



W.P.(MD).No.14661 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.14661 of 2021

and

W.M.P.(MD).No.11593 of 2021

1.P.Govindaraj

2.G.Packialakshmi

...Petitioners

Vs.

1.The Chief Educational Officer,
Chief Educational Office,
Krishnagiri District.

2.The District Educational Office,
District Educational Office,
Krishnagiri District.

3.The Head Master,
Government Higher Secondary School,
Veppanapalli,
Krishnagiri District.

4.S.Govindaraj

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Mandamus, directing the respondent Nos.1



W.P.(MD).No.14661 of 2021

to 3 to disburse the death cum terminal benefits of deceased Subashini, who worked as B.T. Assistant in the third respondent School to the petitioners.

For Petitioners : Mr.R.Suriya Narayanan

For R-1 to R-3 : Mr.M.Sarangan,
Additional Government Pleader

For R-4 : Mr.S.Ramsundar Vijayraj

ORDER

This writ petition has been filed seeking a direction to the respondent Nos.1 to 3 to disburse the death-cum-terminal benefits of the deceased Subashini, who worked as B.T. Assistant in the third respondent / School to the petitioners.

2. The petitioners are the parents of one Subashini, who served as B.T.Assistant in the Government Higher Secondary School at Veppanapalli, Krishnagiri District. The daughter of the petitioners passed away on 23.05.2021 while she was in service.



W.P.(MD).No.14661 of 2021

WEB COPY

3. On 09.04.2017, the deceased employee late Subashini married the fourth respondent and after her death, the petitioners came to understand that the fourth respondent had received the Legal Heir Certificate of the deceased daughter without including her parents / petitioners. On the basis of which, he is insisting the respondent Nos.1 to 3 to disburse the terminal benefits of the deceased daughter fully in favour of him. Hence, the petitioners made a representation, dated 23.07.2021 to the respondent Nos.1 to 3 to disburse the terminal benefits of the deceased employee Subashini to them and not to the fourth respondent / husband, who is presently serving as a Village Administrative Officer. Since the said representation was not considered, the Writ Petition came to be filed.

4. The learned counsel appearing for the petitioners, Mr.Suriya Narayanan submitted that the petitioners are entitled to receive the Death-cum-terminal benefits of the deceased employee Subashini in the capacity of the nominees for the purpose of receiving the Death-cum-Retirement benefits. The deceased employee had duly nominated the petitioners as nominees and hence,



W.P.(MD).No.14661 of 2021

the respondents ought to have considered their representation and passed appropriate orders sanctioning the disbursal of the Death-cum-Retirement Gratuity in favour of them. Since the said exercise was not done, he pressed for allowing this Writ Petition.

5. Mr.S.Ramsundar Vijayraj, learned counsel appearing for the fourth respondent submitted that being the first class legal heir of the deceased employee, who is his wife, he would automatically be entitled to receive the Death -cum-Retirement Gratuity in full and the parents cannot claim any right to receive the Death-cum-Retirement Gratuity even if their names are nominated in view of the Tamil Nadu Pension Rules, 1978. For which, he relied upon the case of ***Ram Chander Talwar and another Vs. Devender Kumar Talwar and others*** reported in ***(2010) 10 SCC 671***, in which, the Hon'ble Apex Court dealt with a case with respect to a nominee of the deceased depositor and submitted that the nominee is the person who is none other than the one who stepped into the shoes of the depositor after his / her death and clothed him / her with the exclusive right to receive the money lying in the account. It gives him only the right of the depositor so far as the depositor's



W.P.(MD).No.14661 of 2021

WEB COPY

account is concerned and by no stretch of imagination, it makes the nominee the owner of the money lying in the account.

5.1. Pointing out the said judgments, the learned counsel appearing for the fourth respondent submitted that the same is squarely applicable to the case of a nominee for the Death-cum-Retirement Gratuity as well. Even if the petitioners / parents of the deceased employee have been nominated as the nominees for receipt of the Death-cum-Retirement Gratuity, they will never become the owner of the money lying in the deceased's account and obviously, the fourth respondent is entitled to receive the same in the capacity of First Class Legal heir by the strength of the Legal Heir Certificate issued by the competent authorities in his favour and pressed for dismissal of this Writ Petition.

