

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :13.08.2019
CORAM
The Honourable Mr.JUSTICE K.K.SASIDHARAN

and
The Honourable Ms.JUSTICE P.T.ASHA
W.P.No.9460 of 2019
and
WMP.No.10047 of 2019

1. The Union of India,
Represented by General Manager,
Southern Railway, Park Town,
Chennai- 600 003.

2. The Divisional Personnel Officer,
Southern Railway,
Madurai Division,
Madurai -625 010

...Petitioners

Vs.

1. The Registrar,
Central Administrative Tribunal,
Madras Bench.

2. S. Vijayalakshmi
.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue an order, writ, direction or other appropriate orders, in the nature of a writ of certiorari to call for the records of the respondent/Tribunal in O.A.No.310/464/2017 dated 14.06.2018, and quash the same.

For Petitioners : Mr. M. Vijay Anand, Additional
Standing Counsel for Railways

For Respondents : Mr. R. Pandidan, Mr. L. Kabilan for R2
R1- Tribunal

O R D E R

(Order of the Court was delivered by P.T.ASHA, J)

This Writ Petition is filed at the behest of the Southern Railway challenging the order passed by the Madras Bench of the Central Administrative Tribunal.

2. The facts in brief which are necessary for the disposal of the above Writ Petition are as follows:
The second respondent herein is the daughter of one M.Sivanandam retired Senior Clerk at Manamadurai, Madurai Division of Southern Railways. The said M.Sivanandam had died on 23.08.2013. Since his daughter the second respondent herein had separated from her husband and was living with him, the said M.Sivanandam had made necessary applications to the petitioners herein for including the name of the second respondent for the purpose of family pension. This request was however turned down by the petitioners by their letter dated 27.05.2005 on the ground that the applicant was over 25 years in age and the divorce had taken place at the age of 43 and for these two reasons she was not entitled to the family pension. It appears that by an annexure to the Office Memorandum dated 30.08.2004, the Rules regarding the age restriction in the case of divorced/widowed daughters was deleted and therefore the father of the second respondent once again submitted a representation on 14.12.2006 which was rejected by the petitioners stating that the divorced/widowed daughters can apply from the date on which the contingency for payment of family pension arose.

3. On the death of her father, the second respondent was called upon by an order dated 8.5.2014 to submit the order of the Court to show proof that the divorce had taken place. It is only after the said communication, the applicant had formally applied for divorce in HMOP.No.80 of 2014 before the Family Court and a decree for divorce was granted to her. However the request of the second respondent to grant her the family pension was once again turned down by the petitioners by the impugned order dated 18.11.2016/07.12.2016 on the ground that the divorce had taken place only after the father's death and therefore she was not entitled to the family pension.

4. Challenging this order the second respondent had moved the Madras Bench of the Central Administrative

Tribunal in OA.No.310/00464 of 2017. After hearing the parties, the Tribunal had allowed the application and directed the petitioners to process the case of the second respondent for family pension and pass a reasoned and speaking order within a period of four (4) weeks from the date of receipt of a copy of the order.

5. The petitioners are before this Court challenging the order passed in OA.No.310/00464 of 2017.

6. The only argument that has been advanced on the side of the petitioners is that the divorce had come into existence only after the death of the father which is evident from the order in HMOP.No.80 of 2014. The order in this case was passed only on 24.06.2016 after the death of the father M.Sivanandam.

7. Heard Mr. Vijay Anand, learned counsel for the petitioners and Mr.R.Pandian, learned counsel for the second respondent.

8. A perusal of the records would show that on 09.01.1997, there was an agreement between the second respondent herein and her erstwhile husband to part ways which has been reduced into writing in an agreement dated 09.01.1997. It is also seen that from the date of her marriage coming to an end by mutual agreement, the second respondent was living with her father. This is evident from a perusal of the family card issued by the Civil Supplies and Consumer Protection Department (Ration Card). The father has made an application on 04.02.2005 requesting the petitioners to include the name of his daughter in the place of his deceased wife for pension. The said request was then denied on the ground that the second respondent was over aged. It appears that thereafter there has been a revision in the Rules wherein the restriction of age with reference to the widowed/divorced daughters had been removed.

