

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.34652 of 2016

P.Muniammal @ Radha .. Petitioner

versus

- 1.Union of India
represented by the Secretary
Department of Posts
New Delhi - 110 001
- 2.The Chief Post Master General
Tamil Nadu Circle
Chennai 600 002
- 3.The Post Master General
Southern Region
Madurai 625 002
- 4.The General Manager
Postal Accounts & Finance
Chennai 600 008
- 5.The Superintendent of Post Offices
Ramanathapuram Division
Ramanathapuram 623 501
- 6.Smt.T.Nagammal
- 7.The Registrar
Central Administrative Tribunal
Madras Bench, High Court Campus
Chennai - 600 104

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records in O.A.310/01417/2015 and the order dt.30.06.2016 on the file of the 7th respondent and quash the same and direct the respondents to allow family pension from 26.08.2005.

For Petitioner : Mr.R.Pandi

For Respondents : Mr.V.Balasubramanian,
Senior Panel Counsel for R1 to R4

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order passed by the Central Administrative Tribunal, Madras Bench, in O.A.310/01417/2015, by which, the Tribunal, declined to grant of family pension and directed the writ petitioner to obtain a decree from a competent court, holding that there is no evidence of a valid divorce of the marriage of the husband of the petitioner with the sixth respondent, namely, the first wife, and directed the petitioner to move the competent civil court of jurisdiction to obtain a valid marriage certificate and submit the same to the respondents, so as to enable them, to process the claim for family pension.

2. Facts leading to the writ petition are as follows:

i) The petitioner husband P.Pitchai, while working in Air Force, married one Nagammal, in the year 1966. He belonged to Kallar/Ambalakarar caste. Within two months, their marriage was dissolved, as per the customs prevalent in the community. Thereafter, the said Nagammal married another person, Thangaraj.

ii) On 19.05.1967, in the presence of relatives and friends, in Uthangudi village, Madurai District, the said P.Pitchai married the petitioner. Due to wedlock, there are six children. He retired from Air Force in 1976 and joined the Department of Posts in 1981, as re-employed pensioner. As he frequently fell ill, he sought for voluntary retirement. It was accepted on 01.06.2001 with civil pension. He dies on 25.08.2005. As the petitioner was unable to maintain the family, she made an application on 31.10.2005, for family pension, in Form 14, with required documents.

iii) The Department of Posts directed the petitioner to produce details, such as passport size photographs, thumb impression, personal marks and identification, and such other documents, for grant of pension. Despite production of all the documents, the department of Posts did not sanction pension and therefore, the writ petitioner filed Original Application No.310/01417/2015, before the Central Administrative Tribunal, Madras Bench and prayed for a direction to the respondents 1 to 5, to grant family pension.

3. Opposing the prayer sought for, before the Tribunal, official respondents 1 to 5, in their counter affidavit, admitted that Mr.P.Pitchai was employed in Indian Air Force. His date of enrollment in Indian Air Force was on 08.09.1961 and during employment in Air Force, he had nominated Smt.Nagammal Pitchai, as his wife, to receive arrears of pension. They also admitted that he was discharged from Indian Air Force on 30.09.1976 and re-employed, as Lower Division Clerk, in Savings Bank Control Organisation, Dindigul Head Post Office from 17.02.1981. He had submitted the details of his family on 28.07.1981, declaring Smt.P.Miniammal (alias)

Radha, as his wife. But the writ petitioner has mentioned her name as P.Muniammal (alias) P.Radha and signed as P.Radha.

4. Official respondents 1 to 5 have further submitted that Mr.P.Pitchai, was permitted to retire from service voluntarily on 01.06.2001 F/N under the provisions of Rule 48 (A) (3-A) of Central Civil Services (Pension) Rules, 1972, vide order of Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, Memo No.B8/20 dated 25.05.2001. When pension papers were forwarded to the Director, Postal Accounts, Chennai - 8, the same was authorised that family pension would be decided later, as the late pensioner was in receipt of military pension, as on the date of voluntary retirement from service on 01.06.2001. Original military pension payment order of Mr.Pitchai was also not available, but a copy of the same was available in the service book of the retired staff.

