

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.22663 of 2008

S.Rajagopal

...Petitioner

Vs.

1.The Secretary to the Government,
Health and Family Welfare Department,
Chennai-600 009.

2.The Director of Medical and Rural Health
Services (ESI), Chennai-600 006.

3.The Accountant General (A&E),
Chennai-600 018.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 12.06.2008 made in Lr.No.54608/Z2/2008-4 passed by the 1st respondent herein, quash the same and consequently direct the respondents herein to include the petitioner's wife Selvi @ Selvimani in the pension records.

For Petitioner : Mr.D.R.Arun Kumar

For Respondents

for R1&R2 :Mr.Thangavadhana Balakrishnan
Additional Government Pleader

for R3 : Mrs.T.S.Selvarani

ORDER

The petitioner prayed for a Writ of Certiorarified Mandamus to quash the order of the 1st respondent in Lr.No.54608/Z2/2008-4 dated 12.06.2008 and consequently direct

the respondents to include the petitioner's wife Selvi @ Selvimani in the pension records.

2.The petitioner has joined in the service of the 2nd respondent/Director of Medical and Rural Health Services (ESI), as selection grade Pharmacist, formerly, at ESI Dispensary, Coimbatore and he got voluntarily retired from service on 14.02.1984. The case of the petitioner is that he got married with one Sulochana @ Rajalakshmi in the year 1973 and two daughters were born out of the said wedlock. The said Sulochana @ Rajalakshmi had some mental illness due to which he was forced to marry one Tmt.Selvamani as second wife to look after the two female children in the year 1988 and through her he has got two more children.

3.From 1980 onwards, the said first wife was not well and she died on 06.08.1998 due to mental illness. Hence the petitioner had approached the 3rd respondent/the Accountant General (A&E), Chennai to include the second wife's name Tmt.Selvamani in the S.R. Book for family pension. The 3rd respondent has given a reply in his letter Ref.No.6/IV/PT/326/200/02/145 dated 07.05.2002 stating that the date of re-marriage with Tmt.Selvamani is 06.04.1988 which is before the death of the first wife i.e., 06.08.1998 and so the second marriage becomes illegal and the children born through second wife are eligible for family pension, when the contingency arises.

4.The petitioner has filed an appeal before the 3rd respondent on 19.04.2004 to reconsider his request. The 3rd respondent has replied that the second marriage was illegal as per Tamil Nadu Pension Rules and hence the second wife's name cannot be included, and further directed the petitioner to get relaxation orders from the 1st respondent/the Secretary to the Government, Health and Family Welfare Department.

5.While that being the case, the 2nd respondent has forwarded all the necessary documents by his proceedings No.1787/ESI/EI(2)/06 dated 26.10.2007 and the said proposal was negatived by the 1st respondent in his letter NO.54608/Z2/2008-09 dated 12.06.2008 on two grounds.

"(i)As per the clarification issued in Government Letter No.80668/Pension/1988-12, dated 29.06.1990, in case of a Government servant, who solemnized second marriage when his first marriage subsisted, the second wife cannot claim the status of a wife in the eye of law. The position of law is that when there is a marriage subsisting, no person can legally solemnize another marriage and if a

second marriage effected either by registration or otherwise, that marriage is a nullity and such the second wife is not entitled to claim family pension.

(ii)As per the explanation under Rule 49 (7) (1) as amended in G.O.Ms.No.906, Finance (Pension) dated 06.12.1995, the second wife shall be eligible for the benefit of pension only if the second marriage,

(a)Solemnized as per customary law prevailed among the community before the date of commencement of Hindu Marriage Act (Central Act 25 of 1995)

(b)Solemnized under the Mohammedan Law in which bigamy is permissible."

The said order of the 1st respondent, dated 12.06.2008 is challenged before this Court, in this Writ Petition.

