has to be treated as a trustee and he is entitled to receive the amount only and he has to pay the amount to the persons who are entitled under Law of Succession.**

5. In yet another case in W.P.No.19132 of 2017 dated 04.04.2024, a Division Bench of this Court, [in which, one of us (DKKJ) is member] has passed the following order:-

5. Admittedly, the petitioner is the second wife of the deceased P.D.Janakaratchagan and her marriage was solemnized with him, while his first wife namely J.Selvakumari was alive. Further, after two days from the date of death of above P.D.Janakaratchagan, the first wife was also died. According to the petitioner, the marriage invitation card, family card, election card and nomination forms produced before this court are proved that the petitioner is the legally wedded wife of the deceased government servant and now the surviving legal heirs of the above deceased are, only the petitioner and her two children and hence, she is entitled for pension. Though it is stated by the petitioner that the above second marriage was solemnized only with the consent of the first wife, the same was took place during the subsistence of the first marriage. Therefore, now the legal point to be decided is that “ Whether the marriage of the petitioner is valid under law or the petitioner is legally



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wedded wife of the deceased employee?”

6. At this juncture, it is useful to extract the **Explanation** appended to Rule 49(7) of the Tamil Nadu Pension Rules, 1978, [the above explanation was added as per G.O.Ms.No.906, Finance (Pension) Department, dated 06.12.1995], which runs as follows.

49. Family Pension

49(7)(c) Explanation:- For the purpose of this rule, the second wife shall be eligible for the benefits of family pension only if the second marriage-

- (i) solemnised as per the customary law prevailed among the community before the date of commencement of the Hindu Marriage Act, 1955 (Central Act 25 of 1955); or
- (ii) Solemnised under the Mohammadan Law, in which bigamy is permissible.

It is an admitted fact that the other terminal benefits were granted to the petitioner. Therefore, the issue is only with regard to the entitlement of the petitioner to the family pension upon the death of the deceased employee. Even though the petitioner and her two children are the only surviving legal heirs of the deceased government employee, in the light of the above explanation, to get the family pension, the petitioner has to prove that she is the legally wedded wife of the deceased. In such circumstances, we are of the view that this Court sitting under Article 226 of the Constitution of India, cannot go into issue of declaration as to whether the marriage of the petitioner with the deceased government servant is valid under law or not. Hence, we are not inclined to entertain this writ petition and it is for the petitioner to approach the civil court to substantiate her right and if such relief is granted to her, thereafter, she



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can approach the authorities concerned for granting family pension.

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6. Here in this case, the appellants themselves admitted that their mother/ fourth respondent and the deceased Rajasekar had been living together as husband and wife and in their wedlock, they born to them. Though it is the contention of the appellants that in their community certificates and the Transfer Certificate, name of deceased Rajasekar has been mentioned as their father; and they are the legal heirs of the deceased Rajasekar, as per the legal heirship certificate; and hence, they are entitled to get the terminal benefits of the deceased employee, this Court sitting under Article 226 of the Constitution of India, cannot go into above issues. Therefore, in our view, learned Single has rightly observed as "***the terminal benefits that are handed over to the petitioner shall be held by petitioner (first respondent herein) in trust. If the 3rd respondent(fourth respondent herein) has a claim over the terminal benefits, the third respondent (fourth respondent herein) can independently workout her remedy against the petitioner (first respondent herein) before the Civil Court in accordance with law. The order passed in this writ petition will not come in the way of the third respondent (fourth respondent herein) to***



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workout her remedy in accordance with law". As such, we do not find any reason to interfere with the above said order, as the remedy for the appellants is available only before the civil court.

7. At this juncture, learned counsel for the appellants submitted that the official respondents are taking steps to disburse the entire amount to the first respondent and hence, seeks to pass necessary order.

8. Though we are not inclined to pass any order in this regard, learned counsel for the official respondents undertakes that they will not disburse the amount to the first respondent for a period of one week from the date of receipt of a copy of this order.

9. Recording the above submission, this writ petition is dismissed. with liberty to approach the civil court. There shall be no order as to costs. Connected miscellaneous petition is closed.

(D.K.K.J.) (P.B.B.J.)

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