5. Before the Tribunal, they further submitted that the writ petitioner made a representation dated 08.07.2015 through Postmaster General, Southern Region, Madurai-2, for family pension. As Mr.P.Pitchai was getting pension from military, a reply was sent that only one family pension is eligible to the writ petitioner, either from military or civil side. It was also replied that the retired official did not give any option for family pension to be paid to the petitioner. Official respondents 1 to 5 have further submitted that vide letters dated 24.07.2013, 20.08.2014, 25.09.2014 and 12.01.2015, respectively, writ petitioner was directed to produce (1) legal heir certificate, (2) age proof of legal heirs and in the meantime, the Senior Superintendent of Post Offices, Madurai Division, Madurai - 625 002, was also addressed to obtain the above said certificates. The writ petitioner submitted documents, except legal heir certificate and age proof. However, the request was forwarded to the General Manager Postal Accounts and Finance, Chennai - 8, along with his Service Book on 23.05.2014. The said authority, vide letter dated 15.07.2014, required a legal heir certificate from the petitioner. But, she refused to submit a legal heir certificate. In this regard, there was correspondence between the department and the writ petitioner. While processing the pension papers, it was seen that in the photograph, the petitioner has signed as P.Radha, countersigned, by the Superintendent of Post Offices and therefore, she was instructed to produce a fresh set of photographs and indicate her name, as P.Miniammal (alias) P.Radha, to avoid any legal complications in future. She was also intimated to produce, a "No Objection Certificate" from the military authorities that, she was not drawing any military family pension.

6. Contention has also been made that the General Manager, Postal Accounts and Finance, Chennai - 8, in his letter dated 27.02.2015, has also stated that (i) the late pensioner had not duly divorced his first wife Smt.Nagammal,

before marrying Smt.P.Radha, (ii) insofar as Rule 54 of CCS (Pension Rules), 1972, it is clear that the subsequent marriage is in violation of the Hindu Marriage Act, 1955 and void and that the spouse of such marriage is not considered to be an eligible member for grant of pension. Further contention has also been made that there was no decree of divorce granted by a court of law. No document was produced to prove dissolution of marriage. Official respondents 1 to 5, have contended that in the abovesaid circumstances, the claim for family pension was rejected, vide order dated 27.03.2015, by the Superintendent of Post Offices, Ramanathapuram.

7. The writ petitioner has filed a rejoinder, reiterating, dissolution of first marriage as per custom, her re-marriage with the retired employee of the postal department, children born out of wedlock and further contended that, as per the Government of India, Rule 19(54) of the CCS (Pension) Rules, 1972, the petitioner/pensioner would be deemed to have opted for civil pension; that when the writ petitioner had already submitted a sworn affidavit, as demanded by the department that she was not receiving any military pension, insisting her to obtain a "No Objection Certificate", from military authorities, was arbitrary and unnecessary, when the department itself wanted only, a sworn affidavit to be furnished.

8. In the rejoinder she has also submitted that the name of Nagammal never figured in any of the correspondence between her and the department until 26.02.2015 and in the Service Book of the retired and expired employee in postal department, name of the petitioner has been entered as wife, and countersigned by the competent authority, she denied the contention that she refused to submit a legal heir certificate. In the rejoinder, writ petitioner has further stated that, photographs, signatures, thumb impression and documents sought for, have been submitted. As regards customary practice prevalent in the community of Ambalakarar, dissolution of marriage and acceptance of the same, the writ petitioner has also relied on the provisions of the Hindu Marriage Act, 1955 and requested to decide the case. In addition to the above, the writ petitioner has also submitted written arguments.

9. Adverting to the above, vide order dated 30.06.2016, the Tribunal disposed of the Original Application No.310/01417/2015 as hereunder:

"8. It is not in dispute that the records of military service rendered by late Pitchai P, Government Servant indicate Respondent No.6 as his wife to receive certain benefits arising out of military service. In view of this, the onus of proof that the applicant is the sole surviving legally wedded wife of Late Pitchai.P and is, therefore, entitled to receive family pension is

on the applicant. I am in agreement with the learned counsel for the respondents that her case for family pension could only be processed after an appropriate decree from the competent court is obtained and produced by the applicant as there is no evidence of a valid divorce of the marriage of the late government servant with his first wife. The applicant is accordingly directed to move the competent Civil Court of jurisdiction to obtain a valid marriage certificate and submit it to the respondents to enable them to process the claim for family pension."

