

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2015

CORAM:

THE HONOURABLE MR. JUSTICE D.HARIPARANTHAMAN

Writ Petition No.15806 of 2015 and
M.P.No.1 of 2015

S.Suseela @ Mary Margaret

...Petitioner

vs.

1.The Superintendent of Police,
Coimbatore District,
Coimbatore - 18.

2.The Principal Accountant General
(Accounts & Entitlements) Tamil Nadu,
361 Anna Salai, Chennai - 600 018.

...Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus calling for the records pertaining to order bearing No.Pen.33/2/pt 11155/FP/14-15 dated 13.02.2015 of the second respondent and quash the same and further direct the second respondent and quash the same and further direct the second respondent to accord sanction for grant of family pension.

For Petitioners : Mr.V.Suthakar

For R.1 : Mr.K.V.Dhanapalan,
Additional Government Pleader

For R.2 : Mr.V.Vijayshankar

WEB COPY
O R D E R

With the consent of both parties, the writ petition is taken up for final disposal.

2.The husband of the petitioner one K.M.Stanley was employed as a Head Constable in the Police Department. While he was in service, he married one Suganthi on 06.06.1973 and out of the said wedlock, they have a female child namely, Rooth Epsia. There were

some difference of opinion between K.M.Stanley and Suganthi and they lived separately from 1975 onwards. While so, K.M.Stanley married the petitioner herein on 23.06.1976, when the first marriage with Suganthi was subsisting. Out of the wedlock, one male child namely, Nakeeran was born and he is now aged around 35 years.

3.The first wife namely Suganthi approached the learned Principal District Judge, Erode, by filing IDOP No.25 of 2001 seeking dissolution of marriage and the District Judge allowed the said petition on 05.11.2003 and the marriage between K.M.Stanley and Suganthi was dissolved. Furthermore, the said Suganthi died on 02.12.2005.

4.While so, K.M.Stanley retired from service on 31.07.2001. After retirement, he has drawn pension and he died on 28.10.2011. During his life time, K.M.Stanley gave a representation dated 26.06.2007 to the first respondent to include the name of the petitioner herein as his nominee for the purpose of getting family pension.

5.The first respondent sent a proposal dated 04.09.2014 to the second respondent to sanction family pension to the petitioner recognizing that the petitioner is the wife of the deceased Government servant. But, the second respondent passed the impugned order dated 13.02.2015, rejecting the proposal stating that since, the marriage between the deceased Government servant and the petitioner herein took place on 23.06.1976, when the marriage between the deceased Government servant and his first wife namely Suganthi was in subsistence, the petitioner herein is not eligible for family pension.

6.The petitioner has now filed this writ petition seeking to quash the impugned proceedings of the second respondent in No.Pen.33/2/pt 11155/FP/14-15 dated 13.02.2015 and to direct the second respondent to accord sanction for grant of family pension to her.

7.Heard Mr.V.Suthakar, learned counsel for the petitioner and Mr.V.Dhanapalan, learned Additional Government Pleader and Mr.V.Vijayashankar, learned counsel for the second respondent.

8.The aforesaid facts would make it clear that according to K.M.Stanley, he was living with the petitioner from 1976 till his death. The marriage between the petitioner and the deceased Government Servant, took place in the year 1976. Even assuming that the said marriage was not a valid one, the living together of the

petitioner with the deceased Government servant from 1976 onwards is not disputed by anybody even by the second respondent. The first respondent has recognised the petitioner as the wife of the deceased Government Servant and sent the proposal for family pension to the petitioner.

9. Further, it is not in dispute that the petitioner lived with the deceased Government servant until his death. The marriage between K.M. Stanley and his first wife was dissolved on 05.11.2003 and thereafter also, K.M. Stanley continued to live with the petitioner as his second wife.

10. At this juncture, the learned counsel for the petitioner placed reliance on a judgment of the Hon'ble Supreme Court in Dhannulal and others v. Ganeshram and another (ILC-2015-SC-civil), wherein in paragraph Nos. 14 and 15, it has been held as follows:-

"14. In the case of Gokal Chand vs. Parvin Kumari, AIR 1952 SC 231, this Court observed that continuous co-habitation of woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long co-habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15. It is well settled that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a long time. However, the presumption can be rebutted by leading unimpeachable evidence. A heavy burden lies on a party, who seeks to deprive the relationship of legal origin. In the instant case, instead of adducing unimpeachable evidence by the plaintiff, a plea was taken that the defendant has failed to prove the fact that phoolbasa Bai was the legally married wife of Chhatrapati. The High Court, therefore, came to a correct conclusive by recording a finding that Phoolbasa Bai was the legally married wife of Chhatrapati."

11. In these circumstances, the first respondent thought it fit to send proposal for family pension to the petitioner. However, the second respondent by way of the impugned order rejected the same.

12. In view of the aforesaid facts, the second respondent was not correct in rejecting the proposal for family pension to the petitioner on the sole ground that when the petitioner married the deceased Government servant, the marriage between the Government servant and his first wife was subsisting.

13. In view of all the above, I am of the view that the second respondent while passing the impugned order failed to take into account the entire facts of the case, particularly, the dissolution of marriage between the deceased Government servant and his first wife in the year 2003; the death of the first wife of the deceased Government servant in the year 2005 and the continuous living together of the deceased Government servant with the petitioner from 1976 till the death of the deceased Government servant in the year 2011. Hence, the first respondent has rightly thought it fit to send proposal for family pension to the petitioner. If it is so, I am of the view that the second respondent is not correct in rejecting the proposal for family pension. It is now accepted that without the formal marriage, living together relationship has conferred every right for the parties aggrieved to claim for their legal rights. In the aforesaid facts and circumstances of the case, the order passed by the second respondent is liable to be interfered with.

14. Accordingly, the writ petition is allowed and the impugned order in No. Pen. 33/2/pt. 11155/FP/14-15, dated 13.02.2015 passed by the second respondent is quashed and the second respondent is directed to sanction family pension to the petitioner from the date of the death of the deceased Government servant till date, within a period of twelve weeks from the date of receipt of a copy of this order and the second respondent is also further directed to pay the monthly family pension to the petitioner regularly. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

jbm

To

1. The Superintendent of Police,
Coimbatore District Coimbatore

2.The Principal Accountant General
(Accounts and Entitlement) Tamil Nadu
No.361, Anna Salai Chennai-18

+1 cc to the Government Pleader High Court madras 30121

+1 cc to M/S.V.Vijay Shankar Advocate sr.30390

+1 cc to M/S.V.Suthakar, Advocate sr.29944

W.P.No.15806 of 2015

aa28/07/2015



WEB COPY