6. Relying upon the counter affidavit filed by the first respondent Mr.Sarangan, learned Additional Government Pleader submitted that in terms of Rule 45 of the Tamil Nadu Pension Rules, 1978, the father and mother are excluded from the term 'family'. A female employee once given in marriage



W.P.(MD).No.14661 of 2021

even if she had nominated her parents before marriage, the same would automatically go away and the husband would be entitled to act as a nominee for the purpose of receipt of terminal benefits. To substantiate his claim, he relied upon Rule 46(1)(b)(i) of the Tamil Nadu Pension Rules, 1978 and categorically contended that only in the absence of one or more surviving members of the family as in Clauses (i), (ii), (iii) and (iv) of Sub-Rule 5 of Rule 45, the parents who are incorporated in category (vi) and (vii) of the Sub-Rule 5 of Rule 45 would be entitled to receive the Death-cum-Retirement Gratuity.

7. However, in the instant case, “the Husband is incorporated in Clause (ii) of Rule 45 Sub-Rule 5 of the Tamil Nadu Pension Rules, 1978 and in his presence, the petitioners are not entitled to receive the Death-cum-Retirement Gratuity and pressed for dismissal of this Writ Petition.

8. Heard Mr.R.Suriya Narayanan, learned counsel appearing for the petitioners, Mr.M.Sarangan, learned Additional Government Pleader appearing for respondent Nos.1 to 3 and Mr.Ramsundar Vijayraj, learned counsel



W.P.(MD).No.14661 of 2021

appearing for the fourth respondent and anxiously perused the materials available on record.

9. The condition for nomination has been set forth in Rule 48 (1) (i) and (ii) of the Tamil Nadu Pension Rules 1978 and the same is extracted as follows:

“48. Nomination :- (1) A Government servant shall make a nomination in Form 1 or Form 2, as may be as appropriate in the circumstances of the case conferring on one or more persons the right to receive the Death-cum-Retirement Gratuity payable under Rule 45:

Provided that, if at the time of making the nomination-

(i) The Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

(ii). The Government servant has no family the nomination may be made, in favour of a person or persons, or a body of individuals, whether incorporated or not.”



W.P.(MD).No.14661 of 2021

WEB COPY

10. Relying upon the first proviso to Rule 48(1) of the Tamil Nadu Pension Rules, 1978, the learned counsel appearing for the fourth respondent submitted that if at the time of making the nomination, the Government servant has a family, the nomination shall not be in favour of any persons or persons other than the members of the family. In view of the fact that the deceased employee is a married woman, the nomination which remained without changing even after her marriage in favour of her parents will not hold good.

11. Rule 46 of the Tamil Nadu Pension Rules, 1978, deals with the persons whom gratuity is payable and the same is extracted as follows:

“46. Persons to whom gratuity is payable-(1)(a).The gratuity payable under Rule 4 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nominations under Rule 48:

(b).If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below:-



W.P.(MD).No.14661 of 2021

WEB COPY

(i).If there are one or more surviving members of the family as in Clauses (i), (ii), (iii) and (iv) of Sub Rule (5) of Rule 45 to all such members in equal shares.

(ii)If there are no such surviving members of the family as in Sub Clause(i) above, but there are one or more members as in Clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) of Sub Rule (5) of Rule 45, to all such members in equal shares.”

12. The word 'family' for the purpose of Rules 46, 47 and 48 in relation to a Government Servant has been dealt with in Rule 45 Sub-Clause(5) of the Tamil Nadu Pension Rules, 1978 and the same is extracted as follows:

“(5). For the purpose of this Rule and Rules 46, 47 and 48 'family' in relation to a Government servant means.

(i) Wife or Wives, including judicially separate 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 step sons, adopted sons and sons born through illegitimate wife.

(iv) unmarried daughters including step daughter, adopted daughters and unmarried daughters born through illegitimate wife.



W.P.(MD).No.14661 of 2021

WEB COPY

(v) widowed daughters including step daughters, adopted daughters and widowed daughter born through illegitimate wife.

(vi) father, including adoptive parents in the case of individuals whose personal law permits adoption.

(vii) mother and step mother, including adoptive parents in the case of individuals whose personal law permits adoption.

(viii) brothers below the age of eighteen years, including step brothers.

(ix) unmarried sisters and widowed sisters, including step sisters

(x) married daughters and

(xi) children of pre deceased “

13. For the purpose of adjudicating the *lis* in hand, it is necessary to conjointly read Rule 45 Sub-Clause (1), Rule 46 Sub-Clause (1) and Rule 48 Sub-Clause (1).