6.The learned counsel for the petitioner would further contend that, the benefit of the Family Pension Scheme is to enable the family of the deceased Government servant to survive subsequent to his death, as per Rule 82 of the Tamil Nadu Pension Rules, 1978, power of relaxation has been given wherein any department of the Government is satisfied that if the operation of any of these rules causes hardship in any particular case, then the Department may, by order for reasons to be recorded in writing, dispense with or relax the requirements that would require to such an extent and subject to exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. In the case on hand, the second marriage which was registered as per the Registration Act on 12.04.2007 was not considered and the first respondent has relying on the Government Order is not valid and hence, this Court interfered to include the second wife name in the pension benefits as wife.

7.In the rule book produced by the petitioner's counsel, how the Family Pension has to be paid has been illustrated. In (VI) it has been stated how the Family Pension is paid when there is more than one wife of a deceased Government servant, if there are more than one wife of a deceased Government servant, then the family pension shall be paid to them in equal shares under Rule 49(7)(a)(1) of Tamil Nadu Pension Rules. If the deceased Government servant had one living wife and her eligible children and the children from other wife (who predeceased) who are not eligible for family pension (i.e) the have crossed the age limit then the family pension in full shall be paid to the living wife.

8.The counter affidavit was filed by the 1st and 2nd respondents, in which it is seen that the alleged person entered into the second marriage during the life time of the first wife is not entitled to receive the family pension, since the marriage is not valid. The petitioner approached the 3rd respondent to include his second wife name Tmt.Selvimani in the Service Register for family pension and the same has been also rightly rejected by the 3rd respondent in his Lr.Ref.No.6/IV/PT/326/200/02/145 dated 07.05.2002. Against the same, the petitioner had preferred an appeal to the 3rd respondent on 19.04.2004 and as per their advice, he approached the 1st respondent for obtaining relaxation. The said relaxation was also rejected on the ground that the Tamil Nadu Pension Rules 1978 particularly Rule 49(7)(c) of the said Rules as amended in G.O.Ms.No.906, Finance (Pension) Department laid down the two conditions.

9.Heard, the learned counsel for the petitioner and learned counsel for the respondents and perused the available records.

10.As per the amendment this person is not entitled to receive the family pension. The petitioner contention is that the said amendment by way of Government Order will not be applicable to him. He would further contend that the power of relaxation can be exercised and the conditions of nomination can be relaxed.

11.This Court while dealing a case in Madurai High Court in W.P.(MD) No.7379 of 2006 has observed that it is an admitted fact that the petitioner was an employee of the 3rd respondent and after his retirement he has given all the retirement benefits till the death and he has also received the family pension. When the welfare measures has been introduced with a purpose to enable family of deceased Government servant and the Family Pension cannot be defeated standing on mere technologies. Hence the power of relaxation has to be given and by using the power of relaxation, the conditions of nomination can be relaxed. The petitioner's petition can be considered and the Family Pension can be sanctioned to the petitioner. The marriage has taken place earlier to the death of the first wife due to mental illness of the petitioner's first wife. The second wife marriage which has been registered has to be accepted and this person should be treated as legal wife of the petitioner. Since the Government has not appreciated the facts which ought to have been considered in a proper perspective because the family pension is only for livelihood of a person's legal heir to survive. In the absence of surviving first wife, the second wife marriage has been registered, from that date onwards the said

person becomes the second wife. Hence, the matter is remanded back to the first respondent to consider the same and as per the rules which entitles the petitioner to move the authorities concerned and the Government in relaxing the said rules.

Accordingly, the Writ Petition is disposed of by remanding this matter back to the first respondent to pass orders in accordance with law within a period of three months from the date of receipt of copy of this order. No costs.

nsd/vji

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Health and Family Welfare Department,
Chennai-600 009.
- 2.The Director of Medical and Rural Health
Services (ESI), Chennai-600 006.
- 3.The Accountant General (A&E),
Chennai-600 018.

+1cc to the Govt.Pleader, Vide SR.NO.76453 & 76808

सत्यमेव जयते

W.P.No.22663 of 2008

NA (CO)
KAK (27/02/2019)

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