9. After the amendment, the father had renewed the request by his letter dated 14.2.200. This request has also been turned down by the petitioners stating that the daughter can apply only from the date on which her turn for family pension materializes provided she is not remarried/employed. In compliance of this direction, on the death of her father, the second respondent had made an application for granting family pension on 28.10.2013. The second respondent had also enclosed the agreement of divorce entered into between herself and her erstwhile

husband. By letter dated 08.05.2014 the petitioners had requested her to submit an order from the Court. In view of the above direction, it appears that the second respondent had made an application for dissolution of her marriage dated 19.08.1996 in HMOP.No.80 of 2014 before the Sub Court Sivagangai. The Sub Court was also pleased to grant a decree of divorce. The agreement dated 09.1.1997 which has been entered into between the second respondent and her erstwhile husband has been marked as Ex.P3 and it was also referred to in the order for grant of divorce. When the said order was produced before the petitioners, the impugned order dated 18.11.2016/07.12.2016 was passed stating that since the divorce had come into existence after the death of the father, she was not entitled to the family pension. As stated supra even during the life time of the father, the second respondent was separated from her husband and was dependant on the deceased employee right from the year 1997. The second respondent has been living apart from her husband ever since 1997 and ultimately on the directions of the petitioners she had made an application for divorce and the court taking note of the fact that an agreement was entered into between the second respondent and her husband on 09.01.1997 (which was marked as Ex.P3 in the proceedings) granted her divorce. Therefore as rightly held by the Tribunal, it is clear that the second respondent is entitled to the family pension.

10. We do not find any cause for interference with the order passed by the Tribunal. The Writ Petition is dismissed with a direction to the petitioners to grant the family pension to the second respondent within a period of two (2) months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The Union of India,
Represented by General Manager,
Southern Railway, Park Town,
Chennai- 600 003.

2. The Divisional Personnel Officer,
Southern Railway,
Madurai Division,
Madurai -625 010

3. The Registrar,
Central Administrative Tribunal,
Madras Bench.

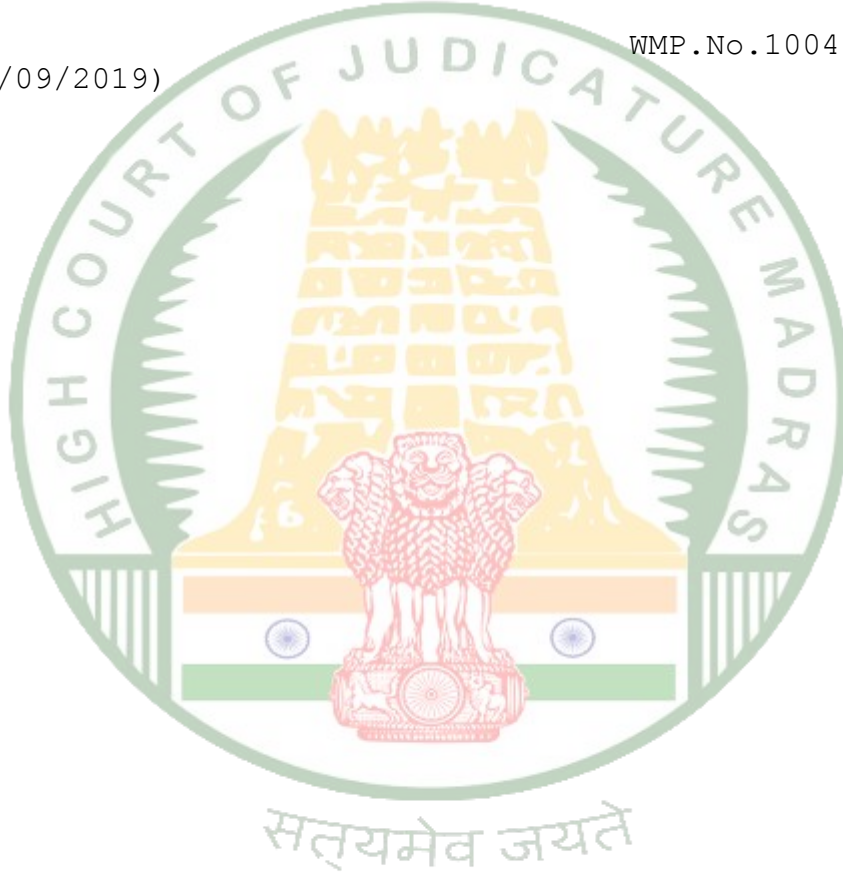
+lcc to Mr.M.Vijay Anand , Advocate SR.No. 68854

W.P.No.9460 of 2019

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A.SK(25/09/2019)



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