

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 14.10.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19686 of 2018

E.Pramila

... Petitioner

Vs.

1.The Principal Accountant General and Entitlement,
No.36, Anna Salai,
Teynampet,
Chennai 600 018.

2.The Assistant Director of Sericulture,
Khaderpet,
Vaniyambadi 635 751.
Vellore District.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the 1st respondent in P27/4/12720880/ADK, dated 07.05.2018 and quash the same and to direct the 1st respondent to sanction and release the DCRG, Provident Fund, Family Pension and other retireal benefits of the petitioner's husband late A.S.Elumalai, Inspector of Sericulture, worked under the 1st respondent, within a time frame, as may be fixed by this Hon'ble Court.

For Petitioner : Mr.R.Kamaraj

For Respondents : Mrs.T.S.Selvarani for R1
Mr.A.N.Thambidurai for R2
Special Government Pleader

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O R D E R

The petitioner has filed this writ petition seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent in P27/4/12720880/ADK, dated 07.05.2018 and to quash the same and to direct the first respondent to sanction and release the DCRG, Provident Fund, Family Pension and other retireal benefits of

the petitioner's husband late.A.S.Elumalai, Inspector of Sericulture, worked under the first respondent, within a time frame, as may be fixed by this Court.

2.Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first respondent and the learned Special Government Pleader appearing for the second respondent.

3.The case of the petitioner is that the petitioner was married to one Elumalai on 05.06.1992 and out of the wedlock, a son namely, Vishnuvardhan was born to them on 26.06.1994. The said Elumalai was working as Inspector of Sericulture in the second respondent Office and he died on 24.12.2015 leaving behind his wife/ petitioner and their son as Class - I legal heirs to succeed his Estate. The Tahsildar, Tiruvannamalai, also issued a legal heirship Certificate on 19.01.2016 to that effect.

4.It is the further case of the petitioner that her husband nominated the petitioner as his nominee in the records of the second respondent to avail family pension and other retireal benefits and based on the above nomination, a proposal for sanction of pension and other retireal benefits was sent by the second respondent to the first respondent. However, on 07.05.2018, the first respondent has returned the proposals for sanctioning family pension and other benefits on the ground that the petitioner is the second wife of late Elumalai. Challenging the same, the present writ petition has been filed.

5.The learned counsel appearing for the petitioner would submit that though the petitioner's husband married one Valarmathi in the year 1982 and entered her name in the service record as nominee in the capacity of wife, thereafter, the petitioner's husband divorced the said Valarmathi and married the petitioner on 04.06.1992 and entered the petitioner's name in the service record as nominee in the capacity of wife and based on the above entry, the second respondent forwarded proposal to the first respondent for sanction of family pension and other benefits, however, the first respondent drawn adverse inference that the petitioner is the second wife of late.Elumalai and returned the proposal, which is not sustainable.

6.The learned counsel appearing for the petitioner would further submit that the first respondent has no right to conduct a roving enquiry unless there is proper complaint by the said Valarmathi or any other aggrieved persons. Hence, the impugned

order passed by the first respondent is un-sustainable one. Accordingly, he prayed for allowing the writ petition.

7.The learned counsel appearing for the first respondent would submit that initially the petitioner's husband entered the name of one Valarmathi in the Service Record, however, subsequently, he entered the petitioner's name in the Service Record. She would further submit that the first respondent is the competent person for disbursement of family pension for deserving persons. In the present case, there is confusion as to who would succeed the Estate of late.Elumalai. She would further submit that the Hon'ble Apex Court clearly says that customary divorce is not permissible in view of Section 13 (1) of the Hindu Marriage Act. Hence, the petitioner is not entitled to family pension and other benefits unless the petitioner establishes that she is the legally wedded wife of late.Elumalai.

8.The learned Special Government Pleader appearing for the second respondent would submit that initially, the petitioner's husband entered the name of one Valarmathi in the Service Record in the year 1984, however, subsequently, he entered the petitioner's name in the Service Record in the year 1993. After death of the petitioner's husband late.Elumalai and after perusing the legal heirship Certificate issued by the Tahsildar, Tiruvannamalai, the second respondent forwarded proposal for disbursement of family pension and other benefits in favour of the petitioner to the first respondent. However, the first respondent returned the said proposal. Hence, this Court may pass orders as it may deem it fit.

