

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A.No.889 of 2017

The Assistant Elementary Educational Officer
Thiruvavarur

.. Appellant/Respondent

-vs-

1. Smt.S.Kamatchi

2. The Accountant General

O/o Principal Accountant General
(Accounts and Entitlement)

Tamil Nadu 361, Anna Salai
Chennai 600 018

.. Respondents

Appeal under Clause 15 of the Letters Patent, against the order dated 06.08.2014 made in W.P.No.31990 of 2012.

WP.31990/2012:Writ Petition is filed under Article 226 of the constitution of India, praying for the issuance of a Writ of Ceritiorarified Mandamus, calling for the records pertaining to Pen. 33/7/Pt.4099/11-12/150-1450-92 dt 12.12.2011 passed by the 1st respondent and quash the same and further direct the respondents to disburse the family pension and other related pensionary benefits including the life time pending arrears to the petitioner pending disposal of the above writ petition

For Appellant :: Mr.V.Jayaprakash Narayanan
Special Government Pleader

For Respondents:: Mrs.S.Hemalatha for R1

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader for the appellant and the learned counsel representing the first respondent.

2. It appears that as per the order of the learned single Judge, the claim made by the second wife of the deceased for the grant of pensionary benefits has been allowed in her favour. It is the contention of the learned counsel for the first respondent/writ petitioner that what is not in dispute is that the first respondent herein was the second wife of the deceased

Subramanian and moreover at the time of claiming the pensionary benefits, the first wife was not alive. It is also contended that even the first wife Saroja never objected to the marriage between the first respondent and Subramanian, as she was suffering from illness and rather with her consent, their marriage was solemnized.

3. However, the learned Special Government Pleader for the appellant insisted upon the production of some documents to show that the first wife had ever consented for the second marriage during her lifetime.

4. It appears that, as contended by the learned counsel for the first respondent, the first wife was suffering from illness and another thing is that the second marriage is said to be a voidable marriage. Since the marriage is said to have taken place with the consent of the first wife, the second marriage between Subramanian and the first respondent becomes not void-ab-initio, but voidable, as an option is also given to the first wife either to accept or not to accept the second marriage. In this situation, we are of the view that the order passed by the learned single Judge does not suffer from any error, more so, when it is a case of voidable marriage and also the first wife is not a rival claimant. Moreover, the first respondent/second wife has also been nominated for claiming the pensionary benefits in the service records of the deceased. In that view of the matter, the appeal filed by the Department does not merit consideration. Accordingly, the writ appeal is dismissed. Consequently, C.M.P.No.12515 of 2017 is also dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Assistant Elementary Educational Officer, Thiruvarur
2. The Accountant General
O/o Principal Accountant General
(Accounts and Entitlement)
Tamil Nadu 361, Anna Salai, Chennai 600 018

+1cc to Mr.S.Hemalatha, Advocate, S.R.No.59613
+1cc to the Government Pleader, S.R.No.58881

W.A.No.889 of 2017

BR(CO)
GN(08/09/2017)

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