

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2018

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THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.31402 of 2018

and W.M.P.No.36591 of 2018

Subbulakshmi

... Petitioner

versus

1. The Administrator,
Tamil Nadu State Transport Corporation
Employees Post Retirement Welfare
Fund Scheme,
Thiruvalluvar House,
Pallavan Salai,
Chennai - 600 002.

2. The General Manager,
Tamil Nadu State Transport
Corporation Limited (Coimbatore),
Erode Division,
45, Chennimalai Road,
Erode.

3. The Branch Manager,
Tamil Nadu State Transport
Corporation Limited (Coimbatore)
Kavindapdi Branch,
Velampalayam,
Kavindapdi Village, Bhavani Taluk,
Erode District.

4. Amirtha @ Amirthalakshmi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, to call for the records pertaining to the impugned order passed by the 2nd respondent vide his office proceedings No.Pa.No.4129/PF4/Vai.Ni/Tha.A.Po.Ka/Ko/EMa/18 dated 27.09.2018, rejecting the claim of the petitioner for family pension for the death of her husband namely Balaguru and quash the same and consequently direct the respondents to pay the Family pension to the petitioner within a time stipulated by this Court.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.R.S.Selvam,
Government Advocate for R1 to R3

ORDER

The order dated 27.09.2018 passed by the second respondent, declining to grant family pension to the petitioner, who is the wife of the deceased Balaguru, is under challenge in this writ petition.

1.1. The petitioner's husband was working as a Cook in the 3rd respondent Transport Corporation and he retired from service on 30.06.2016. Thereafter, he died on 12.04.2018.

1.2. It is the case of the petitioner that her husband had a first wife Amirtha @ Amirthalakshmi, 4th respondent herein, who got divorced on 02.05.2016 as per the order passed in H.M.O.P.No.263 of 2015 on the file of the Family Court, Erode, which has become final. Thereafter, the deceased Balaguru married the petitioner as second wife on 12.09.2012 and out of their wedlock, three sons were born. The petitioner's husband Balaguru died on 12.04.2018, leaving behind him the petitioner and their three sons as his legal heirs. It is the further case of the petitioner that her husband, during his life time, has made a representation to the respondent to delete the name of his first wife and to include the name of the petitioner as his nominee in his family pension register/service record. As the said representation was not considered, the deceased filed a suit in O.S.No.275 of 2016 on the file of the District Munsif Court, Bhavani, seeking declaration for recording Subbulakshmi as his legally wedded wife. In the said suit, a decree was passed on 22.08.2017, Despite the decree, the respondent has not considered the representation and passed orders. After the death of her husband, on 23.04.2018, she made a representation to the respondents, seeking grant of family pension. Thereafter, the petitioner filed a writ petition in W.P.No.14538 of 2018 and this Court, by an order dated 23.04.2018, directed the respondents to conduct a detailed enquiry and consider the representation of the petitioner dated 23.04.2018 and pass orders. As there was no response, the present writ petition has been filed.

2. The learned Government Advocate appearing for the respondents pointed out that the deceased Balaguru married the petitioner on 12.09.2012, i.e. well before the divorce on 02.05.2016. Hence, the marriage between the petitioner and the said Balaguru is not valid.

3. Though such a contention is advanced, it is to be pointed out that it is not open to the respondents to decide on the question of validity of the marriage as it is within the domain of the Civil Court/Family Court to do the same. Once the decree has become final, it is binding upon the respondents also. Under such circumstances, it is not open to the

respondents to say that the petitioner is not entitled to pension after the death of her husband in view of passing of decree in O.S.No.275 of 2016. Therefore, the order dated 27.09.2018 passed by the second respondent is hereby set aside.

4. This order has been passed only on the basis of the representation has been made that the 4th respondent did not file appeal as against the decree passed in O.S.No.275 of 2016 dated 22.08.2017 and that this decree has become final. However, this fact need to be ascertained from the 4th respondent. In order to avoid further waste of time, as the resolution is mainly based on the question of law, this Court has passed this order. However, the interest of the 4th respondent also can be protected if she has genuine interest. Therefore, the respondents 1 to 3 shall issue notice to the 4th respondent before including the name of the petitioner as nominee only to the limited extent of finding out whether any appeal has been preferred as against the Judgment in O.S.No.275 of 2016. If no appeal is filed, the respondents 1 to 3 shall include the name of the petitioner as a nominee of the deceased and to sanction family pension and if there is any appeal preferred, the respondents 1 to 3 shall pass orders subject to the result of the appeal filed.

5. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

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Kavindapdi Village, Bhavani Taluk,
Erode District.

+1cc to Mr.I.C.Vasudevan , Advocate SR.No. 86168

+1cc to Mr. R.S.Selvam,, Advocate SR.No. 85958

W.P.No.31402 of 2018

A.SK(25/01/2019)



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