



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2016

CORAM:

WEB COPY

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.23888 of 2016

U.Antony

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai)Ltd.,
Bye Pass Road, Madurai 625016.

2.The General Manager,
Tamil Nadu State Transport Corporation (Madurai)Ltd.,
Dindigul Region, Dindigul - 4.

3.The Administrative,
Tamil Nadu State Transport Corporation Employees Pension Fund
Trust,
Pallavan Salai,
Chennai - 2.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to enter the name of the petitioner's second wife namely, Rosali in the service register of the petitioner based on the marriage certificate No.3 of 2009 dated 21.12.2009 as petitioner's nominee in the service register in view of the suit for judicial separation in O.S.No.42 of 1988 dated 04.04.1988 filed by the first wife namely, Mariammal within the stipulated period.

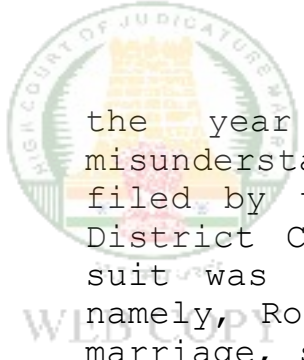
For Petitioner : Mr.S.Govindan

For Respondents : Mr.A.Jeyaraman

O R D E R

The petitioner seeks for issuance of a Writ of Mandamus, directing the respondents 1 and 2 to enter the name of the petitioner's second wife namely, Rosali as his nominee in the service register based on the marriage certificate No.3 of 2009 dated 21.12.2009 and also based on the suit in O.S.No.42 of 1988 for judicial separation dated 04.04.1988, which was filed by the first wife namely, Mariammal within the a time frame.

<https://hcservices.courtservice.in/hcservices/> 2. The case of the petitioner is that he was appointed as Driver in the respondent / Corporation in the year 1971 and retired from service on 31.05.2002 as Driving Instructor. During



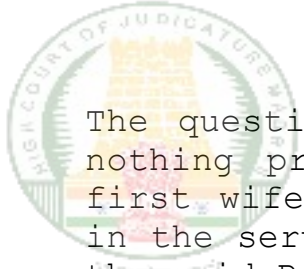
the year 1975 he married one Mariammal. Due to some misunderstanding between them, a suit in O.S.No.42 of 1988 was filed by the said Mariammal for judicial separation before the District Court, Dindigul and by order dated 04.04.1988 the said suit was ordered. Thereafter, the petitioner married a women namely, Rosali on 25.03.1990 as second wife and from the date of marriage, she is living with the petitioner.

3.The grievance of the petitioner is that on 25.03.1990, the petitioner submitted a representation to the respondents stating that the name of his second wife has to be entered in the service register as his nominee. In the mean time, on 31.05.2002 he retired from service. However, the respondents have not taken any action for entering the name of his second wife as nominee. The petitioner also executed a Will in favour of his second wife on 20.03.2013. Again on 01.07.2010 the petitioner sent a representation to the respondents along with marriage certificate dated 21.12.2009. But, no action has been taken by the respondents till date. Hence, the petitioner is before this Court with the present Writ petition.

4.The learned counsel for the respondents would contend that the petitioner has not taken steps for nominating his second wife as his nominee while he was in service and after the period of 14 years from the date of his retirement, he is seeking for alteration in the service record, which is not permissible. Apart from that, he would further contend that unless and otherwise, the petitioner gets a decree of divorce from a Court of law, even though they have lived separately for more than 25 years, the same cannot be construed as divorce.

5.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

6.Though I find much force in the contention of the learned counsel for respondents that the petitioner and his first wife namely, Mariammal, are living separately for more than 25 years without obtaining a decree of divorce and no petition has been filed by the first wife for divorce or no criminal complaint has been lodged stating that the said Rosali is living with the petitioner for so many years and they have got three children and also a Will was executed in favour of the said Rosali, which is in force and based on the said Will, the Rosali may be entitled to get the benefits. The Will comes into effect after the lifetime of the petitioner and the petitioner can wrote another Will suppressing the present one during his life time. The nominee is a person, who is holding the money in trust for the legal heirs.



The question of legal heir does not arise now. If that be so, nothing prevented the respondents in replacing the name of the first wife namely, Mariyammal by substituting the name of Rosali in the service records as the petitioner has clearly admitted that the said Rosali is living with him for several years.

7. In view of the above, the respondents are directed to replace with the name of the said Rosali in the service record of the petitioner, within a period of one month from the date of receipt of a copy of this order. The Writ petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road, Madurai 625016.

2. The General Manager,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Dindigul Region, Dindigul - 4.

+1cc to Mr. S. Govindan, Advocate SR.no.82135

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W.P. (MD) No.23888 of 2016
20.12.2016