

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2018

CORAM:

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

W.P.No.21346 of 2004
and
WP.M.P.No.26789 of 2004

Kalavathy

.. Petitioner

Vs.

1. The District Educational Officer,
Tiruvannamalai.

2. The Director of School Education,
Chennai.

3. The Correspondent,
Sevarapoondi Government Higher
Secondary School,
Tiruvannamalai.

4. Jebamalai

.. Respondents

(Fourth respondent impleaded as per order
dated 29.10.2004 in WMP.No.34806 of 2004)

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to disburse the service benefits of Jayaraman,

Headmaster of the third respondent Institution to the petitioner.

For Petitioner : Mrs.V.Srimathi

For Respondents : Mrs.M.E.Raniselvam
Addl. Govt. Pleader
for respondents 1 and 2

Mr.R.Suresh
for 4th respondent

ORDER

This writ petition has been filed by the petitioner seeking a writ of mandamus directing the first respondent to disburse the service benefits of Jayaraman, who was working as Headmaster in the third respondent school, to the petitioner.

2. The case of the petitioner is that marriage between the petitioner and Jayaraman was solemnized on 8.4.1974 as per Hindu rites and customs in the presence of Murugaiyan, Deputy Secretary of the Tamil Nadu Assembly. At the time of her marriage, her husband Jayaraman was working as teacher in the third respondent school and later on promoted as Headmaster in

the same school and till his death, he was working as such. In the service records of Jayaraman, the petitioner was shown as his wife.

3. According to the petitioner, her husband Jayaraman died on 28.6.2001. The petitioner was the only legal heir to deceased Jayaraman and she had also approached the first respondent for pension and other service benefits due and payable to deceased Jayaraman. While forwarding the proposal, the first respondent quoted that the fourth respondent is the second wife of the deceased Jayaraman.

4. The grievance of the petitioner is that her husband has not married the fourth respondent. In his proceedings dated 8.4.2002, the second respondent directed the first respondent to consider the case for disbursement of benefits. Despite direction, the first respondent delayed the disbursement of the service benefits. Hence, the writ petition seeking direction on the first respondent to disburse the service benefits of Jayaraman to the petitioner.

5. The first respondent filed counter stating that after the death of Jayaraman, the first respondent made arrangements to pay the immediate relief and other monetary benefits to the petitioner as per the nomination entered in the Service Register. It is stated that the fourth respondent submitted an application to settle the death and pension benefits to her claiming that she is the second wife of Jayaraman. It is stated that the deceased Jayaraman shared his life with the fourth respondent and, therefore, the fourth respondent is entitled to receive 50% of the service benefits of the deceased Jayaraman.

6. I heard Mrs.V.Srimathi, learned counsel appearing for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for respondents 1 and 2 and also Mr.R.Suresh, learned counsel appearing for the fourth respondent. Perused the materials available on record.

7. The learned counsel appearing for the petitioner submitted that the petitioner is the first wife, whose name was

entered in the nomination papers, and therefore, she is entitled to get the pension as well as the service benefits due and payable to Jayaraman in full. He argued that the fourth respondent has no right to claim service benefits due to the deceased Jayaraman.

8. Per contra, the learned counsel appearing for the fourth respondent submitted that the fourth respondent is the second wife of the deceased Jayaraman and to that effect, the Revenue authorities issued legal heir-ship certificate. He also argued that during his life time, the deceased Jayaraman executed an unregistered Will stating that after his death the monetary benefits will go equally to both wives.

9. The learned Additional Government Pleader appearing for the official respondents submitted that in case the deceased Government servant had two wives, the benefits should be shared equally among both of them. The fourth respondent has established her claim as wife of the deceased. The learned Additional Government Pleader submitted that the fourth respondent is entitled to receive 50% of the service benefits of

the deceased Jayaraman.

10. Explanation to Rule 49(7)(a) of the Tamil Nadu Pension Rules was introduced by amending the Rule with effect from 2.6.1992. On or after 2.6.1992, if any Government servant dies, then the wife of a second marriage, is also entitled to payment of family pension. In the case on hand, Jayaraman died on 28.6.2001.