10. Assailing the correctness of the order, Mr.R.Pandi, learned counsel for the writ petitioner, reiterated the submissions made before the Central Administrative Tribunal, Madras Bench and in support of the above, took this court through, the correspondence between the petitioner and the department and further contended that though several documents were filed in the typed set of papers along with Original Application, Rejoinder and written arguments, and when the contents of the same, were not disputed by the department, the Tribunal failed to advert to the documentary evidence filed to substantiate the dissolution of the first marriage, marriage of the writ petitioner with the employee P.Pitchai.

11. He also reiterated that when P.Pitchai, had mentioned the name of the writ petitioner as his wife in the Service Book of Postal Department and countersigned by the Postmaster, Dindigul and that when the petitioner has also submitted a sworn affidavit, as directed by the postal department that she has not claimed any military pension, after the death of her husband, civil pension ought to have been granted to her. It is also his further contention that Nagammal, the sixth respondent herein, had married another person and that when there was no counter-claim by her, the Tribunal ought not to have turned down, the genuine request of the petitioner, and driven her to obtain a decree of divorce from the civil court.

12. On the basis of the counter affidavit filed before the Tribunal, Mr.V.Balasubramanian, learned Senior Panel Counsel for official respondents 1 to 5, justified the action of the official respondents 1 to 5 in denying family pension, and prayed to sustain the order of the Tribunal. To ascertain as to whether Mr.P.Pitchai, the deceased employee, had mentioned the name of the writ petitioner, as his wife, in the service when he entered the Postal Department and countersigned by a competent authority, we directed the learned counsel for the official respondents 1 to 5 to produce the Service Book of deceased P.Pitchai.

13. From the copy of the military pension payment order of Mr.P.Pitchai, it is seen that name of Nagammal Pitchai is shown, as his wife. At the same time, we also notice that when P.Pitchai had joined the postal department and re-employed on

01.06.1981, in the particulars relating to pension, he had mentioned the name of the writ petitioner, as his wife and that the same has also been countersigned a competent authority. He had served in Postal department from 1981, till he voluntarily retired on 01.06.2001. There is no change in the Service Book, as regards the marriage status of the petitioner, declared as wife. Nagammal, whose marriage with Mr.P.Pitchai, is stated to have been dissolved by customary practice stated to be prevalent in the community of Ambalakarar, which according to the petitioner is recognized by Law, has not come forward to make any claim for pension. Enclosure Nos.1 and 2 in the typed set of papers, are stated to be the marriage photograph of the petitioner with Pitchai, and photograph of the couple, with children.

14. Details of the family, as submitted by Mr.P.Pitchai, while in service, as Lower Division Clerk, SBCO, Sholavandan HO are A.Ponnusamy - father, P.Kulandaiammal - mother, Miniammal (alias) Radha - wife, Dhanasekar, Ilango, Nirmal Kumar, Ayyanar, Anjuman (sons) and Kavitha - daughter. Perusal of the above shows that the writ petitioner has been shown as wife. The declaration made by Late P.Pitchai has been countersigned by the Postmaster, Dindigul, and witnessed by an Upper Division Clerk, Sholavandan HO.

15. While furnishing particulars of pension in part II, the employee, had stated that Miniammal @ Radha, as his wife, He had also mentioned the names, Smt.Miniammal @ Radha - wife, P.Anjuman - son and P.Kavitha - daughter. The above details have been countersigned by the Postmaster, Dindigul. However, in Part III - Particulars of Family Pension, he had not given any specific name. Enclosures 6 and 7 in the typed set of papers filed in this court, are stated to be photographs of her son's marriage. Legal heir certificate dated 24.4.2016 issued by the Tahsildar, Madurai North, shows the name of the writ petitioner, as P.Muniammal @ Radha, wife of P.Pitchai, and their sons P.Dhanasekar, P.Elangovan, P.Nirmal Kumar, P.Ayyanar, P.Anjuman and daughter P.Kavitha of the wedlock.