9.The Assistant Director of Sericulture, Khaderpet, Vaniyambadi, Vellore District/ second respondent appeared before this Court today and produced the Service Record of late.Elumalai for perusal of this Court. He also submitted that there is no rival claim made for disbursement of family pension and other benefits in favour of the petitioner.

10.This Court perused the Service Record of late.Elumalai. The perusal of Service Record of late.Elumalai reveal that one Valarmathi's name was entered as nominee in the capacity of wife on 06.03.1984 and the said name was again reiterated on 10.07.1987. However, subsequently the petitioner's name was entered as nominee in the capacity of wife on 30.07.1993 in the Service Record of late.Elumalai. Further the said Elumalai has made declaration under Rule 2 of the Provident Fund Rules and has made further declaration in Form E for nomination for receiving the family pension. Though the said nomination was

subsequently entered in the year 1993, thereafter no one objected the said nomination.

11. Even today, there is no objection from anyone for disbursement of family pension and other benefits in favour of the petitioner. The learned counsel appearing for the first respondent fairly conceded that there is no rival claim before the first respondent.

12. The Service Record of late. Elumalai clearly shows that the petitioner is the nominee of late. Elumalai. Further there is no rival claim before the first respondent. In the absence of any rival claim, denying family pension and other benefits in favour of the petitioner is un-sustainable one.

13. Hence, this writ petition is allowed and the impugned order is set aside. The second respondent is directed to forward proposal for disbursement of family pension and other benefits in favour of the petitioner, to the first respondent, within a period of two weeks from the date of receipt of a copy of this order. The first respondent is directed to pass appropriate orders, extending the benefits in favour of the petitioner, within a period of eight weeks from the date of receipt of proposal from the second respondent.

14. The writ petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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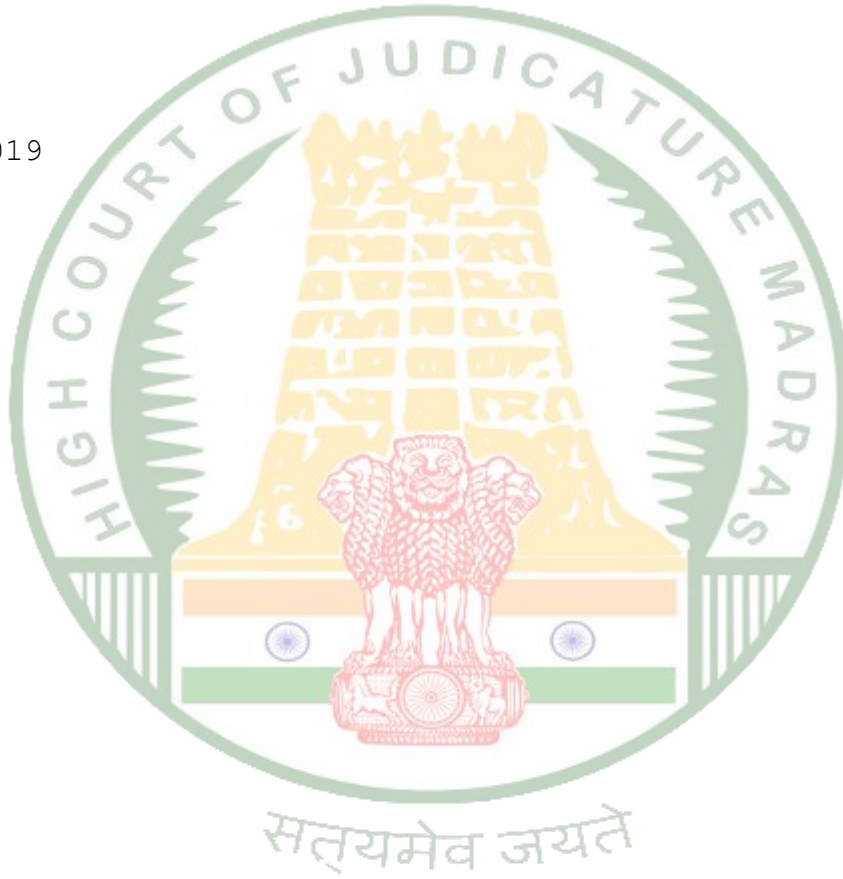
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+1 cc to the Government Pleader sr86113
+1 cc to Mr.R.Kamaraj Advocate sr86212
+1 cc to Mrs.T.S.Selvarani Advocate sr85964

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