11. The Parliament, to protect the interest of women, who end up as a second wife or a concubine as a result of long living with a male companion, has enacted the Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as "*the said Act*".

12. Section 2(f) of the said Act reads as follows:

"Domestic Relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage,

adoption or are family members living together as a joint family."

13. Thus, the Parliament in order to protect and/or save the interest of women, has enacted the said Act. But neither the legislative nor the Court has encouraged the second marriage under the Personal Law except under Mohammedan Law.

14. The first respondent in his counter categorically stated as under:

"11. It is most respectfully submitted that the claim of the petitioner is unlawful and against law as per Pension Rule (49) wherein it is stated that if a Government servant has more than one wife, the pension and other monetary benefits should be shared equally. The point of whether he is eligible to have more than one wife stands only when the Government Servant is alive. In case if a Government Servant is deceased and have two wives the benefits should be shared by both of them. Mrs.Jabamalai has a right to claim as the wife of the deceased Mr.M.Jayaraman is support of the following documents issued by the Revenue

Authorities and other Department of Tamil Nadu Government

- 1) Family card*
- 2) Death Certificate*
- 3) Voter List*
- 4) Registered Document*

And it is further submitted that, Mrs.Jabamalai has only produced the Death certificate of Mr.Jayaraman. It clearly indicates that Mr.Jayaraman had shared his life with Mrs.Jabamalai.

Therefore, it is submitted that from the above grounds Mrs.Jabamalai is entitled to receive 50% of the service benefits of the deceased Mr.Jayaraman. Under the said articles, it is humbly prayed that the Hon'ble Court may be pleased to dismiss the writ petition and then render justice." सत्यमेव जयते

15. It is pertinent to note that when the writ petition was taken up for hearing on 24.9.2013, this Court observed as under:

"3. One thing is admitted by both sides that at any event, if the claim of the fourth respondent is established, each of them would be entitled to only

50% of the service benefits. Therefore, as of now, the petitioner's claim over the service benefits, at least to an extent of 50% is not disputed by the fourth respondent. Mr.V.Raghavachari, learned counsel for the petitioner also expressed that there could be some possibility of settlement between the parties, if this 50% of the service benefits reaches the hands of the petitioner.

4. Therefore, considering all these facts and circumstance, a direction is issued to the respondents 1 to 3 to disburse 50% of the service/retirement benefits payable to the deceased Jayaraman to the petitioner herein within a period of six weeks from the date of receipt of copy of this order. The third respondent shall send the proposal within a period of two weeks from the date of receipt of copy of this order. On receipt of such proposal, the respondents 1 and 2 shall disburse 50% service/retirement benefits to the petitioner within a period of four weeks thereafter. Post the matter after six weeks."

16. From a reading of the counter, it is seen that the fourth respondent has produced documents obtained from the Revenue Department before the first respondent to show that she

lived with deceased Jayaraman and the first respondent has also satisfied that the fourth respondent is the second wife of Jayaraman. In the legal heirship certificate produced by the fourth respondent, it has been stated that the fourth respondent is the second wife of deceased Jayaraman. In the Family Card produced by the fourth respondent, after the name of Jayaraman, the fourth respondent's name has been mentioned. Nothing has been produced to disprove the said documents.

17. As stated supra, where a family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares. The said principle applies equally to all other service benefits also.

18. In view of the findings arrived at supra, the petitioner and the fourth respondent are equally entitled to 50% of the service benefits.

19. The writ petition is disposed of in the aforesaid terms. The respondent authorities are directed to disburse the

amounts, excluding the amount, if any, already paid to the petitioner as per the order of this Court dated 24.9.2013 and also to the fourth respondent, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, WP.M.P.No.26789 of 2004 is closed.

08.06.2018

Note: Issue order copy on 12.06.2018

vs

Index : Yes

Internet : Yes

To

1. The District Educational Officer,
Tiruvannamalai.
2. The Director of School Education,
Chennai.
3. The Correspondent,
Sevarapoondi Government Higher Secondary School,
Tiruvannamalai.

M.V.MURALIDARAN, J.

vs



Pre-delivery order made in
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