

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2014

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.31172 of 2013

and M.P.No.1 of 2013

1. Tmt.K.Vijayalakshmi
2. Selvi K.Padmini
3. Mrs.Banumathi

... Petitioners

Vs.

1. The Manager, (E.R.),
Indian Oil Corporation Limited,
Marketing Division, Southern Region,
No.139, Mahatma Gandhi Road,
(Nungambakkam High Road),
Chennai - 600 034
2. The Commissioner,
Employees' Provident Fund Organisation,
No.37, Royapettah High Road,
Opposite Swagat Hotel,
Chennai, Tamil Nadu - 600 014.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the 2nd respondent to pay the pension to the petitioner as per the order passed in O.P.No.258 of 2009 dated 22.04.2010 passed by this Court.

For Petitioners : Mr.R.Karunakaran
For Respondents : Mr.K.Gunasekar, SCGSC for R.2
No Appearance for R.1

ORDER

The 1st petitioner is the the 2nd wife of the deceased employee V.Kothandapani and the 3rd petitioner is the first wife of the deceased. The 2nd petitioner is the daughter of the 1st petitioner. In the Succession O.P filed before this Court in O.P.No.258 of 2009 by the petitioners, the following order was passed on 22.4.2010:

'... That K.Vijayalakshmi, the 1st petitioner herein, on complying with Rules of this Court and on their behalf a certificate under part X of the Indian Succession Act XXXIX of 1925 do issue herein, out of and under the seal of this Court, and the same be granted to

Mrs.K.Vijayhalakshmi, the 1st petitioner herein, empowering her to collect the debts by way of terminal benefits morefully set out in the schedule hereunder and to receive the same.

2. That from and out of the terminal benefits of the deceased morefully set out in the Schedule hereunder, the petitioners herein, shall receive 65% of the terminal benefits (i.e.,) Rs.4,12,015.50/- (Rupees four laksh twelve thousand fifteen and paise fifty only) and the respondent herein shall be entitled to get remaining 35% of the terminal benefits Rs.2,21,854.50/- (Rupees two laksh twenty one thousand eight hundred and fifty four and paise fifty only).

3. That the monthly pension amount of the deceased Kothandapani, shall be equally shared by the 1st petitioner and the respondent herein.

SCHEDULE

Sl.No.	Name of Debtor	Amount of debt on date of petition	Description of date of instrument if any by which the debt is secured.
1	Manager, Indian Oil Corporation Limited, Chennai	Rs.6,33,870	Retirement Benefits such as P>F., Gratuity, Leave encash, GSLI: General Insurance.

.....

2. Based upon the said order passed, the petitioners approached this Court seeking payment of retirement benefits of deceased Kothandapani.

3. The objection raised on behalf of the 2nd respondent is that as per Para 16(2)(b) of the Employees' Pension Scheme, 1995, when there are two or more widows the family pension shall be payable to the eldest and her next surviving widow, if any. Therefore, learned counsel for the 2nd respondent submitted that the petitioner No.3 alone is entitled to.

4. This Court is not concerned with the entitlement of the parties. It is the 3rd petitioner herein, who is willing to give a part of the amount of pension to the 1st petitioner as per the order passed in O.P.No.258 of 2009. In other words, what belongs to petitioner No.3 is sought to be given to petitioner No.1 at her request. There is no dispute between the parties. Both the wives of the deceased are the petitioners 1 and 3 herein. Therefore, this Court is of the view that Rule 16(2)(b) of the Employees' Pension Scheme, 1995, is not violated. The said rule will come into play when

there is a dispute between the petitioners. That is not the case here. Similarly the entitlement of the 1st petitioner is in the event of the 3rd petitioner pre-deceased her, which situation which has not arisen now.

5. In such view of the matter, direction is issued to the 2nd respondent to make the payment to the petitioner Nos.1 and 3 as per the order passed in O.P.No.258 of 2009 dated 22.4.2010. Before making said payment, the 1st petitioner once again is directed to file 10(d) form before the 2nd respondent expressing her consent to part with the pension amount to the 3rd petitioner.

6. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar
Dated:16.12.14

True Copy

Sub Assistant Registrar

To

1. The Manager, (E.R.),
Indian Oil Corporation Limited,
Marketing Division, Southern Region,
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Chennai, Tamil Nadu - 600 014.

+1 cc to M/s.R.Karunakaran, Advocate, SR.58048

+1 cc to Mr.K.Gunasekar, Sr.Panel Counsel Central Government, SR.58136

rsk(co)
krd 17/12

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