

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.5399 of 2013

R.Valli

.. Petitioner

Vs.

1.The Accountant General of Tamil Nadu,
Department of Pension and Entitlement,
D.M.S.Compound, Teynampet,
Chennai - 600 018.

2.The Director of Elementary School Education,
D.P.I. Compound, College Road,
Chennai - 600 006.

3.The Chief Elementary Education Officer,
Cuddalore, Cuddalore District.

4.Sivakami

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus to direct the respondents 1 to 3 to sanction the pension in favour of the petitioner for the death of her husband Late Ramachandran on par with the fourth respondent and disburse the other monetary benefits forthwith based on the representation of the petitioner dated 14.01.2013.

For Petitioner : Mr.C.Prabakaran

For Respondents: Mrs.Hema Muralikrishnan (for R1)

Mr.R.Govindasamy (for R2 and R3)
Special Government Pleader

Mrs.R.Meenal (for R4)

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of Mandamus to direct respondents 2 to 3 to sanction the pension in favour of the petitioner for the death of her

husband Late Ramachandran on a par with the fourth respondent and disburse the other monetary benefits forthwith based on the representation of the petitioner dated 14.1.2013.

2.The facts of the case, in a nutshell, are as under:

The petitioner's husband, one Ramachandran, was working as teacher. He married the fourth respondent and they had no children. Thereafter, with the consent of the fourth respondent, the writ petitioner married the said Ramachandran on 5.10.1989. After the marriage, they all stayed together as a joint family. Even from the second marriage they had no children.

3.While things stood thus, the petitioner's husband passed away on 12.3.2003 leaving behind the writ petitioner and the fourth respondent. It is pleaded that the Tahsildar, Panruti, after thorough enquiry, issued a legal heirship certificate on 10.9.2003, notifying that the writ petitioner and the fourth respondent are legal heirs of the deceased Ramachandran. That being so, it is alleged that the fourth respondent alone obtained the death benefits, gratuity and other benefits in respect of her late husband.

4.It is the case of the writ petitioner that the fourth respondent has no objection for equal distribution of the benefits and that the fourth respondent has also informed the same to the third respondent. The petitioner pleads that she sent series of representations to the respondent authorities, however the same did not evoke any response.

5.It is alleged that the fourth respondent received all the death benefits of her deceased husband and had driven her out of the matrimonial house and that she is unable to maintain herself and her aged parents. In this backdrop, the petitioner sent a representation on 17.1.2012 to the respondent authorities and requested them to apportion all the benefits of her late husband and pay the same to her to enable her eke out her livelihood.

6.Referring to Rule 49(7)(a)(ii) of the Tamil Nadu Pension Rules, 1978, it is pleaded that if the deceased employee has more than one widow, the widows are entitled to equal share.

7.The petitioner relies on a decision of a learned Single Judge of this Court in S.Suseela @ Mary Margaret v. The Superintendent of Police and another [Order dated 18.6.2015 made in W.P.No.15806 of 2015], to emphasize that the petitioner, being the second wife, is entitled to family pension.

8.In this factual backdrop, the present writ petition is filed for the relief stated supra.

9. In the counter affidavit filed on behalf of the first respondent, it is pleaded that merely because the fourth respondent consented to the marriage of the petitioner with late Ramachandran, it does not make the second marriage legal or valid in the eye of law. It is further stated that on the sole ground that the Tahsildar had included the name of the petitioner as legal heir of late Ramachandran, she cannot be granted equal share in the benefits of her deceased husband. It is averred that the second marriage even during the subsistence of the first marriage is not valid and, therefore, the petitioner is not a legitimate wife of Late Ramachandran in the eye of law.

10. Placing reliance on a clarification issued by the Government of Tamil Nadu in Finance (Pension) Department Letter No.80668/Pension/88-12, dated 29.6.1990, in respect of Rule 49 (7), it is averred by the first respondent in the counter affidavit that where there is a marriage subsisting, no person can legally solemnize another marriage and such second marriage is a nullity and the second wife is not entitled to claim family pension.

