

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.12105 of 2016
and
WMP No.10475 of 2016

Tmt.J.Rajakumari

... Petitioner

Vs.

1. The Superintendent of Police,
Trichy.

2. The Accountant General (A&E),
Tamilnadu, Teynampet,
Chennai-18

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified Mandamus, calling for the records pertaining to the orders passed by the second respondent in Letter NO.Pen4/11/Pt.7489/14-15/59419 dated 19.08.2014 and quash the same and consequently direct the respondents to sanction and settle the family pension due to the death of Thiru Jayaraman (PPO.No.POL.Y.861/96)

For Petitioner : Mr.S.Kamadevan

For Respondents : Mr.S.Gunasekaran (for R1)
Additional Government Pleader

Mr.V.Vijayshankar (for R2)

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O R D E R

Heard Mr.S.Kamadevan, learned counsel appearing for the petitioner, Mr.S.Gunasekaran, learned Additional Government Pleader, after accepting notice for the 1st respondent and Mr.V.Vijayshankar, learned standing counsel, after accepting notice for the 2nd respondent. By consent of learned counsel on either side, the writ petition is taken up for final disposal at the time of admission itself.

2. The petitioner's husband late Jayaraman, after serving as Constable in the Police Department retired from

service as Head Constable on attaining superannuation on 31.07.1996. Even after his retirement, he received the retirement benefits and also his pension till his death, which occurred on 25.05.2015. It is the claim of the petitioner that her husband originally got married with one Dhanalakshmi and after some time, he has contracted the second marriage on 13.08.1973 according to the Hindu Customs and Rites in the temple with the blessings of both the family, including his first wife, who is none other than the petitioner's elder sister. The first wife of the late Jayaraman predeceased on 13.02.2013. Since the marriage of the petitioner took place with the deceased Government employee prior to the induction of Tamilnadu Pension Rules and the 1st wife also predeceased the Government Servant, the respondents failed to pay the family pension after the death of the petitioner's husband.

3. In the present case also the 1st respondent considering the entire facts on record and accepting the request of the petitioner for payment of family pension forwarded the proposal after the death of the first wife to incorporate her name in the pension paper book as the 1st wife predeceased, but the proposals were rejected by the 2nd respondent on 19.08.2014 and the consequential order has also been passed on 07.04.2015, holding that being the second wife of the deceased government employee, the petitioner is not eligible to get family pension.

4. The said issue pleaded has been repeatedly settled by this Court in W.P.(MD) No.7817 of 2011 filed by S.Pushpavalli against the Senior Accounts Officer, O/o. The Principal Accountant General (A&E) Tamilnadu and two others. This Court by a well reasoned order dated 26.08.2014, while dealing with a similar and identical issue at paragraph Nos.5 to 7, has issued direction to the respondents therein to sanction family pension to the petitioner on account of the demise of the Government employee and the same is extracted hereunder.

"5. Admittedly, the marriage between the petitioner and her husband is void as per Section 5 of the Hindu Marriage Act. But the question whether the wife of such void marriage is entitled for family pension or not had been dealt with elaborately by this Court with reference to Sub-Rule 7(a)(i) Rule 49, in W.P.(MD) No.9374 of 2010. In that case, this Court took a view that the second proviso to the said provision was inserted only with effect from 14.10.1991 and therefore, any wife of the void marriage whose marriage had taken place on or after 14.10.1991 alone is not entitled for family pension. In paragraphs 12 to 18 of the order passed by this Court in W.P.(MD) No.9374 of 2010 dated 22.07.2014, this Court has held as follows:

"12. As I have already pointed out, so far as Tamil Nadu State is concerned, family pension is governed by the Tamil Nadu Pension Rules, 1978, which is a statutory Rule. As per Sub-Rule (7) (a) of Rule 49, it is crystal clear that if there are more than one wife to a Government Servant who died, they are entitled for family pension in equal moietis, until the amendment which was brought into force on 02.06.1992 did not prohibit the wife of a bigamous marriage from getting a share in the family pension. The explanation to the said Rule was introduced by amending the Rule only with effect from 02.06.1992. Therefore, on or after 02.06.1992, if any Government Servant dies, then, the wife of a bigamous marriage, which is void, is not entitled for family pension. this Rule, in my considered opinion, is prospective in operation. In the case on hand, the deceased died in the year 1988. That is the reason why the family pension was shared between Mrs.Amsavalli and the petitioner in equal moities.

