



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.A(MD) No. 943 of 2015
and
W.M.P. (MD) No. 1 of 2015

N.Pitchaiyammal .. Appellant
Vs.

1. The Accountant General (A & E),
(Pension payment order section),
Chennai - 18.

2. The Superintendent of Police,
Madurai Rural Division,
Madurai District.

.. Respondents

PRAYER: This Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 04.02.2015 in W.P.(MD) No.5401 of 2012 on the file of this Court.

Prayer in WP(MD). 5401/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus to direct the respondents to give the family pension as per the Pension Act to the petitioner from 12.06.2011 within a time frame fixed by this Honourable Court.

For Appellant : Mr.M.Venkatesan

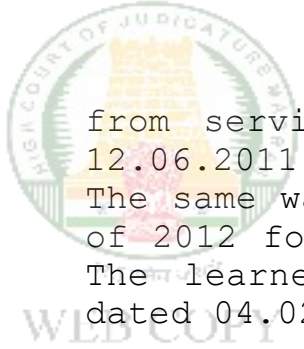
For Respondents : Mr.T.S.Mohameed Mohideen
Additional Government Pleader.

J U D G M E N T

[Judgment of the Court was delivered by **G.R.SWAMINATHAN, J.**]

The unsuccessful writ petitioner is on appeal challenging the order dated 04.02.2015 dismissing W.P.(MD) No.5401 of 2012.

2.The appellant herein was married to one Nagarajan. According to the appellant, her husband joined the Police Department in the year 1974. The marriage between the appellant and the said Nagarajan took place in the year 1976. He retired



from service in the year 2011. He subsequently passed away on 12.06.2011. The appellant applied for grant of family pension. The same was declined. Hence, the appellant filed W.P.(MD)No.5401 of 2012 for directing the respondents to give her family pension. The learned single Judge dismissed the writ petition by order dated 04.02.2015. Hence, this intra Court appeal.

3. Heard the learned counsel appearing for the appellant.

4. The learned counsel appearing for the appellant would place reliance on Rule 49(11-A) of Tamil Nadu Pension Rules, 1978. The said provision is to the effect that where the Government servant dies leaving behind the judicially separated spouse and there is no child or children, the family pension in respect of the deceased shall be payable to the person surviving. The family pension shall not be payable to the person surviving, if such person was held guilty of committing adultery. But this rule will not come to the aid of the appellant for the simple reason that the appellant was divorced vide judgement dated 24.02.2005 in H.M.O.P.No.37 of 2001 on the file of the family Court, Madurai. The appellant's husband Nagarajan filed the said petition for divorcing the appellant herein on the ground of desertion. The appellant's husband had specifically alleged that the writ petitioner had converted herself from Hinduism and become a Christian. The appellant had also pressurized her husband to become a Christian. The said H.M.O.P. was allowed by the Family Court on the ground of desertion. The appellant is no longer the surviving spouse of Nagarajan. As on date, she is the divorced wife of the deceased Nagarajan. The said Rule 49(11-A) of Tamil Nadu Pension Rules, 1978 is applicable only in the case of a judicially separated spouse. The expression judicial separation and divorce have distinct connotations in Family law. The divorced wife cannot claim to be a judicially separated wife. When a party to a marriage has been divorced by the other, she goes out of the family. Therefore such a person cannot be said to be eligible for getting family pension. The case of judicial separation is different.

5. In the case of judicial separation, husband and wife may not be together. But the marital tie is still alive. In the case of divorce, the bond snaps and is cut of.

6. Therefore the writ petition was rightly dismissed by the learned Judge. We see no reason to interfere with the said order. This writ appeal is without any merit. It stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/



To

1. The Accountant General (A & E),
(Pension payment order section),
Chennai - 18.
2. The Superintendent of Police,
Madurai Rural Division,
Madurai District.

+1cc to Mr.M.Venkatesan, Advocate in SR.No.71574

skm

AE/GT/SAR1/21.09.2017/3P/4C

W.A (MD) No.943 of 2015
08.09.2017