

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30802 of 2014

P.Suriya

...Petitioner

Vs.

The Superintending Engineer,
Kanchipuram Electricity Distribution Circle,
Anna Maaligai, Oli Mohamedpet,
Kanchipuram.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India to issue a writ pf Certiorarified Mamdamus or any other appropriate writ or order or direction in the nature of writ to call for the records in connection with the impugned order passed by the respondent in letter No.3225/Nipi3/Asst.2/Ko.06(07)/2013 dated 08.04.2013 and quash the same and further direct the respondent to pay the family pension and the arrears with interest to the petitioner in view of her husband demise based on the nomination submitted by her husband in the pension proposal and pass orders.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.R.Varalakshmi

O R D E R

The relief sought for in this writ petition is to quash the order of rejection issued by the respondent-Board on 08.04.2013 in respect of grant of family pension and arrears of family pension to the writ petitioner.

2.The learned counsel appearing for the writ petitioner made a submission that the husband of the writ petitioner late Parthasarathy was working as a Line Inspector in the Tamil Nadu Electricity Board and retired from service on attaining the age of Super Superannuation on 30.06.2007. Subsequently, the husband of the writ petitioner passed away on 17.04.2011. The petitioner states that she is the second wife of late Parthasarathy and the first wife Jagatha also died on 18.02.2005.

3. Further it is stated that the marriage between the writ petitioner and the deceased employee was solemnized and registered in the Office of the Register of Marriage, when the deceased employee was in service. Further, the learned counsel states that late Parthasarathy, while submitting his pension proposal during the year 2007, nominated the name of the writ petitioner in the pension proposal. In other words, in the pension records, the name of the petitioner has been recorded as nominee in her capacity as wife.

4. The deceased employee late parthasarathy passed away on 17.04.2011. Accordingly, the writ petitioner claims that she is entitled for family pension, based on her application submitted before the respondent on 21.09.2012.

5. The respondent considered the application submitted by the writ petitioner and rejected the same in proceedings dated 08.04.2013, stating that the marriage between the writ petitioner and the deceased employee late parthasarathy was solemnized during the life time of the first wife S.Jagatha and therefore, the marriage become invalid and the second wife of the deceased employee is not entitled for family pension and arrears of family pension.

6. The learned counsel appearing for the respondent-Board also reiterated by stating that the marriage between the writ petitioner and the deceased employee was solemnized during the life time of the first wife. Such a fact cannot be disputed by the writ petitioner and further the marriage between the writ petitioner and the deceased employee, was null and void in the eye of law. If the marriage has not been established or if the marriage was not in accordance with law and legal, the Board cannot consider the claim of family pension and therefore, the order of rejection is in accordance with law and there no infirmity.

7. Now, this Court has to consider the fact that whether the writ petitioner is an eligible nominee for the purpose of receiving the family pension and arrears of family pension in accordance with the Pension Rules in force.

8. The learned counsel for the writ petitioner fairly admitted the fact that the marriage between the writ petitioner and the deceased employee late parthasarathy, was solemnized during the life time of the first wife Smt.S.Jagatha. Though the writ petitioner admits the fact that the marriage between the writ petitioner and the deceased employee was solemnized during the life time of the first wife. The date of marriage and the marriage certificate registered as per the statement made in the affidavit filed in support of the writ petition has not been

furnished in this writ petition. However, admittedly, the marriage was solemnized during the life time of the first wife. Thus, the marriage cannot be treated as legal and if any second marriage is solemnized during the life time of the first wife, the marriage becomes null and void.

9. Those particulars with regard to the Registration Certificate and the date of marriage, have not been stated in the writ petition. Thus, the writ petitioner also has not come out with clean facts. This apart, the fact regarding the marriage during the life time of the first wife has been admitted by the writ petitioner and the learned counsel also fairly made submissions in this regard.

10. The Tamil Nadu Electricity Board has adopted the Tamil Nadu Pension Rules, 1978 for the purpose of grant of pension to the employees of the Board. The Tamil Nadu Pension Rules, Rule 49 Sub-clause 13(b) reads as follows:-

"(b) family in relation to a Government Servant means-

[(i) (a) wife in the case of a male Government servant or husband in the case of a female Government Servant;

(b) a judicially separated wife or husband such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery; and]

Note - Wife and husband shall include respectively judicially separated wife and husband.