13. Now the question is as to whether the petitioner is entitled for getting the remaining 50% of pension which was hitherto paid to Mrs.Amsavalli. As I had already extracted, the second proviso to Sub-Rule 7 (a) (i) of Rule 49 makes it very clear that if the widow is survived by a child, if the child is eligible. If there is no child, who is eligible to get pension, the share which was hitherto paid to the widow would cease. This proviso was in force only until 14th October 1991. Thereafter, the same was substituted by the proviso which read as under:

"Provided that the widow is not survived by any child, her share of family pension shall be payable to the other widows in equal shares, or if there is only one such widow, in full to her."

14. Here in this case, the first wife, Mrs.Amsavalli had a child and therefore, this proviso is not applicable to the petitioner so as to insist for payment of full pension.

15. Now, turning to the judgment of the Division Bench of this Court in A.S.No.154 of 2004 dated 07.03.2012,

(Krishnaveni and others Vs. Meera @ Devaki and others), relied on by the learned counsel for the respondent, it is not applicable to the facts of the present case. In that case, the deceased died subsequent to the amendment, by which explanation was introduced with effect from 02.06.1992. It was in those circumstances, applying the explanation, the Division Bench held that the wife of the bigamous marriage which is void is not entitled for family pension. In this case, the deceased died even before the amendment and that is the reason why the second wife, viz., the petitioner, has been paid 50% of pension.

16. Now turning to Rameshwari Devi's case, cited supra, relied on by the learned counsel for the respondent, it cannot be taken as a precedent to govern the issue involved in this case. In that case, obviously there was no Rule which enables the wife of a void marriage to get a share in the pension. It was in those circumstances, the Hon'ble Supreme Court held that the wife of a void marriage is not entitled for pension. But so far as Tamil Nadu State is concerned, as I have already pointed out, the Tamil Nadu Pension Rules, 1978, has made a specific provision to enable the wife of a void marriage to get pension. Therefore, that judgment is not applicable.

17. In Yamunabai's case, the entitlement of the wife of a void marriage for maintenance under Section 125 Cr.P.C., was considered. That cannot be imported to the facts of the present case. Here, in this case there is a specific Rule which entitles the wife of a void marriage to get pension. Though I am holding so, I am of the further view that in the instant case, the petitioner is not entitled for the balance 50% of pension which was hitherto paid to Mrs.Amsavalli, because Mrs.Amsavalli had a child.

18. In view of all the above, the petitioner is not entitled for the relief as prayed for."

6. In view of the said settled position of law, since the marriage between the petitioner and Mr.Singaram was prior to the crucial date, she is entitled for family pension.

7. In view of the above, the writ petition is allowed with a direction to respondents to sanction family pension to the petitioner on account of the demise of Mr.Singaram, who was working as Selection Grade Higher Grade Assistant in a Panchayat Union Middle School at T.Kallupatti, Thanjavur District. The consequential order shall be passed by the second respondent, within a period of eight weeks from the date of receipt of a copy of this order, and the first respondent shall sanction the amount within a further period of eight weeks. Consequently, the connected Miscellaneous petition is closed. No costs."

5. This order has also been followed in another case viz., W.P.No.9856 of 2015 filed by P.S.Shanthi Balakrishnan against The Director of Medical Education, Kilpauk, Chennai and two others, dated 02.11.2015 holding clearly that second wife is also entitled for pension as per Rules 49(7)(a)(i) of the Tamil Nadu Pension Rules, 1978. The relevant paragraphs are also given as hereunder.

"5. The plain reading of the provision would reveal that the Parliament in its wisdom thought it fit to extend the benefit to the widows if the deceased had more than one wife, hence, 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 3878 - S.Pushpavalli Vs. 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, the connected Miscellaneous Petition is closed."

6. A careful reading of the above observations of this Court mentioned supra shows that the case of the petitioner is also squarely covered. Therefore, this Court finds no impediment to direct the 2nd respondent to consider the proposal forwarded by the 1st respondent vide proceedings dated 29.04.2015, in the light of the above orders, within a period of four weeks from the date of receipt of a copy of this order.

7. With the above direction, the writ petition stands allowed and the impugned order is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Superintendent of Police,
Trichy.
2. The Accountant General (A&E),
Tamilnadu, Teynampet,
Chennai-18

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.20301
+1cc to the Government Pleader, S.R.No.20515

W.P.No.12105 of 2016

RSY(CO)
CA(12/05/2016)

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