16. In one of the letters, dated 22.08.2006 from the office of the General Manager Postal Accounts & Finance Tamil Nadu Circle, Chennai - 600 008, addressed to the Senior Postmaster, Thallakulam Head Office, by mentioning Smt.Miniammal @ Radha, as wife of Late Pitchai, and as the deceased was an Ex-serviceman and military pensioner, the Senior Postmaster, Thallakulam Head Office, has been instructed to ascertain as to whether he had opted for family pension, in military or not. If not opted, writ petitioner has been instructed to obtain a "No Objection Certificate", from military authorities for taking necessary action. In this regard, in another letter dated 15.03.2007 from the Postmaster General, Southern Region, Madurai the writ petitioner has been referred to Smt.P.Muniammal @ Radha, wife of late P.Pitchai. The Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, has also sent a letter dated 18.09.2007 on the

17. One of the sons of P.Pitchai, P.Nirmal Kumar died on 12.12.2009. The Tahsildar, Madurai North, has issued a legal heir certificate on 30.12.2009 and that the same is extracted hereunder:

"No.27015/2009/C2

Office of Tahsildar,
Madurai North Taluk
Madurai - 20

Date : 12-2009

Legal Heirship Certificate

Madurai District, Madurai North Taluk,
Othakadai Inner Circle, Uthangudi village, 3/97
Pandikovil Street, Melur Main Road, Uthangudi,
Madurai, resident of the above address, Late Shri
P.Nirmal Kumar (age 37) S/o P.Pitchai had left the
following persons as the legal heirs for which this
certificate is issued.

2. This certificate is issued only for the purposes
of name changes of the properties and for other
reasons.

sd----4-1-10

Tahsildar, Madurai

North

To

Tirumathi S.Shanmuga Priya,

W/o.P.Nirmal Kumar (Late)

3/97 Pandikovil Street

Melur Main Road

Uthangudi, Madurai."

18. In the letter dated 15.07.2013, the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram has stated that, as the retired official, was receiving pension from military side, only one family pension is eligible to his wife Smt.P.Muniammal @ Radha either from the civil side or from military side. Letter dated 15.07.2013 is reproduced hereunder:

"DEPARTMENT OF POSTS, INDIA

From

To,

Superintendent of Post offices

The Postmaster
General

Ramanathapuram Division
Ramanathapuram - 623 501

Southern Region
Madurai - 625 002

C/526 dated at Ramanathapuram - 623 501 the
15.07.2013:

Sub: Grant of Family Pension and other
benefits C/o Late P.Pitchai, TBOP PA (SBCO),
Ramanathapuram.

HO (DOD 25.08.2005) - reg.

Ref: RO Lr.No.AP/10-2/RMN/08 dated 05.07.2013

A kind reference is invited to the letter
cited above. The above mentioned retired official
was getting pension from military side also. Hence
only one family pension is eligible to his wife
Smt.P.Miniammal @ Radha either from civil side or
from military side. During the retirement period,
the official had not given option for family
pension.

Moreover, it is found in his pension file that
even the death of the petitioner had not been
intimated by his wife earlier. This is for your
kind information please.

/V.KUMARAKRISHNAN/,

Superintendent of Post Offices

Ramanathapuram Division

Ramanathapuram - 623 501.

Copy to:-

1.Smt.P.Miniammal @ Radha, W/o Shri P.Pitchai,
2/84A, Pandi Kovil Street, Near K.M.College, Melur
Main Road, Uthangudi Post, Madurai - 625 017. She
will please intimate to this office whether she is
getting family pension from military side.

/V.KUMARAKRISHNAN/,

Superintendent of Post Offices

Ramanathapuram Division

Ramanathapuram - 623 501."

19. From 2006 onwards, writ petitioner has been referred
to as the wife of P.Pitchai. Thereafter, on 31.10.2013, the

Superintendent of Post Offices, Ramanathapuram Division, has directed the petitioner to produce an affidavit, confirming her date of birth, from a Notary Public, in original and a further affidavit to the effect that she was not drawing any family pension from military. Letter dated 31.10.2013 is extracted.