14. First proviso to Rule 48 (1), came to be amended in the year 1997 by issuance of G.O.(Ms).No.173, Finance (Pension) Department, dated 03.04.1997, by which the proviso (i) to Rule 48(1), the words 'and such



W.P.(MD).No.14661 of 2021

WEB COPY

nomination shall be in the order laid down in the Sub-Rule 5 of Rule 45' came to be omitted.

15. In view of the same, it has become clear that, it has become certain that the nomination necessarily ought not to be in the order as laid down in Sub-Rule 5 of Rule 45 as contended by the learned Additional Government Pleader and the learned counsel for the fourth respondent.

16. That apart, it is pertinent to point out that the nomination was not made after the marriage i.e., in the year 2017 when a family was subsisting. The deceased employee nominated her parents even before her marriage immediately on being appointed to the Government job as early as in the year 2014 and hence, there is no flaw in the said nomination.

17. In view of the amendment brought in by the Government Order in G.O.(Ms.).137, Finance (Pension) Department, dated 03.04.1997, the proviso to Rule 48(1) of the Tamil Nadu Pension Rules, 1978, the nomination made by the deceased employee in favour of her parents, is in order. That apart, Rule 46 (1)



W.P.(MD).No.14661 of 2021

(b) (i) relied upon by the learned Additional Government Pleader is also not acceptable to the facts and circumstances of this case for the reason that the said Clause would be applicable only to those cases where no nomination is made. However, in the presence of a clear nomination of the petitioners for the purpose of receipt of the Death-Cum-Retirement Gratuity, the contentions of the learned counsel for the fourth respondent and the learned Additional Government Pleader does not hold good.

18. A similar matter has been dealt with in a Writ Petition in W.P. (MD).No.6596 of 2016 and this Court by order dated 21.11.2023 has passed favourable orders in favour of the mother of a deceased employee and the relevant portion of the same is extracted hereunder:

“3. Since the matter relates to issue of pension, at the request of Mr.P.Gunasekaran, learned Standing Counsel for Accountant General (Audit) to get a clarification on the issue, Mr.P.Gunasekaran has produced a clarification issued by the Government of Tamil Nadu in its Letter No. 29593A/Finance (Pension) Department/2009, dated 25.08.2009. The said clarification reads as follows:

“..... shall be paid to the nominee or in the absence of any nomination, to the legal heirs of the deceased employee.”



W.P.(MD).No.14661 of 2021

4. From the clarification letter, it is very clear that the amount under the Contributory Pension Scheme is payable to the nominee and only in the absence of the nominee, the amount becomes payable to the legal heirs. The writ petitioner has produced the copy of the nomination form of the deceased Devi, whereunder, she has nominated the writ petitioner as person entitled to receive the Death cum Retirement Gratuity. 5. I have to point out here that even though notice was served on the fourth respondent, he has not appeared or he has not contested the proceedings. 6. Consequently, in the light of the clarification issued by the Government of Tamil Nadu, the writ petition has to succeed and the same is allowed. The respondents 1 and 2 are directed to verify the nomination form produced by the third respondent to them and after such verification, if the nomination made on the death of the writ petitioner has not been changed, the respondents 1 and 2 are directed to disburse Death cum Retirement Gratuity benefits to the writ petitioner.”

19. Fully fortified by the aforesaid judgment and in view of the amendment brought in by the Government vide G.O.(Ms).No.173, Finance (Pension) Department, dated 03.04.1997, carrying out the amendment to the first proviso to Rule 48(1), I am of the considered view that the respondent Nos.1 and 2 should have verified the nomination form produced by the petitioners and after such verification, if the nomination made on the Death-



W.P.(MD).No.14661 of 2021

cum-Retirement Gratuity by the deceased employee has not been changed even after her marriage, the respondent Nos.1 and 2 are directed to disburse the Death-cum-Retirement Gratuity benefits to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

20. With the above direction, the Writ Petition is **disposed of**. No costs. Consequently, the connected miscellaneous petition is closed.

24.07.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

TSG

To

1.The Chief Educational Officer,
Chief Educational Office,
Krishnagiri District.

2.The District Educational Office,
District Educational Office,
Krishnagiri District.

3.The Head Master,
Government Higher Secondary School,
Veppanapalli,
Krishnagiri District.



WEB COPY



W.P.(MD).No.14661 of 2021

L.VICTORIA GOWRI, J.

TSG

W.P.(MD).No.14661 of 2021

24.07.2024