

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.28357 of 2008

and

M.P.No.1 of 2008

G.Minnoli

... Petitioner

Vs.

1. The Accountant General (A&E) Tamil Nadu
361, Anna Salai,
Teynampet,
Chennai - 18,

2. The Superintending Engineer,
Public Works Department,
Parambikulam, Aliyar Basin Circle,
Pollachi.

3. The Executive Engineer,
Public Works Department,
Aliyar Basin Division,
Pollachi.

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the impugned order passed by the 1st respondent in proceeding No: P.15/IV/520 Urg./ dated 16.06.08 and quash the same and consequently direct the respondents to restore the family pension to the petitioner with effect from 19.07.04 and consequently pay the arrears of family pension and other monetary benefits.

For Petitioner : Mr.Harivasagam
For Mr.Premnarayanan

For R1 : Mrs.S.Hema Muralikrishnan
Senior Standing Counsel

For R2 & R3 : Mr.R.S.Selvam
Government Advocate

O R D E R

This Writ Petition has been filed to call for the records in pursuant to the impugned order passed by the 1st respondent in proceeding No: P.15/IV/520 Urg./ dated 16.06.2008 and to quash the same, and consequently, to direct the respondents to restore the family pension to the petitioner with effect from 19.07.2004 and to pay the arrears of family pension and other monetary benefits.

2. The case of the petitioner is that her husband, namely, R.Govindarajan, was working as Assistant Engineer in Public Works Department, Udumalpet Division and died on 20.11.1986, while he was in service. Consequent to the death of the petitioner's husband, on 20.11.1986, family pension was sanctioned by the Accountant General vide P.P.O.No:65708/FA., with effect from 21.11.1986. Meanwhile, since the petitioner had entered into an agreement for remarriage with one Mr.K.H.Aseef on 25.11.1991, she informed the same to the department and requested the 2nd respondent to sanction the family pension to her minor son, namely, G.Ramkumar (now known as G.Ravi Kumar) who born through her husband (Late) R.Govindarajan, with effect from 25.11.1991.

3. The petitioner would contend that as per her request, the family pension was sanctioned and paid to her son from 25.11.1991 to 18.07.2004, but, she had not go for remarriage and further, she left the said Aseef.

4. The petitioner would further contend that since she had not go for remarriage, she is entitled for the family pension as per rules. Hence, she submitted a non-marriage affidavit to the 3rd respondent on 04.10.2006. The 3rd respondent, by letter dated 29.01.2007, recommended her application to the 1st respondent for grant of family pension, and further, sent a reminder on 18.03.2008. The 1st respondent, after a lapse of one and half years, issued the impugned order in proceeding No: P.15/IV/520 Urg./ dated 16.06.2008, stating that "a divorce cannot be treated as unmarried, and therefore, family pension could not be resumed in favour of the petitioner". Aggrieved by the said order, the present Writ Petition has been filed by the petitioner, by raising various grounds.

5. Denying the above allegations of the petitioner, the 1st respondent, namely, the Accountant General (A&E) Tamil Nadu, has also filed a counter affidavit, wherein, it has been contended that the petitioner, as the wife of late R.Govindarajan, was authorized for the pensionary benefits in respect of the deceased Government servant vide PPO.No.65708/FA. During 1994, the petitioner had intimated the Sub-Treasury Officer concerned that she got remarried on 25.11.1991 and hence, extend the

family pension in favour of her minor son, G.Ram Kumar. As per her request, the family pension was authorized to the minor son, G.Ram Kumar, payable through natural guardian, the petitioner, vide PPO.No.FA 570659/PW, till 18.07.2004, the date on which, the said Ram Kumar attained the age of 18 years. The petitioner, by representation dated 27.01.2007, which was forwarded by the 2nd respondent by letter dated 29.01.2007, informed the respondent office that the agreement made between her and Shri K.H.Aseef on 25.11.1991, was only a contract to enter into marriage and the agreement did not become a fact and put into practice. Further, she had requested the respondent office to resume family pension in respect of late R.Govindarajan in her favour from 19.07.2004, by enclosing an affidavit of non-remarriage.

