

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.29952 of 2011

MP.No. 2 of 2011

G.Padmavathy

Petitioner

Vs

1.The Chairman, Tamil Nadu Electricity Board  
No.114,Anna salai ,Chennai-2

2.The Superintending Engineer (O&M)  
Cuddalore Electricity Distribution Division  
Keppermalai, Cuddalore-4

Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings dated 12.09.2011 in Letter No.038212-1/1430/No.3.UT.2/2011 of the 1st Respondent and to quash the same and consequently, to direct the 2nd Respondent to forthwith grant family pension to the Petitioner.

For Petitioner : Mr.Prashanth Nadraj for  
Ms.AL.Ganthimathi

For Respondents :Mr.Fakir Mohideen, Standing Counsel

ORDER

The prayer in this Writ Petition is to quash the proceedings dated 12.09.2011 of the 1st Respondent and consequently, to direct the 2nd Respondent to grant family pension to the Petitioner.

2. This court heard the learned counsel on either side and also perused the materials placed on record.

3. According to the learned counsel for the Petitioner, the Petitioner is the second wife of the deceased, Govindaraj, who was employed as the Commercial Assistant in the Tamil Nadu Electricity Board and the family pension amount was also settled to the Petitioner. The marriage between the Petitioner and the deceased was held on 22.10.1986 and the first wife of the deceased, by name, Chandra died on 21.2.2000. The impugned proceedings came to be passed, stating that the Petitioner is not

entitled to receive the family pension. Hence, this Writ Petition has been filed, seeking the relief, as stated above.

4. On the other hand, the learned standing counsel for the Respondents would submit that the Petitioner married the deceased during the life time of his first wife, Chandra and hence, the Petitioner is not entitled for family pension.

5. Reliance is placed on the order of this Court, dated 27.6.2017 made in WP.No.2875 of 2015, wherein this Court had held that the second wife is not entitled for getting family pension during the life time of the first wife. In the said order, in paragraphs 5 and 6, it was observed as under:-

"5. In this regard, learned counsel appearing for the respondent relied on a judgment by 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. In the said decision, this Court considered the very same Rule 49 of the Tamil Nadu Pension Rules and the relevant is extended 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 2<sup>nd</sup> 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 26.8.2014 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."

6. In view of the above decision, the claim of the writ petitioner for family pension, cannot be considered. In view of the fact that the marriage between the writ petitioner and the deceased employee is not legally valid. Thus, no further consideration is required to be under taken in this writ petition."

6. Further, there is no materials placed before this Court contrary to the submissions of the learned standing counsel for the Respondent. Considering the aforesaid facts and circumstances and the order of this Court, dated 27.6.2017 made in WP.No.2875 of 2015, this Court is of the considered view that the case of the Petitioner is squarely covered by the said order of this Court, dated 27.6.2017 made in WP.No.2875 of 2015 and consequently, the Petitioner is not entitled for any family pension and this Court cannot interfere with the impugned order of the 1st Respondent.

7. However, the learned counsel for the Petitioner would submit that the legal heirs of the Petitioner are entitled for the family pension and hence, opportunity may be granted to them to seek family pension. Considering the said request made by the learned counsel for the Petitioner, while dismissing this Writ Petition, liberty is given to the parties concerned to approach the Respondent Board to seek their remedy for family pension payment of the deceased Govindaraj, as per law. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Srcm  
To

1.The Chairman, Tamil Nadu Electricity Board  
No.114,Anna salai Chennai-2

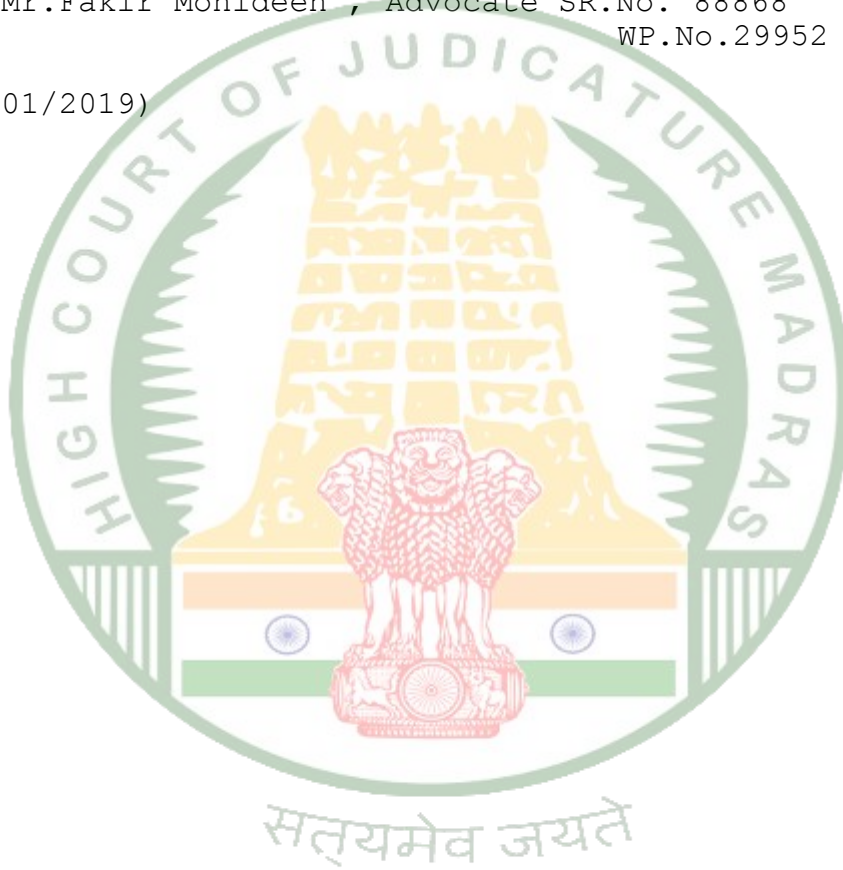
2.The Superintending Engineer (O&M)  
Cuddalore Electricity Distribution Division  
Keppermalai, Cuddalore-4

+1cc to Ms.AL.Ganthimathi , Advocate SR.No. 88760

+1cc to Mr.Fakir Mohideen , Advocate SR.No. 88868

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A.SK(31/01/2019)



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