

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.5879 of 2010

M.Shyamala

.. Petitioner

.Vs.

1.Secretary to Government,
Transport Department,
Secretariat,
Chennai-600 009.

2.Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai-600 002.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, issue a Writ of Mandamus, to direct the respondents to consider the request of the petitioner to sanction family pension to the petitioner, consequent on the death of the petitioner's husband on 09-12-2008.

For Petitioner : Mr.N.Sundaramurthy

For R 1 : Ms.K.Bhuvaneswari, AGP

For R 2 Ms.S.Rajeni Ramadas

O R D E R

The instant writ petition is filed to issue a Writ of Mandamus, to direct the respondents to consider the request of the petitioner to sanction family pension and other related pensionary benefits to the petitioner.

2.The facts as stated in the writ petition is that one late Mahadev Prasad was working in the erstwhile Tamil Nadu State Transport Department from 29.02.1952 upto 30.04.1975 and then absorbed in the then Pallavan Transport Corporation which has now got the name of Metropolitan Transport Corporation. He

retired from service on superannuation on 30.06.1988 as a Store Superintendent and he was receiving pension from the date of superannuation till his death on 09.12.2008.

3.The petitioner states that the petitioner had married one Tmt.Varalakshmi. Since Varalakshmi was not in good health, the said Mahadev Prasad married the petitioner. On the death of Mahadev Prasad, the petitioner is claiming family pension as the wife of Mahadev Prasad. The facts state that the petitioner M.Shyamala, W/o. Late Mahadev Prasad marriage was solemnised during the life time of the first wife. Under Section 5 of the Hindu Marriage Act, the marriage is void ab initio. Since the marriage is void ab initio, no benefit can accrue to the 2nd wife. This issue as to whether the 2nd wife would be entitled family pension under Rule 49 of the Tamil Nadu Pension Rules, or not has been considered by the Division Bench of this Court in W.A.No.977 of 2017 dated 05.07.2018 and the issue was decided by the Division Bench, which reads as under:

"41. A substantially similar view has been expressed by another learned Judge of this Court in P.Velammal v. The Additional Assistant Elementary Educational Office, Sivagangai District in WP (MD) No.3096 of 2016, wherein, after taking note of the provisions of Section 5 (1) of the Hindu Marriage Act, 1955, as well as the explanation added to Sub Rule 7 of Rule 49, the learned Single Judge has held as follows:

12. Law is settled that two Hindus cannot contract marriage after the enforcement of the Hindu Marriage Act and if any of them is having a living spouse, the marriage would be a nullity and would also not be protected under the Conduct Rules, as well as, the pension rules. Therefore, the second wife as referred to under the pension rules would only include second wife whose marriage is permissible under the Personal Law, but in the case of Hindus, the second wife will have no right, whatsoever, as the law prohibits second marriage, as long as, the Government servant has a spouse who is alive. Thus for harmonious construction of the Rules governing pension, wherever, the rule provides for wives, it has to be interpreted as per the law governing marriage as applicable to the Government servant and in cases where the second marriage is void under the law, second wife will have no status of a widow of the Government servant and relying on protection of Women from Domestic Violence Act, 2005, in the opinion of

this Court, is only taking a shelter.

42. We have discussed the basis on which the various judgments, of course conflicting views, have been rendered. Insofar as the view that the second wife of the Government Servant, who died prior to 02.06.1992 as held in Tamilselvis case, referred to supra, and the view that a widow of an invalid second marriage that had taken place prior to 14.10.1991, as held in Pushpavallis case, have given our reasons, as to why, we are unable to subscribe to the said conclusions of the learned Single Judge. We are, therefore, of the opinion that in order to enable a second wife to claim family pension the marriage should have been valid under the Personal Law applicable to the parties, to hold otherwise would be in violation of the law of the land, viz. the Personal Law of the parties as well as the Criminal Law, which prohibits bigamous marriage.

43. We are, therefore, constrained to conclude that the judgments which conclude that a second wife would be entitled to family pension, irrespective of her marriage being void, under the provisions of their relevant Personal Laws applicable to the parties do not reflect the correct position of law and therefore will stand overruled. The applicability of Sub Rule 7(a)(i) is confined only to cases where the second marriage is valid under the Personal Law applicable to the parties, only in such cases, widows of such marriages would be entitled to family pension".

In view of the said judgment of the Division Bench of this Court, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

KP

To

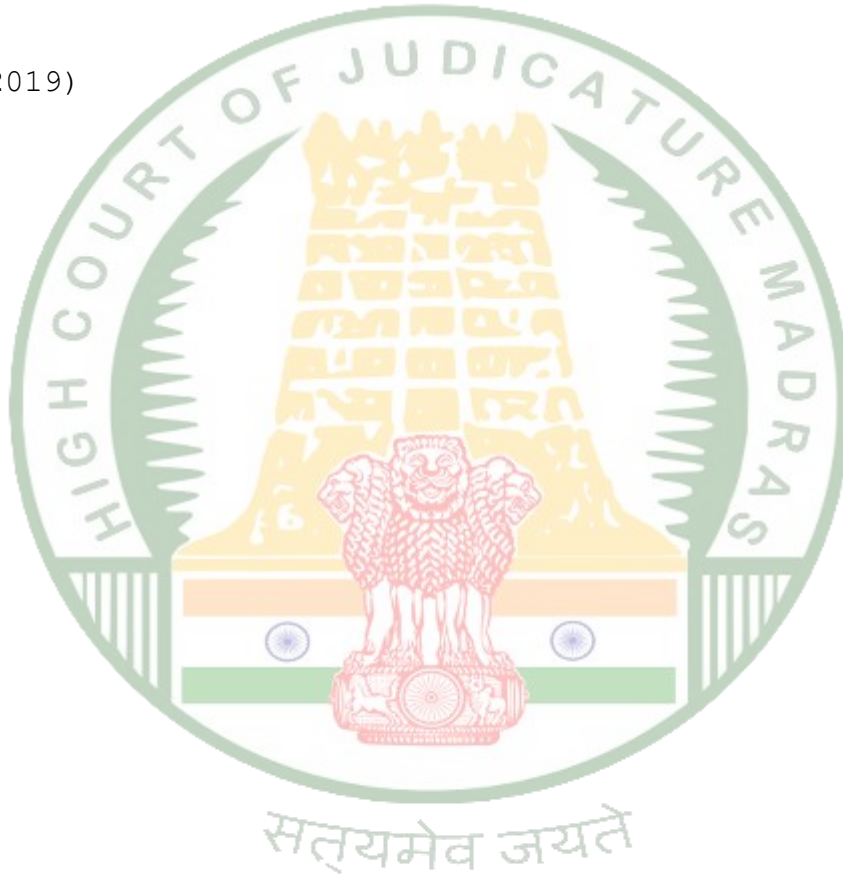
1.The Secretary to Government,
Transport Department,
Secretariat,
Chennai-600 009.

2.The Managing Director,
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai-600 002.

+1cc to Mr.S.Rajeni Ramadas, Advocate, S.R.No.82230
+1cc to Mr.N.Sundaramurthy, Advocate, S.R.No.82065
+1cc to the Government Pleader, S.R.No.82308

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(CO)
NR(15/11/2019)



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