

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.09.2016

Pronounced on : 15-11-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 6270 of 2012

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S. Parvathy

.. Petitioner

Versus

1. Principal Accountant General
Tamil Nadu
No.82, Anna Salai
Chennai
2. Assistant Primary Educational Officer
Office of Assistant Primary Education Office
Thandarampattu – 606 707
3. The District Primary Education Officer
Gandhi Nagar
Thiruvannamalai
4. The District Principal Education Officer
Puthu Kargana Street
Thiruvannamalai

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the first respondent to release the pension amount of petitioner's deceased husband Sri Ramulu.

For Petitioner : Mr. K. Venkatasubban
for M/s. Sarvabhauman Associates

For Respondents : Mr. Mrs. Hema Muralidharan for R1
Mr. A. Kumar
Special Government Pleader for RR2 to 4

ORDER

The petitioner is the second wife of Late. Sriramulu, who retired as Teacher from Thenmudiyanur Government Elementary School, Thiruvannamalai District on 01.11.1978. It is the contention of the petitioner that the deceased Sriramulu married her as his second wife in the year 1961 and such marriage was solemnised with the consent of the first wife namely Krishnaveni. Out of the wedlock between the petitioner and the deceased, 2 sons and 2 daughters have born. As far as the pensionary benefits are concerned, after retirement, the said Sriramulu was in receipt of pension at the rate of Rs.120/- per month. On 25.09.2009, the first wife Krishnaveni died. On 25.12.2008, the said Sriramulu died and prior to his death, he was in receipt of pension at the rate of Rs.4,240/-. On his death, the Directorate of Pension issued a cheque dated 03.09.2009 for Rs.25,000/- to the petitioner towards the lumpsum grant under the Tamil Nadu Government Pensioner's Family Security Fund Scheme. However, family pension was not paid to the petitioner despite her repeated request.

2. According to the petitioner, she married the deceased Sriramulu in the year 1961. Though at that time, his first wife was Krishnaveni was alive, she gave consent for the marriage of the petitioner as second wife to the deceased. Therefore, at that time, the name of the petitioner was not included in the service register of the deceased maintained by his employer. Further, at the time of the death of the deceased, the first wife was not alive, therefore, the petitioner claims that she and her four children are the legal heirs to succeed to the estate of the

deceased. The petitioner also obtained legal heir certificate in which the petitioner and her four children alone were shown as legal heirs of the deceased. Therefore, as legal heir, the petitioner sent repeated representations to the respondents by enclosing the legal heir certificate and sought for disbursement of family pension to her. As there was no response, the petitioner sent a notice through a lawyer on 10.11.2009 but there was no response. The petitioner also wrote a letter dated 22.11.2010 to the first respondent to release the family pension, but there was no response. In the meantime, the petitioner has sent a representation dated 10.08.2010 to the Tamil Nadu Chief Minister's Grievance Cell and it was forwarded to the Director of Primary Education, Chennai to take necessary action on the petitioner's representation. On 14.09.2010, the Director of Primary Education forwarded the representation of the petitioner to the District Educational Officer, Thiruvannamalai and to submit a report. Accordingly, on 17.09.2010, the Additional Primary Educational Officer, Thandarampattu sent a letter to the first respondent recommending to release the family pension to the petitioner. Despite the same, the first respondent refused to pay family pension to the petitioner on the ground that the petitioner married the deceased when the marriage of the deceased with his first wife Krishnaveni was subsisting. The first respondent also called upon the petitioner to submit certain details as to whether the first wife was alive as on date and also to furnish the correct date of the marriage of the petitioner with the deceased. Immediately, the petitioner furnished such details to the Additional Primary Educational Officer, who in turn forwarded the same to the first respondent on 06.07.2011. However, according to the petitioner, the respondents did not pass any orders granting family pension in her favour, hence,

she has come forward with this writ petition seeking appropriate direction to the respondents to release the pension amount to her on the death of the deceased Sri Ramulu.

3. The learned counsel for the petitioner submits that the petitioner is the only surviving legal heir on the death of the deceased government servant and therefore, she is entitled for payment of family pension. The petitioner also forwarded the legal heir certificate issued by the competent authority which would indicate that the petitioner is the only surviving legal heir on the death of the deceased. Having regard to the above, on 17.09.2010, the Additional Primary Educational Officer, Thandampattu sent a letter to the first respondent recommending to release the family pension to the petitioner. In spite of the same, the respondents failed and neglected to pass any orders granting family pension to the petitioner. In this context, the learned counsel for the petitioner placed reliance on the order passed by this Court in **(P.S. Shanthi Balakrishnan vs. The Director of Medical Education, Kilpauk, Chennai and others)** reported in **2015 SCC Online Madras 11754** wherein this Court has held that Rule 49 (7) (a) (i) of the Tamil Nadu Pension Rules, 1978, provides that where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares. Relying on the above provision contained in the Tamil Nadu Pension Rules, this Court held that the benefit of family pension can be extended to the widows even if the deceased government servant had more than one wife.

4. The learned counsel for the petitioner also placed reliance on the

order passed by this Court in (**S. Pushpavalli vs. The Senior Accounts Officer, office of the Principal Accountant General (A&E), Tamil Nadu and others**) reported in **2014 SCC Online Madras 6319** wherein this Court held that even the wife whose marriage was held to be void is entitled for family pension.

