

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.9856 of 2015
and MP.No.1 of 2015

P.S.Shanthi Balakrishnan

.. Petitioner

Vs.

1.The Director of Medical Education
Kilpauk, Chennai.

2.The Accountant General (Account Entitlements)
No.261, Anna Salai,
Chennai-18.

3.The Account Officer,
Pension Pay Officer,
College Road, Chennai-6.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorarified mandamus to call for the records pertaining to the order passed by the first respondent in his proceedings in K.Dis.No.78942/A3 (1)/01 dated 07.05.2003 and quash the same and direct the respondents to pay/disburse the Family Pension to the petitioner of her late husband Dr.P.R.Balakrishnan who retired as Professor of Dental Surgery, Madurai Medical College at Madurai with effect from 28.01.2001 with appropriate interest from the date from which the petitioner is entitled for the Family Pension.

For Petitioner : Mr.S.Sathish Rajan

For Respondents : Mr.V.Jaya Prakash Narayanan,
Spl.GP for R1.
Mr.V.Vijay Shankar for R2 and R3.

ORDER

The petitioner would contend that she is the legally wedded wife of late Dr.P.R.Balakrishnan @ Sampath and she was married to him on 15.07.1968 at Tirupathi Devasthanam in accordance with Hindu rites and customs. The marriage was also duly registered in the office of the Marriage Registrar at T.Nagar, Chennai on

14.11.1979 and out of the marriage wedlock, the petitioner begotten two daughter by name Padmini and Priya on 29.04.1970 and 09.04.1971 respectively.

2.The claim of the petitioner is that her husband retired from service on 01.05.1992 as Professor of Dental Surgeon, Madurai Medical college and he died on 28.01.2001. The first wife Anusuya Balakrishnan died on 07.07.1996. The petitioner being the surviving legally wedded wife of late Dr.P.R.Balakrishnan is entitled for pension as per Rules 49(7) (a)(i) of the Tamil Nadu Pension Rules, 1978. However, the claim of the petitioner was rejected by the respondents on the only ground that she is the second wife of late Dr.P.R.Balakrishnan @ Sampath.

3.The second respondent filed his counter stating that the petitioner was married to Dr.P.R.Balakrishnan @ Sampath on 14.11.1979 when the marriage with the first wife/Anusuya Balakrishnan was subsisting and the first wife died only on 07.07.1996. As per Section 5 of the Hindu Marriage Act, the marriage of the petitioner with her husband is void and therefore she is not entitled for the pension. It is further contended by the respondents that as per entries in the service register of late Dr.P.R.Balakrishnan @ Sampath, only the first wife was nominated to receive the family pension and the name of the petitioner is not recorded in the service register.

4.The learned counsel for the petitioner submitted that as per Rules 49(7)(a)(i) of the Tamil Nadu Pension Rules, 1978, the second wife is also entitled for pension. The relevant portion is extracted below :

Rules 49(7)(a)(i) Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares.

5.The plain reading of the provision would reveal that the Parliament in its wisdom that it fit to extent the benefit to the widows if the deceased had more than one wife. The issue is no longer resintegra. As this Court, in the decisions relied upon by the learned counsel for the petitioner reported in (i) CDJ 2014 MHC 3594 - S.Kamatchi V. The Accountant General and another and (ii)CDJ 2014 MHC 3978 - S.Pushpavalli V. The Senior Accounts Officer, O/o.The Principal Accountant General (A&E) Tamil Nadu and others, held that the second wife is also entitled for pension, as per sub Rule 7(a)(i) of Rule 49 of Tamil Nadu Pension Rules. The marriage of the petitioner with Dr.P.R.Balakrishnan @ Sampath is not disputed by the respondents and the petitioner has further stated that they got two children out of the marriage wedlock.

6.In view of the above facts, the impugned order dated 07.05.2003 in K.Dis.No.78942/A3(1)/01 passed by the first respondent is liable to be set aside and it is accordingly set aside.

7.In the result, the writ petition is allowed. The respondents are directed to disburse the family pension to the petitioner, with effect from 28.01.2001 within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

tsh

To

1. The Director of Medical Education
Kilpauk, Chennai.
2. The Accountant General (Account Entitlements)
No.261, Anna Salai,
Chennai-18.
3. The Account Officer,
Pension Pay Officer,
College Road, Chennai-6.

+1 cc to Mr.S.Sathish Rajan, Advocate, sr.60264

+1 cc to Government Pleader, sr.60115

W.P.No.9856 of 2015

ar iii
kra 23.11.2015

सत्यमेव जयते

WEB COPY