
(2013) 09 MAD CK 0080

In the Madras High Court

Case No : Writ Petition No. 8154 of 2009 and M.P. No. 1 of 2009

Kalavathy

APPELLANT

Vs

The Chief Engineer/General, P.W.D. Department and Others

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 4 LLJ 337

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : G. Nalini, for the Appellant; V. Subbiah, Spl. G.P. for R1 and R2, Mr. V. Vijayshankar for R3 and None for R4 and R5, for the Respondent

Final Decision : Disposed Off

Judgement

D. Hariparanthaman, J.—The petitioner is the wife of one Late N.S. Gopal @ Murugan, who was working as Fitter Grade II in the Public

Works Department. The marriage between the petitioner and the said Gopal took place on 29.08.1985 at the Corporation Community Hall as per

Hindu Rites and Customs. Out of the said wedlock, the petitioner gave birth to a female child by name Vijayalakshmi on 14.06.1986, who is aged

22 years at the time of filing of the writ petition. She is unmarried and unemployed. According to the petitioner, her husband deserted her at the

instigation of her mother-in-law. Hence, she had no other option except to file a case for maintenance against her husband in M.C. No. 201 of

1998 and a sum of Rs. 750/- per month was ordered as maintenance for the petitioner and her child.

2. While so, the husband of the petitioner expired on 09.07.2003 while he was in service. The petitioner came to understand that there was a rival

claim from the 4th respondent as she claimed that she was the wife of late Gopal. The 4th respondent got married to Gopal on 11.12.1995 and a girl child was born out of the said alleged wedlock.

3. In the said circumstances, the petitioner filed a suit in O.S. No. 49 of 2007 before the II Additional Principal Family Court for declaration that

the petitioner is the legally wedded wife of late N.S. Gopal @ Murugan. The second wife, the department and mother of the deceased, were made

as defendants in the suit. The department remained ex parte. A compromise memo was filed between the private parties. As per the compromise

memo,

i) The petitioner is entitled to receive 40% of the terminal benefits and future family pension.

ii) The minor daughter Mangayarkarasi, aged 6 years born to the second wife is entitled to 40% of the terminal benefits through her mother and

natural guardian.

iii) The mother of the deceased is entitled to receive 20% of terminal benefits. Based on the aforesaid compromise, the suit was decreed on

27.09.2007 in O.S. No. 49 of 2004.

4. The suit filed by the second wife viz., Kavitha in O.S. No. 20 of 2004 before the same II Additional Family Court, praying for permanent

injunction restraining the department from disbursing the service benefits to the petitioner herein due to the death of Gopal was dismissed as

withdrawn on 27.09.2007 in view of the compromise referred to above.

5. It is not in dispute that the General Provident Fund (GPF) was disbursed by the third respondent as per the decree dated 27.09.2007 to the

petitioner, minor daughter born to the second wife and the mother in the ratio of 40:40:20. The department also disbursed the Family Security

Fund and Special Provident Fund as per the decree to petitioner, minor daughter and the mother of the deceased in the ratio of 40:40:20.

6. The first respondent sent proposals to the third respondent in respect of DCRG and Family Pension as per the decree. As far as GPF is

concerned, the third respondent has allocated the amount as per the decree in the ratio since there is no impediment under the Rules. But the third

respondent has sought to authorise the DCRG to the nominee namely the mother of the deceased. Likewise, the third respondent sought to

authorise pension at the rate of 50% to the petitioner and the balance 50% to the minor daughter as per the pension rules.

7. (i) The third respondent passed an order dated 26.09.2008 authorising payment in respect of GPF to Kavitha, mother and natural guardian of

Mangayarkarasi, as per the decree dated 27.09.2007.

ii) By a second communication dated 10.10.2008, the third respondent authorised the entire DCRG to the mother of the deceased.

iii) By the third communication dated 10.10.2008, the third respondent authorised 50% of the Family Pension in favour of Mangayarkarasi, alleged

minor daughter.

iv) By another communication dated 10.10.2008, the third respondent authorised 50% of the Family Pension in favour of the petitioner.

8. The petitioner has filed this writ petition to quash the aforesaid four orders.

9. Heard both sides.

10. As far as GPF is concerned, there is no dispute between the parties. The petitioner has no objection for receiving the GPF as per the order

dated 26.09.2008.

11. As far as the order dated 10.10.2008 authorising the entire amount of DCRG in favour of the 5th respondent, who is the mother of the

deceased is concerned, the learned counsel for the petitioner submitted that the same shall be apportioned in the ratio as agreed to between the

parties before the II Additional Family Court i.e., she has prayed to quash the order and sought for a direction to the third respondent to issue a

fresh order authorizing DCRG to the petitioner, the minor daughter Mangayarkarasi and the 5th respondent in the ratio of 40:40:20 as per the

judgment and decree dated 27.09.2007 made in O.S. No. 49 of 2007 by the II Additional Family Court.

12. On the other hand, the learned counsel for the third respondent has submitted that since Rules provide for authorising DCRG to the nominee,

the third respondent authorised the entire DCRG to the mother of the deceased.

13. In my view, the third respondent is not correct in authorising the entire DCRG in favour of the mother of the deceased, particularly, when the

mother herself has agreed to receive the DCRG in the ratio as agreed to in the judgment and decree dated 27.09.2007. In fact, the department has

also sent proposals in the case of DCRG as per the decree. It is a different matter if the mother has claimed the entire DCRG based on the nomination. It is not so.

14. In these circumstances, I have no hesitation to quash the order dated 10.10.2008 with respect of the authorisation of DCRG issued by the third respondent. The third respondent is directed to authorise DCRG as per the judgment and decree dated 27.09.2007 in the ratio of 40:40:20 to the petitioner, minor daughter Mangayarkarasi through her mother and natural guardian, and the 5th respondent herein.

15. The learned counsel for the petitioner has submitted that she has no objection for receiving pension as ordered by the third respondent. The learned counsel for the third respondent has submitted that on the minor child viz., Mangayarkarasi, daughter of the second wife, attaining the age of 25 years, the entire family pension would be paid to the petitioner. In these circumstances, the writ petition is disposed of in the following terms:-

i) As far as GPF is concerned, the third respondent is directed to disburse the amount as per the order dated 26.09.2008.

ii) As far as DCRG is concerned, the order dated 10.10.2008 of the third respondent is quashed and the third respondent is directed to pass fresh order authorising DCRG to the petitioner, minor daughter Mangayarkarasi and the 5th respondent in the ratio of 40:40:20 as per the judgment and decree dated 27.09.2007.

iii) As far as family pension is concerned, the orders of the third respondent is upheld.

iv) The third respondent is directed to issue order in respect of DCRG within a period of four weeks and further directed to re-validate the order relating to payment of GPF within a period of four weeks.

No costs. Connected miscellaneous petition is closed.