6. The first respondent would further contend that the respondent office, in the impugned proceedings, informed the 2nd respondent that the Government had already clarified that a divorce cannot be treated as unmarried. On the same analogy, even if the petitioner had obtained a divorce through Court of Law, family pension could not be resumed in favour of the petitioner again. However, proposal from her son, Shri G.Ravi Kumar (name changed as per Gazette Notification) was called for, for grant of family pension to him, till he attained the age of 25 years or the date on which, he starts earning for his livelihood, whichever is earlier. This matter was also referred to the Government by the respondent office vide Pen.30/III/OR 490/2007-08/8 dated 09.06.2008, for which, no reply has been received so far from the Government.

7. The first respondent would also contend that the petitioner, on her own free volition forwarded the documents in support of her remarriage and only based on her intimation of remarriage, the family pension that was being paid to her was stopped. Now she claims that she had only entered into a contract of marriage, but, no marriage was solemnized under any Personal Laws. The Government, who is the competent authority to decide the case, but, which has also not furnished any reply so far in this matter. Hence, the respondent left their option before this Court for passing suitable orders.

8. Denying the above allegations of the petitioner, a counter affidavit has been filed by the 3rd respondent, wherein, it has been contended that Thiru.R.Govindarajan, was working as Assistant Engineer in Public Works Department, Udumalpet Division, Udumalpet and he was expired on 20.11.1986. Consequent to the death of Thiru.R.Govindarajan, the family pension was sanctioned in the name of the petitioner Tmt.G.Minnoli, wife of the deceased Government Servant, with effect from 21.11.1986, by the Accountant General, vide PPO.No.65708/FA.

6. The third respondent would further contend that Tmt.G.Minnoli, the petitioner herein, had submitted an application, requesting to sanction the family pension to her son Selvan.G.Ramkumar, as she got remarried with one Mr.K.H.Aseef, and further, requested to pay the family pension to her, as her son is minor (DOB: 19.07.1986) at the time of her application. Based on the application of the petitioner, the family pension was sanctioned to her as guardian of G.Ramkumar by the Accountant General vide PPO.No.FA.570652/PW and was paid to her from 25.11.1991 to 18.07.2004. While that being so, on 24.01.2007, the petitioner had submitted an application to the Accountant General, Chennai, requesting to sanction the family pension to her with effect from 19.07.2004, stating that the agreement made between the petitioner and the said K.H.Aseef, was only a contract to enter into marriage and the agreement did not become actual fact and put into practice. Further, the petitioner submitted a Non remarriage affidavit before the 3rd respondent office, stating that she has not got remarried so far and she is not interested in the remarriage in future also. For these reasons, the respondent sought for dismissal of the above Writ Petition.

10. Heard both sides and perused the materials available on record.

11. On perusal of the records, it could be seen that the petitioner was aged about 40 years at the time of filing this Writ Petition and her husband, namely, R.Govindarajan died on 20.11.1986. After the death of her husband, the petitioner entered into the agreement for remarriage on 25.11.1991. In the said agreement, both the petitioner and the said K.H.Aseef, had agreed that they were living together happily as husband and wife, and to make an evidence or record for the same, they made that agreement and undersigned it. But, in the representation given by the petitioner on 27.01.2007, it has been stated that the agreement made between the petitioner and K.H.Aseef was only a contract to enter into marriage and the agreement did not become actual fact and put into practice. Further, the petitioner has stated that she was not remarried and she is not interested in the remarriage in future also. Hence, she requested for family pension to be paid to her from 19.07.2004 onwards, as her son, namely, G.Ram Kumar had attained the age of 20 and become major.

12. From the above statement, it is clear that the petitioner had lived with the said Aseef and therefore, she had requested the 2nd respondent to sanction the family pension to her minor son, namely, G.Ramkumar, who born through her husband (Late) R.Govindarajan, with effect from 25.11.1991. Hence, the

contention of the petitioner that she had only made an agreement for remarriage with Aseef, but, she had not lived with him, cannot be accepted.