"DEPARTMENT OF POSTS, INDIA

From

To,

Superintendent of Post offices

Smt.P.Miniammal @ Radha,

Ramanathapuram Division

2/84-A, Pandi

Kovil Street,

Ramanathapuram - 623 501

Near K.M.College,

Melur Main Road,

Uthangudi (Post)

Madurai - 625 107

C/526 dated at Ramanathapuram - 623 501 the
31.10.2013:

Sub: Grant of Family Pension: case of
P.Pitchai, Retd TBOP

PA, SBCO, Ramanathapuram HPO - DOR -
01.06.2001-

regarding

Ref: Your letter dated 13.08.13.

Please refer to the above cited letter, you
are instructed to submit the following documents
for further action.

1. An affidavit confirming your date of birth
obtained from the notary public in original.

2. The affidavit for not drawing family
pension from military side in original.

Superintendent of Post Offices
Ramanathapuram Division
Ramanathapuram - 623 501."

20. On 27.11.2013, the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, by stating that on perusal of copy of PPO and Service Book, it was noticed that the employee had mentioned the name of his wife, as Smt.Miniammal @ Radha, but the representation was sent in the name of P.Miniammal @ Radha and signed as Radha, has returned her case. Thereafter, the petitioner, is stated to have sent a representation dated 02.12.2013 that it was strange to raise the issue of spelling, after a long period of more than eight

years and that the same was not even mentioned, when she met the Superintendent of Post Offices, Ramanathapuram Division on 28.10.2013. Thereafter, the petitioner has also submitted the affidavit, as required.

21. As there was undue delay, left with no other alternative, the petitioner has represented her case before the Regional level Postal Pensioners Association on 16.12.2013 and when the same was brought to the notice of the Postmaster-General, Southern Region, Tamil Nadu, Madurai, the said official, vide letter dated 13.02.2014, has directed the Superintendent of Post Offices, Ramnad Division, Ramanathapuram, to give top priority. Thereafter, on 27.02.2014, Senior Superintendent of Post Offices, Madurai Division, Madurai - 625 002, has requested the Assistant Superintendent of Post Offices, Melur Sub Division, Melur - 625 106, for necessary action. The same is extracted hereunder:

"Registered

DEPARTMENT OF POSTS, INDIA

From	To
Sr. Supdt. of P.Os, Madurai Division, Madurai 625 002	The Asst. Supdt. of P.Os, Melur Sub Division Melur 625 106

No.C/2-1/09-10/IV dated at Madurai 625 002
the 27.02.2014

Sub : Collection of pension papers; grant of
family pension,

c/o.Late P.Pitchai, Retd TBOP PA, SBCO
Ramanatha-
puram HO DOR 01.06.2001 reg; (ppo
No.21756/LPS)

The family pension papers as detailed below
in r/o Late B.Pitchai, Retd PA Ramanathapuram HO
received from the Supdt of Post Offices,
Ramanathapuram dn Ramanathapuram is enclosed for
favour of necessary action. The family pensioner
Smt.P.Muniammal @ Radha is residing at 2/84-A
Pandikoil st Near KM College, Melur Main Road,
Uthangudi PO, Madurai 625 107.

- 1.Form 14 in duplicate
- 2.Mahazar in duplicate
- 3.Option for medical allnce
- 4.Specimen signature slip
- 5.Identification mark slip
- 6.Legalheir certificate
- 7.Passport size photographs
- 8.Age proof certificates of legal heirs
- 9.Finger Impression Sheets

DA: As above.

Sr. Supdt. of P.Os,
Madurai Division
Madurai 625 002

Copy to: The Supdt of Postoffices, Ramanathapuram,
Ramanathapuram 623 501 for favour of information
wrt lr noc/526 dated 26.12.13.

Sr. Supdt. of P.Os,
Madurai Division
Madurai 625 002

22. The Senior Superintendent of Post Offices, Madurai Division, Madurai has addressed a letter dated 21.05.2014, that identification marks, left thumb impression duly attested by the Assistant Superintendent of Post Offices, Melur Sub Division, have been forwarded to the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, on 17.05.2014. On 02.07.2014, the said authority has also sent another letter to the petitioner, stating that all the documents, in support of her claim for family pension, have been forwarded to the General Manager Postal Accounts and Finance, Chennai - 8.

