

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 15375 of 2016
and W.M.P.No.13399 of 2016

Kala

... Petitioner

Vs.

1. The Chairman,
TANGEDCO,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai - 02.

2. The Superintendent,
TANGEDCO,
Tamilnadu Electricity Board,
Cuddalore District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the 2nd respondent in letter no.018201/Admin.2/Assist.2/Court case2006-3, dated 19.11.2007 and quash the same and direct the 2nd respondent to pay all the pensionary benefits and monthly family pension to the petitioner within a reasonable time.

For Petitioner: Mr.N.Anand Venkatesh

For Respondents: Mr.M.Fakkir Mohideen

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O R D E R

The order of rejection issued by the second respondent in proceedings dated 19.11.2007 in relation to the grant of family pension to the writ petitioner is under challenge in this writ petition.

2.The impugned order dated 19.11.2007 states that the deceased employee of the Board was working as a Wire man and

retired from service on attaining the age of superannuation on 30.06.2000 and thereafter he passed away on 16.01.2005. When the question of settlement of pensionary benefits came for consideration the respondents have taken a decision by examining the rules regarding the grant of family pension. The respondents came to the conclusion that during the life time of the first wife of the deceased employee, Smt.Navaneetham, the deceased employee has solemnized the second marriage with the writ petitioner. Thus, in accordance with the Tamil Nadu Pension Rules, 1978, if the second marriage was solemnized during the life time of the first wife, then the family pension cannot be granted to the second wife.

3.Even in earlier communication issued by the respondents in proceedings dated 02.08.2008 it is stated that the second wife (Writ petitioner) has obtained a succession certificate from the District Munsif Court, Panruti and further the legal heirs of the first wife also have given No Objection Certificate for disbursing the pensionary benefits in favour of the writ petitioner. However, it is stated that the marriage between the deceased employee and the writ petitioner was solemnized in the year 1981 and moreso, during the life time of the first wife, Smt.Navaneetham. Further it is stated that the decree of divorce was obtained with the first wife only on 12.07.2001 and the marriage was solemnized between the deceased employee and the writ petitioner in the year 1981, thus the marriage between the writ petitioner and the deceased employee is to be held as void.

4.The learned counsel appearing for the writ petitioner made a submission that the legal heirs of the first wife have no objection with regard to the settlement of the terminal benefits of the deceased employee in favour of the writ petitioner. However, those factors cannot be taken into account in lieu of the legal impediment in this regard with reference to the Rule 49 of the Tamil Nadu Pension Rules. This apart, this Court in the case of V.Backiyam -Vs- The Principal Accountant General in W.P.(MD) No.3989 of 2016 on 20.04.2016 decided the case on the similar issue and the Rule 49 of the Tamil Nadu Pension Rules is considered and the relevant portion of the order is extracted here under:

"4.In this regard, it is worthwhile to consider the explanation given to Rule 49(7) (a) (i) of the Tamil Nadu Pension Rules, 1978, which reads as follows:

Explanation:- For the purpose of this rule, the second wife shall be eligible for the benefits of family pension only if the second marriage.

(i) solemnised as per the customary law prevailed among the community before the date of commencement of the Hindu Marriage Act, 1955 (Central Act 25 of 1955); or (ii) solemnised under the Mohammadan Law in which bigamy is permissible. (Explanation to Rule 49(7)(c) was introduced on 2nd June 1992, only to clear the ambiguity existing prior to that.

5. Clause 7 (a) (i) contemplates of family pension payable to more widows than one. This was intended to mean only those marriages solemnized prior to 1955 Act. Therefore, when the explanation clearly indicates that the personal law is applicable to the parties, the explanation by the learned counsel for the petitioner cannot be accepted.

6. The learned counsel for the petitioner relied on an unreported judgment of this Court in S. Pushpavalli Vs. The Senior Accounts Officer, dated 26.08.2014 in W.P.(MD).No.7817 of 2011.

7. The explanation to the rule 49(7) (a) (i) very clear that the second wife shall be eligible for the benefits of family pension, if the second marriage was solemnized as per customary law prevailed among community before the date of commencement of Hindu Marriage Act, 1955. It means that if the second marriage was after the coming into force of Hindu Marriage Act, 1955, the second marriage is void and the second wife is not entitled to the benefits of family pension."

5. When the Tamil Nadu Pension Rules 1978, unambiguously provides that if the second marriage was solemnized during the life time of the first wife, then the second wife is not entitled for the family pension under Rule. Admittedly, the affidavit filed in support of this writ petition is also silent regarding the date of marriage of the writ petitioner with the deceased employee. However, the proceedings of the respondents dated 02.08.2006 states that the marriage of the writ petitioner with the deceased employee was solemnized in the year 1981, thus, this Court has no option to consider the mere pension in the order dated 02.08.2006. In this view of the matter, the relief as such sought for in this writ petition cannot be considered, in view of the bar in Rule 49 of the Tamil Nadu Pension Rules, 1978.

6. Accordingly, the writ petition stands dismissed. However, there is no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Chairman, TANGEDCO,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.
2. The Superintendent, TANGEDCO,
Tamilnadu Electricity Board,
Cuddalore District.

+1cc to Mr.N.Anand Venkatesh, Advocate sr.70741

W.P.No. 15375 of 2016
and W.M.P.No.13399 of 2016

ss(12/10/2017)

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