Daniel (Died) Vs. the Assistant Elementary Educational Officer.

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SooperKanoon Citation : sooperkanoon.com/925801

Court : Chennai

Decided On : Apr-20-2012

Judge : R.Banumathi; M.Sathyanarayanan, Jj.

Appeal No. : Writ Appeal (MD)No.545 of 2008

Appellant : Daniel (Died)

Respondent : The Assistant Elementary Educational Officer.

Advocate for Def. : Mr.A.Muthukaruppan, Adv.

Advocate for Pet/Ap. : Mr.C.Sankar Prakash, Adv.

Judgement :

M.SATHYANARAYANAN,J

1. The appellant is the writ petitioner and he filed W.P.(MD)No.9183 of 2007 is filed for issuance of a Writ of Mandamus directing the first respondent to sanction the Family Benefit Fund to the petitioner's family which is due and payable on account of demise of his wife namely Chinnammal. The said writ petition was dismissed on 07.01.2008 for the reason that the petitioner is not entitled to the benefit under the Family Security Fund Scheme since his wife died beyond the age of 60 years. The writ petitioner challenging the vires of the same, preferred this writ appeal. Pendency of this writ appeal, the appellant died and the present

appellant is substituted as per the order dated 02.09.2010 made in M.P(MD)No.1 of 2010.

2. In the affidavit filed in support of the writ petition, the writ petitioner averred that his wife namely Chinnammal was working in the Government Primary School at Pallikulathu Villai as a Part Time Sweeper and she died at the age of 59 years on 13.02.2003.

3. The petitioner would further aver that the Government introduced a Fund called 'Tamil Nadu Family Benefit Fund', under which, a lump sum has been assured to the family of an employee in the event of death in harness and in terms of the Scheme and as per G.O.Ms.No.1151 Finance (Pension) Department dated 07.11.1990, the family of the Part Time employees is also entitled to get the said benefit and therefore, the petitioner and his two daughters are eligible to get the said fund of Rs.1,00,000/- (Rupees One Lakh only).

4. The petitioner would further state that though necessary records were sent to the concerned authorities for the payment under the Family Benefit Fund Scheme, it was not sanctioned and in this regard, he submitted number of representations and since there was no response forthcoming, he filed the above writ petition.

5. The first respondent filed the counter affidavit stating that the wife of the petitioner was working as a Part Time Sweeper at the Government Primary School at Pallikulathu Villai, Kanyakumari District and she was relieved from her duties on 30.09.2002 on attaining the age of 60 years and as per the records, her date of birth was 01.07.1938 and she died after attaining the age of 64 years 7 months and 12 days.

6. The first respondent would further state that the Family Benefit Fund Scheme was extended to the Part Time employees on consolidated pay and honorarium in G.O.Ms.No.1151 Finance (Pension) Department dated 07.11.1990 and certain clarifications were sought and clarified in Government Letter No.133231/Pension/90-1 dated 17.06.1991 and as per the said clarification, 'The Family Benefit Fund Scheme shall be admissible only to those who die while in service before attaining the age of 60 years and the recovery of the subscription

shall be stopped on their attaining the age of 60 years.'. Since the wife of the petitioner died after attaining the age of 64 years, she is not entitled to the benefits under the Family Benefit Fund Scheme in terms of the above said Government Order and the clarification issued in the Government Letter No.133231/Pension/90-1 dated 17.06.1991 and hence, prayed for the dismissal of the writ petition.

7. The learned Single Judge after taking into consideration the materials placed before him, held that since the wife of the petitioner died beyond the age of 60 years, in terms of the above said Government Order and the Government Letter, she is not entitled to the benefit under the Family Benefit Fund Scheme and even if it is true that the subscription was collected from her beyond the age of 60 years, it may be either by mistake or due to inadvertence and the same will not confer any right to the petitioner to get the said benefit. The learned Single Judge citing the said reasons, dismissed the writ petition vide order dated 07.01.2008.

8. Hence, the challenge is made to the said order by filing this writ appeal.

9. The learned Counsel for the appellant/writ petitioner would submit that the date of birth has been wrongly entered in the Service Register and if the correct date of birth was entered, she was entitled to the benefit under the Family Benefit Fund Scheme as she died before attaining the age of 60 years. It is the further submission of the learned Counsel for the appellant/writ petitioner that the said Government Order and the Government Letter are being benevolent in nature, it should be interpreted in favour of the beneficiaries and hence, prayed for setting aside the impugned order, under which the writ petition came to be dismissed.

10. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that as per the date of birth entered in the Service Register, the wife of the petitioner was relieved from duty on 30.09.2002 and since she died after attaining the age of 64 years, the request made by the petitioner was rejected in terms of the above said Government Order and the Government Letter and hence, prayed for the dismissal of this writ appeal.

11. This Court has carefully considered the rival submissions and also perused the typed set of documents.

12. Though it is vehemently contended by the learned Counsel for the appellant/writ petitioner that the date of birth of his wife was wrongly entered, absolutely, there is no iota of materials to show that wrong entry was made in the Service Register. As per the Service Register, the wife of the petitioner was relieved from duty on 30.09.2002 on attaining the age of 60 years and admittedly, she died on 13.02.2003 and at the time of her demise, she was aged about 64 years 7 months and 12 days.

13. G.O.Ms.No.1151 Finance (Pension) Department dated 07.11.1990, came to be issued extending the Family Benefit Fund Scheme to the Part Time employees also and certain queries were raised with regard to the implementation of the said Government Order and those enquiries were clarified in the Government Letter No.133231/Pension/90-1 dated 17.06.1991, wherein it has been clarified that the Family Benefit Fund Scheme shall be admissible only to those who die while in service before attaining the age of 60 years and the recovery of the subscription shall be stopped on their attaining the age of 60 years.

14. As per the Service Register maintained by the respondents, the wife of the petitioner attained the age of 60 years on 30.09.2002 and she died thereafter. Therefore, as per the clarifications issued in the above Government Letter, she is not entitled to the benefits conferred under the Family Benefit Fund Scheme as she died after attaining the age of 60 years.

15. The learned Single Judge has taken into consideration the said aspect and rightly found that the appellant/writ petitioner who is the husband of the deceased Chinnammal, is not entitled to any relief under the said Scheme.

16. This Court on an independent application of mind to the entire materials placed before it, is of the considered opinion that there is no error apparent on the face of the record or infirmity in the impugned order dismissing the writ petition and finds no merit in this writ appeal.

17. In the result, the writ appeal is dismissed, confirming the order dated 07.01.2008 made in W.P(MD)No.9183 of 2007. However, in the circumstances of the case, there shall be no order as to costs.