23. Subsequently, vide letter dated 20.08.2014, the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, has directed the petitioner to obtain legal heir certificate from the Revenue authority and to submit the same to Assistant Superintendent of Post Offices, Melur Sub Division, Melur, for onward transmission to the General Manager, Postal Accounts and Finance, Chennai - 8. As there was delay in sanctioning family pension, the writ petitioner seemed to have sent a representation dated 07.08.2014 to the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare, Government of India, New Delhi, for which, there was a reply dated 28.08.2014.

24. On 18.09.2014, the General Manager Postal Accounts and Finance, Tamil Nadu Postal Circle, Chennai - 600 008, has sent a letter to the petitioner stating that, as she had signed her name as, P.Radha countersigned by the Superintendent of Post Offices, and therefore instructed her to produce fresh set of photographs and to indicate the name, as Muniammal @ P.Radha, to avoid any legal complication in future. Letter dated 18.09.2014 is extracted hereunder:

Office of the General Manager Postal Accounts and
Finance

Tamil Nadu Postal Circle Chennai 600 008
No.638/PENI/GL IV/P.Pitchai/21756/LPS/14-15/
18/09/2014.

To
The Superintendent of Post Offices
Ramanathapuram Division
Ramanathapuram 623 501.

Sir,

Sub : Grant of family pension to
Smt.Muniammal @ Radha w/o P.Pitchai holder of PPO
No.21756/LPS reported to have died on 03.09.2005 -
reg.

Ref : Lr No C526/ dated 23.05.2014

Kindly refer to your letter cited above
forwarding the claim papers for grant of family
pension to Smt.Kuppammal @ P.Radha w/o of
P.Pitchai reported to have died on 03.09.2005.

While processing the pension case it is seen
that the photograph of the claimant has signed as
P.Radha which has been countersigned by the SPOs.
The claimant may be instructed to produce a fresh
set of photographs and indicate the name as
Muniammal @ P.Radha to avoid any legal
complication in future.

It is also intimated that the family pension
in the civil side i.e. under the Dept of Posts
will be authorised only from 24.09.2012 as per
Ministry of Defence Lr No.0105/2010-D Pen/Policy
dated 17.01.2013 instead from the day following
the date of death of the pensioner i.e. from
04.09.2005 since the claimant is yet to produce
the NOC from the Military authorities about non
drawal of Military family pension.

The pension payment order will be released
only on the receipt of photographs from your end
please note.

Encl:- photo of the claimant

Senior Accounts Officer,
Pension Section

Copy to
Smt Muniammal alias P.Radha, 2/84, Pandikoil
Street, near KM College, Melur Main Road,
Uthangudi Post, Madurai - 625 107. It is intimated
that her family pension is being processed at this
end and meanwhile she is instructed to submit one
more set of photographs to SPO Ramnad Division
signing her name as P.Muniammal @ P.Radha.

Sri.S.Muthusamy Secretary, Indian Southern Region
Postal Pensioners Welfare Association (Regn
No.81/2011) Madurai, Tamil Nadu 625 005.

25. Thereafter, the writ petitioner is stated to have sent representation to various authorities upto the Hon'ble Minister for Communication. After receipt of the affidavit from the writ petitioner to the effect that she was not getting any military pension, again on 12.01.2015, the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, has reverted to the original position of driving her to submit a "No Objection Certificate", from the military authorities for non-drawal of military pension, and also directed her to submit a new set of three photographs.

26. On 26.02.2015, for the first time, the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, has sent a letter to the petitioner stating that the General Manager Postal Accounts and Finance, Chennai - 600 008, has pointed out that, in the copy of the military PPO enclosed in the Service Book of the pensioner, P.Pitchai, he had nominated Smt.Nagamma Pitchai, as wife to receive any arrears from the military side. But the pensioner P.Pitchai, while in service in postal department had not provided any proof for divorce from his first wife Smt.Nagammal.