11. Placing reliance of the decisions of this Court in (i) W.P.No.45 of 1996, dated 14.9.2001 [K.Muthulakshmi v. The Principal Accountant General, Madras and others], and (ii) W.P. (MD) No.3096 of 2016, dated 26.4.2016 [P.Velammal v. The Additional Assistant Elementary Educational Office and another], it is averred that the second wife will not be entitled to the family pension as a legally wedded wife and, thus, pleaded for dismissal of the writ petition.

12. In the counter affidavit filed by the third respondent, it is averred that on production of the legal heirship certificate by the fourth respondent, the family pension was sanctioned by the first respondent to fourth respondent and that they had not passed any order against the writ petitioner.

13. I have heard the contentions of Mr.C.Prabakaran, learned counsel appearing for the petitioner; Ms.Hema Muralikrishnan, learned counsel appearing for the first respondent; Mr.R.Govindasamy, learned Special Government Pleader appearing on behalf of respondents 2 and 3 and Mrs.R.Meenal, learned counsel appearing for the 4th respondent.

14. Before advertng to the merits of the case, it is appropriate to refer to Rule 49(7)(a)(i) of the Tamil Nadu Pension Rules, which reads as under:

"49. Family Pension -

(1) to (6).

(7) (a)(i) Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares."

15.A reading of the above said provision makes it clear that the family pension is payable to more widows than one. But, what is to be analyzed is whether such second marriage is a nullity or valid in the eye of law. It is trite that after the enforcement of the Hindu Marriage Act, two Hindus cannot contract marriage, if any of them is having a living spouse. The second marriage, if any contracted, will be a nullity and would not be protected under the Pension Rules.

16.In the case on hand, it is admitted that the writ petitioner is the second wife of the deceased employee and their marriage took place during the subsistence of the first marriage. The factor which marks a difference in the case on hand is that the second marriage took place with the consent of the fourth respondent, who is the first wife. The next point which tilts the balance in favour of the writ petitioner is the averment made in the affidavit filed in the writ petition to the effect that the fourth respondent has given her no objection for equal distribution of family pension to the writ petitioner. However, no iota of material is placed before this Court to establish the said pleading and, in my considered opinion, the veracity of such a pleading can be examined by the authority concerned only upon hearing the writ petitioner and the fourth respondent. In the peculiar circumstances stated above, I do not propose to delve deep into or deliberate on the case law cited on either sides, which are distinguishable on facts.

17.With regard to the plea of the writ petitioner that her name finds place in the legal heirship certificate, the same may be useful for the petitioner to claim any property as legal heir, but not family pension and other benefits attached to the government post which the deceased employee was holding.

18.Under such circumstances, considering the specific pleading of the writ petitioner that the marriage of the writ petitioner took place with the consent of the fourth respondent and that the fourth respondent has also consented for apportionment of the family pension (though no proof is adduced to justify the said plea), without going into the merits of the said plea, this Court passes the following order:

- a. the writ petitioner is directed to submit a detailed representation to the first respondent raising all the grounds raised in this writ petition within a period of 15 days from the date of receipt of a copy of this order;

b. on receipt of such representation, the first respondent is directed to consider the claim of the writ petitioner considering Rule 49(7)(a)(i) of the Tamil Nadu Pension Rules, 1978 and the decisions of this Court, referred supra, and pass appropriate orders within a period of four weeks thereafter, of course after affording an opportunity of personal hearing to the writ petitioner as well as the fourth respondent. It is made clear that the first respondent shall not be prejudiced by any of the observations made in this order.

19. In the result, this writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Accountant General of Tamil Nadu,
Department of Pension and Entitlement,
D.M.S.Compound, Teynampet,
Chennai - 600 018.
2. The Director of Elementary School Education,
D.P.I. Compound, College Road,
Chennai - 600 006.
3. The Chief Elementary Education Officer,
Cuddalore, Cuddalore District.

+2cc to Mr.D.S.Thirumavalavan, Advocate, S.R.No.58708
+1cc to Mr.R.Meenal, Advocate, S.R.No.58501
+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.58443
+1cc to the Government Pleader, S.R.No.58558

W.P.No.5399 of 2013

GN(24/10/2017)