Note- Where the appointing authority referred to in sub-rule(3) of Rule(6) decides that for reasons to be recorded in writing, a child or children from a judicially separated deceased female Government servant should receive the family pension in preference to judicially separated husband of the deceased Government Servant, such husband shall not be regarded as covered by the expressions "family"

(ii) son who has not attained the age of (twenty five) years and unmarried daughter who has not attained the age of (twenty five) years (including such son and daughter adopted legally and also such son or unmarried daughters born through illegitimate wife before retirement and (such son or

daughter born after retirement, on or after 1st January 1979)

(iii) (legally adopted son and daughter, father) failing which the mother, in the case of an unmarried Government Servant subject to the condition that such person declares to the dependent on the deceased government Servant]"

11. On perusal of the above provisions, it is clear that wife alone is eligible for family pension and to receive the arrears of pension.

12. Therefore, it is unambiguously portrayed that the writ petitioner is not a legally wedded wife of the deceased employee late parthasarathy and the order of rejection passed by the respondent is in accordance with the provisions of the Tamil Nadu Pension Rules, 1978 and there is no infirmity.

13. At this juncture, the learned counsel for the writ petitioner made a submission that a minor son and a minor daughter, were born from and out of the wedlock between the writ petitioner and the deceased employee and those minor son and daughter are eligible for family pension in this regard.

14. This Court is of the opinion that it is left open to the eligible persons to submit their respective application to the competent authorities. On receipt of the same, the competent authorities are at liberty to consider the case on merits and in accordance with the law. However, the relief sought for in this writ petition in respect of the writ petitioner, cannot be granted and the impugned order of rejection passed by the respondent is in order and there is no infirmity.

15. Thus the relief of family pension and the arrears of family pension in respect of the writ petitioner, cannot be granted. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

svn/smn

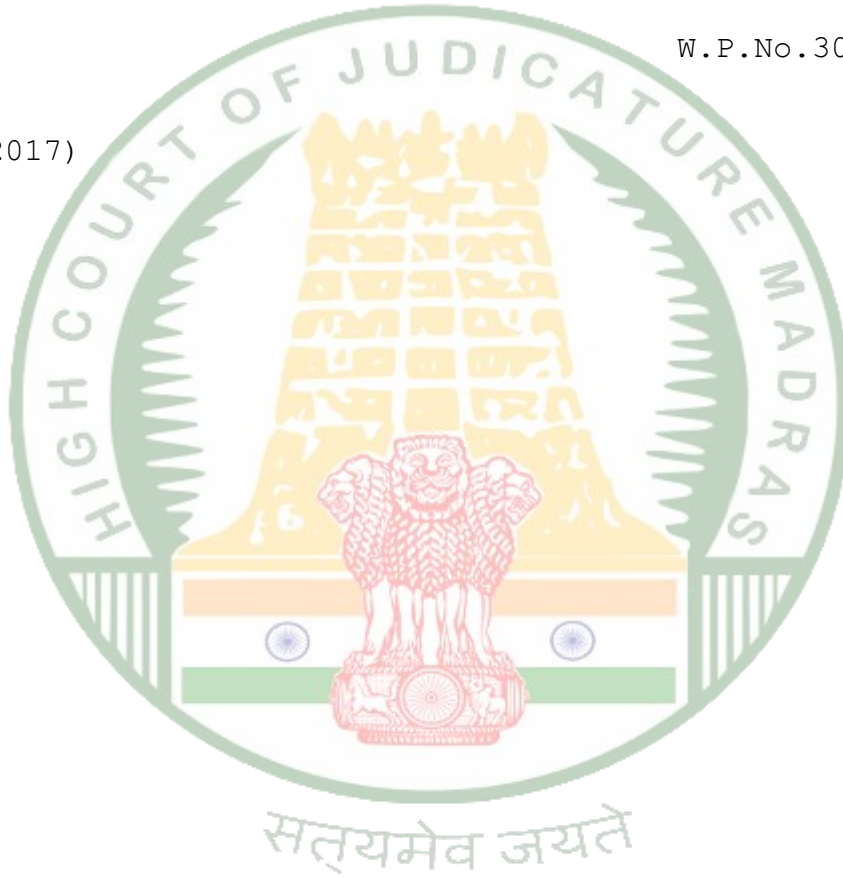
To

The Superintending Engineer,
Kanchipuram Electricity Distribution Circle,
Anna Maaligai, Oli Mohamedpet,
Kanchipuram.

+ 1 cc to MR. S. Sivakumar, Advocate Sr.75962

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RK(CO)
EU(08/12/2017)



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