27. Going through the correspondence between the writ petitioner and the Department, it could be seen that, at each and every stage, the writ petitioner has been directed to produce photographs, affidavits, documents, NOC, etc. As extracted supra, it is an admitted fact that the deceased employee himself had mentioned the writ petitioner, in the statement of details of family, duly countersigned by the Postmaster, Dindigul, as wife and after lapse of almost a decade, the department has raised a new ground that P.Pitchai had nominated Nagammal, as wife, in the military PPO and that the employee had not produced any proof of divorce from his wife. If there was any doubt regarding divorce, the department, ought to have obtained the details of the same from the employee, at the time, when the name of the writ petitioner was entered, as wife in the Service Book of the postal department, in 1981, duly countersigned by the competent authority. It is too late in the day and that too, when a claim for family pension is made by the petitioner to raise a new point that the deceased had not provided any proof of divorce from his first wife Nagammal, who was never in the picture for nearly a decade, nor the said individual has raised any claim for the subsistence of marriage, and her marital status, during his life time and employment in the Department of Posts. When the department had not raised any doubt over the declaration of the employee in 1981, mentioning the petitioner as his wife, in the Service Book, duly signed by the competent authority, after nearly a decade when a claim was made by the petitioner, the Senior Accounts Officer, Pension Section, Office of the General Manager Postal Accounts and Finance, TamilNadu Circle, Chennai 600 008, has written a letter, dated 27.02.2015, stating that the pensioner had not

legally divorced his first wife Nagammal, before marrying the writ petitioner, and therefore, as per Rule 54 of CCS (Pension) Rules, 1972, the later marriage, in violation of the Hindu Marriage Act, 1955 is void. Thereafter, vide letter dated 27.03.2015, the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, has rejected the claim of the writ petitioner, as not genuine, since her claim of marriage with the pensioner P.Pitchai in 1966 is not correct. Later, on 28.05.2015, the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, has stated that no further communication in that regard would be entertained.

28. From the materials on record, it could be deduced that, despite production of various documents, indicating marriage and children, born out of the wedlock and duly certified by the Revenue authority, the Superintendent of Post Offices, Ramanathapuram Division, Ramanathapuram, has made a statement that the marriage of the petitioner with the employee, is not correct and none of the authorities, who have dealt with the request of the writ petitioner, for payment family pension, have considered the solemn declaration of the employee as his wife, duly countersigned by Postmaster, Dindigul and without considering the same, the department has protracted finalisation of her request and from the above, it is evident that the writ petitioner has been tossed from pillar to post. There is inordinate delay in settling family pension. At one stage, the department had even asked the writ petitioner to submit an affidavit to the effect that she had not claimed any military pension, which she has also done. After receipt of the required particulars, once again, the very same issue of obtaining, "No Objection Certificate", from the military has been insisted. Instead of driving the writ petitioner to obtain, "No Objection Certificate" from military, the department of Posts, could have very well ascertained from military, as to whether anybody has claimed military pension, instead of driving the petitioner to obtain a decree of divorce from the civil court, when the specific case of the petitioner is that she has not claimed military pension and the affidavit sought for, is also submitted, there is absolutely, no reason, as to why family pension should be denied.

29. The Tribunal has failed to consider that after nearly a decade, the department, has raised a new ground for rejection. The Tribunal has also failed to consider, as to why the department, had not raised any doubt, in 1981, when it accepted the entry in the Service Book, i.e. when the employee himself had declared the petitioner as his wife, and duly countersigned by the competent authority.

30. As rightly contended by the learned counsel for the petitioner, supported with documents, none of the above aspects, has been considered by the Tribunal while rejecting

the prayer of the petitioner, for family pension. It is not open to the respondents, to fish out, new reasons for rejection. For the reasons stated supra, we are of the considered view that the official respondents have unnecessarily delayed sanction of family pension, for nearly a decade, despite the fact, the writ petitioner, had been mentioned as wife, in his service book, duly countersigned in 1981, and raised a dispute over the marital status for the first time, in 2015, after nearly 34 years. Hoping that the grievance of the writ petitioner would be ventilated, as early as possible, without any further delay, we direct the official respondents 1 to 5, to sanction family pension to the writ petitioner, from the date of submission of application, namely 31.10.2005, in accordance with law, within three months from the date of receipt of a copy of this order.

Writ petition is allowed with the above direction. However, there shall be no order as to cost.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Secretary, Department of Posts
Union of India
New Delhi - 110 001

2.The Chief Post Master General
Tamil Nadu Circle
Chennai 600 002

3.The Post Master General
Southern Region
Madurai 625 002

4.The General Manager
Postal Accounts & Finance
Chennai 600 008

5.The Superintendent of Post Offices
Ramanathapuram Division
Ramanathapuram 623 501

6.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

ss(co)
krd 16/12