

(2011) 09 MAD CK 0091

Madras High Court

Case No: Writ Petition No. 12917 of 2011 and M.P. No. 1 of 2011

Yamuna Devi

APPELLANT

Vs

D. Nalini and Others

RESPONDENT

Date of Decision: Sept. 8, 2011

Acts Referred:

- Hindu Succession Act, 1956 - Section 13B

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: T. Dhanyakumar, for the Appellant; M.S. Subramanian, for R1 and J. Sathya Narayana Prasad, for R5 and R6, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner has come forward to file the present Writ Petition seeking to challenge an order dated 28.4.2011 passed by the 6th Respondent Assistant Provident Fund Commissioner (pension), Chennai. By the impugned order, the 1st Respondent who was widow of A. Ravi Shankar and a person who was subscriber to the Provident Fund, by his employer/2nd Respondent, was informed that she will be paid monthly pension with effect from 12.3.2002. Challenging the said communication, the Petitioner filed the present writ petition seeking to set aside the order dated 28.4.2011 in ordering family pension to the 1strespondent also and for a direction to the 5th and 6threspondents to sanction the monthly pension under the provisions of the Employees Pension Scheme, 1995 to the petitioner.

2. In the writ petition, Notice of Motion was ordered on 1.6.2011. On behalf of the 1st Respondent, a counter affidavit dated 25.7.2011 was filed. On behalf of the respondents 5 and 6, a common counter affidavit dated5.8.2011 was filed.

3. The facts are not in dispute in this case. The 1st respondent is the original wife of late L.R. Paranthaman who was employed in Mylapore Hindu Permanent Fund Limited. The petitioner is the mother of late L.R. Parantham, who died on 11.3.2002, The 1st Respondent being his wife and widow applied for pension under Form 10-D. She was sanctioned the widow pension to the tune of Rs. 973/-per month under Pension Payment Order dated 12.3.2002 and it was credited to her savings bank account, Indian Overseas Bank, Chennai 83. This Pension Payment Order was prepared on 28.4.2011 based on the input data sheet of the Accounts Branch dated 6.4.2011. The 1st Respondent got remarried on 10.11.2002 to one Ravi Shankar. She was informed that she will not be eligible to get any family pension after the date of remarriage on 10.11.2002. Therefore, she was eligible to get pension for the period of 7 months and the amount of Rs. 7689/-was credited into her account. The subsequent amount credited, namely Rs. 1,06,673/-was a mistake and it was not collected by her and only a sum of Rs. 7689/-was credited into her Savings Bank account.

4. The contention of the Petitioner was that the marriage between the 1st Respondent and her son was solemnized as per Hindu rites and custom and there were no children out of the wedlock. But several criminal, police, civil and matrimonial proceedings were initiated by the 1st respondent against her ex-husband and she had also filed a petition for divorce in O.P. No. 2104 of 1999 on the file of the 2nd Respondent Family Court. This O.P was filed on the ground of impotency on the part of the late Paranthaman. Subsequently, the Petitioner's son filed a petition u/s 13-B of the Hindu Succession Act for consent divorce. Even while the proceedings were pending, her son died on 11.3.2002. It is claimed by the Petitioner that her son was murdered by the 1st Respondent by engaging rowdy elements. Investigation is still pending. Though the matter was closed as an accidental death, the Petitioner filed O.P. No. 193 of 2005 under the Indian Succession Act for getting succession certificate. The 1st Respondent has filed a rival O.P No. 892 of 2005 for similar relief but only claiming for 1/2 share. By a common order dated 18.9.2009, this Court allowed the original Petition filed by her. It is stated that the Petitioner as well as the 1st Respondent are entitled to succeed to half share in respect of the dues payable to the late Paranthaman. It is claimed that the pension payable was not the subject matter of the Original Petition. Therefore, when she applied for pension, the 1st Respondent has made a claim for sanction of widow pension under the Employees' Pension Scheme, 1995 and got some sanction in her favour suppressing the fact of remarriage. Therefore, it was claimed that the pensions sanctioned in favour of the 1st Respondent should be cancelled with a further direction to sanction family pension to the Petitioner.

5. This Court is not inclined to go into the acrimonious fights between the Petitioner and the 1st respondent being the mother-in-law and the daughter-in-law. But, it is suffice that the 1st Respondent was widow of the petitioner's son Paranthaman, who was the subscriber to the Provident Fund. Subsequent to his death, being the

widow, the 1st Respondent is entitled to have preference in claiming the family pension. Subsequent to her remarriage, ever her eligibility to family pension will disappear. Only because the 1st Respondent was ceased to get the amount, the Employees Pension Scheme does not provide for such a family pension being to be given to the mother.

6. A Family Pension Scheme, 1985 defines a family under Rule 2(vii), which includes the wife in case of a male member of the Employees Pension Fund and only in the absence of wife being available, sons and daughters of the member of the Employees Pension Scheme will become eligible to get family pension. The scheme is part of contributory scheme. The terms and conditions will have to be interpreted only in terms of the Scheme and not in any other manner. Rule 16 provides for pension to the family only in the case of death of a member and Rule 16(2) talks about the monthly widow pension and it is payable to widow up to the date of death of widow or remarriage whichever is earlier. Only in the absence of widow being available, it is payable to the sons and daughters of the member. Only when there are surviving children, the monthly pension fund will be provided as per Rule 16(iii). Therefore, the petitioner's claim that she should be made eligible for pension does not stand in terms of the statutory scheme and hence no case is made out. Further, the statement that the 1st Respondent has received excessive amount, suppressing her remarriage also is not borne out by records. Hence, the Writ Petition stands dismissed. No costs. The connected Miscellaneous Petition is closed.