13. The petitioner, even after execution of the agreement dated 25.11.1991 and sanction of the family pension to her minor son, had submitted a non-marriage affidavit to the 3rd respondent on 04.10.2006, stating that due to the misunderstanding arose between the petitioner and the said Aseef, they revoked the said agreement. Therefore, it is clear that since her son G.Ram Kumar had become major and the family pension paid to him was stopped on 18.07.2004, the petitioner had played a role to avail the benefit of family pension from 19.07.2004. Hence, the contention of the petitioner that since she was not remarried, she is entitled for the family pension as per rules, cannot be accepted.

14. As per Hindu Marriage Act, if any women married another person, after the death of her husband, she has no right to claim anything on her 1st marriage life, thereby, the petitioner herein, has no right to claim family pension for the death of her 1st husband, namely, R.Govindarajan, that too after so many years and after availing the benefit till her son become major.

15. Under these circumstances, this Court is not inclined to quash the impugned order passed by the 1st respondent in proceeding No: P.15/IV/520 Urg./ dated 16.06.08 and accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

raja

To

1. The Accountant General (A&E) Tamil Nadu
361, Anna Salai,
Teynampet,
Chennai - 18,

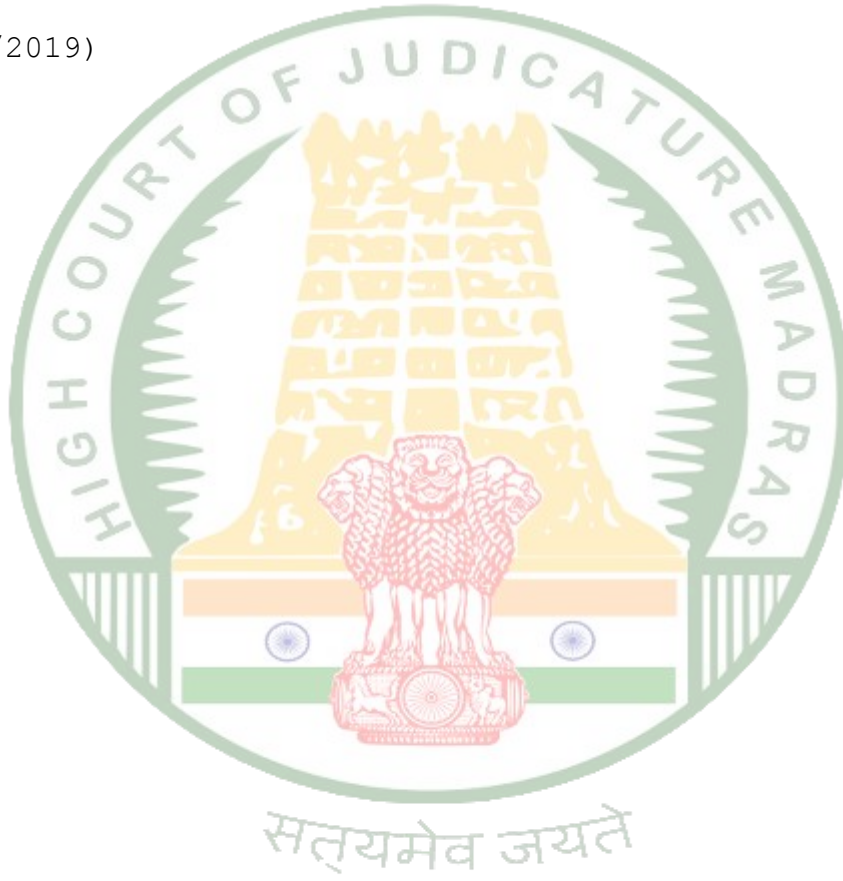
2. The Superintending Engineer,
Public Works Department,
Parambikulam, Aliyar Basin Circle,
Pollachi.

3. The Executive Engineer,
Public Works Department,
Aliyar Basin Division,
Pollachi.

+1cc to Government Pleader SR.No.48938

W.P.No.28357 of 2008
and
M.P.No.1 of 2008

VGI (CO)
GMY (02/01/2019)



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