5. A counter affidavit has been filed by the second respondent stating that in the service register of the deceased, only the name of the first wife Krishnaveni is mentioned. Since the name of the petitioner has not been incorporated in the service register or the petitioner was mentioned as nominee, she was not paid the family pension. As per the Tamil Nadu Pension Rules, the petitioner, who is admittedly the second wife of the deceased government servant, is not entitled for payment of family pension. The petitioner herself admitted that she married the deceased when the first wife was alive and therefore, the first respondent is justified in not granting family pension to the petitioner. When there was a marriage subsisting, no person can legally solemnise another marriage and if a second marriage is effected either by registration or otherwise, such marriage is a nullity and the second wife is not entitled for payment of family pension.

6. The second respondent also filed a counter affidavit stating that the proposal sent for payment of family pension in favour of the petitioner was returned and certain details have been called for by the first respondent relating to the exact date of marriage of the petitioner with the deceased. Since the petitioner was admittedly the second wife of the deceased, the respondents have not passed any order granting family pension to the deceased. According to the respondents,

under the Tamil Nadu Pension Rules, as amended from time to time, family pension to second wife of the government servant while the first wife was alive, cannot be admitted. Inasmuch as the claim of the petitioner for payment of family pension is unjustifiable, the second respondent prayed for dismissal of the writ petition.

7. I heard the counsel for both sides and perused the materials placed on record. It is an admitted fact that the petitioner is the second wife of the deceased government servant and she has contracted such marriage when the marriage of the deceased with his first wife Krishnaveni was subsisting. Of course, it is contended that the petitioner married the deceased as second wife after getting consent from the first wife. The petitioner married the deceased government servant in the year 1961. It is also an admitted fact that the first wife Krishnaveni died in the year 1999 and she pre-deceased the deceased government servant. Subsequently, during the year 2009, the petitioner's husband and who is the government servant also died. On his death, the petitioner and her four children have succeed to his estate. A perusal of the legal heir certificate would indicate that the first child born to the petitioner and the deceased government servant is now 41 years old and the assertion of the petitioner that she is now aged 70 years is true. It is also to be noted that recognising the petitioner as the sole surviving legal heir of the deceased, the Directorate of Pension issued a cheque dated 03.09.2009 for Rs.25,000/- to the petitioner towards the lumpsum grant under the Tamil Nadu Government Pensioner's Family Security Fund Scheme.

8. Admittedly, the service rendered by the deceased government servant is a pensionable service and he received pension till his death in the year 2009. Even before the death of the deceased government servant, the first wife died and at the time of the death of the deceased government servant, the petitioner is the only widow and legal heir to succeed to his estate. Therefore, as legal heir, the petitioner claims payment of family pension. Of course, the petitioner's name is not incorporated in the service record either as wife or as a nominee. Further, the petitioner, as second wife is not eligible for payment of family pension, provided if the first wife is surviving. In this case, the first wife pre-deceased the deceased government servant even in the year 1999 and at the time of the death of the deceased government servant in the year 2009, except the petitioner, there is no one is available to succeed to the estate of the deceased as the wife.

9. As far as payment of pension or family pension is concerned, it is governed by the Tamil Nadu Pension Rules. As per Rule 49 (7) (a) of the Tamil Nadu Pension Rules, if there are more than one wife to a government servant who died, they are entitled for family pension in equal moieties, 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. On or after 02.06.1992, if any government servant dies, then the wife of a bigamous marriage, which is void, is also entitled for payment of family pension. The very same issue was considered by this Court in the decision rendered in (**S. Pushpavalli vs. The Senior Accounts Officer, office of the Principal**

Accountant General (A&E), Tamil Nadu and others) reported in **2014 SCC**

Online Madras 6319 wherein in Para No. 5 it was held as follows:-

“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) of Rule 49 in WP (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 WP (MD) No. 9374 of 2010 dated 22.07.2010, 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 moieties, until the amendment which was brought into force on 02.06.1982 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 moieties.

Now, the question is as to whether the petitioner is entitled for getting the remaining 50% the 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 clear that if the widow is survived by a child, her share of the family pension shall be payable to her 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 reads 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.”

10. Applying the above said decision rendered by this Court and the

statutory Rule in force, in this case, the deceased government servant died only in the year 2009 and at that time, the first wife of the deceased government servant was not alive. Therefore, the petitioner is the only surviving legal heir of the deceased government servant. Further, as held by this Court in (**P.S. Shanthi Balakrishnan vs. The Director of Medical Education, Kilpauk, Chennai and others**) reported in **2015 SCC Online Madras 11754** mentioned supra, Rule 49 (7) (a) (i) of the Tamil Nadu Pension Rules, 1978, provides that where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares. Therefore by application of Rule 49 (7) (a) (i) of The Tamil Nadu Pension Rules, I hold that the petitioner is entitled for payment of family pension as the only surviving legal heir of the deceased government servant.

11. In the result, the writ petition is allowed with a direction to the respondents to sanction family pension to the petitioner on account of the demise of the deceased government servant, who was in receipt of pension after his retirement. The consequential order shall be passed by the respondents 2 to 4 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 thereafter. No costs.

15-11-2016

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Index : Yes / No

Internet : Yes / No

To

1. Principal Accountant General
Tamil Nadu
No.82, Anna Salai
Chennai
2. Assistant Primary Educational Officer
Office of Assistant Primary Education Office
Thandarampattu – 606 707
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4. The District Principal Education Officer
Puthu Kargana Street
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B. RAJENDRAN, J

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Pre-delivery Order in
WP No. 6270 of 2012

15-11-2016