



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.14457 of 2014

S.Sakthivel

... Petitioner

Vs.

1.Tamil Nadu State Transport Corporation,
Rep by its General Manager,
Divisional Head Office,
Maruthpathi, Karaikudi,
Sivagangai District.

2.Tamil Nadu State Transport Corporation Employees,
Pension Fund Trust,
Rep by its Administrator
Thiruvallur Illam,
Pallavan Salai,
Chennai-2.

... Respondents

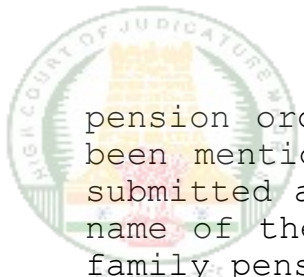
PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to mention the petitioner's wife name ie., Panchavarnam in the petitioner's pension proceedings in No.KKD 1315, based on his representation dated 20.08.2014.

For Petitioner	: Mr.S.M.Mohan Gandhi
For R1	: Mr.D.Sivaraman
For R2	: No appearance

ORDER

The lis on hand is for a direction to direct the respondent to mention the petitioner's wife name ie., Srimathi Saroja, in the service records/pension records of the writ petitioner based on his representation dated 20.08.2014.

2.the learned counsel for the writ petitioner states that the petitioner has joined as conductor in Tamil Nadu State Transport Corporation in the year 1982 and after serving for about 25 years retired from service on 31.01.2013 in proceeding dated 15.01.2013. After the retirement, the writ petitioner is receiving pension from the respondent. At the time of retirement, the second respondent issued Pension Order in favour of the writ petitioner in the said



pension order, the name of the wife of the writ petitioner has not been mentioned by the competent authority. Thus the petitioner has submitted a representation requesting the authorities to include the name of the wife in the pension order so as to get the benefits of family pension in the event of demise of the writ petitioner.

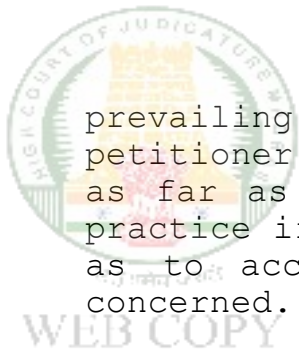
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3.The petitioner states that he married one Srimathi Saroja and her name was entered in his service records maintained by the second respondent Corporation. On account of difference of opinion, the writ petitioner got divorce with his first wife viz., Saroja through customary divorce. The learned counsel for the writ petitioner states that an agreement was arrived at between the writ petitioner and his first wife and certain properties were also settled in favour of his children. Subsequently, the writ petitioner married Srimathi Panchavarnam as his second wife and has got two female children viz., Sankareswari and Sangeetha. The petitioner has approached the first respondent Corporation in the year 1995 to change his wife's name in his service records. The authorities directed the writ petitioner to produce the particulars with regard to the marriage proof with Panchavarnam in order to include the name of the second wife as nominee in his service records. The authorities have subsequently entered the name of the Panchavarnam and two daughters as nominee in the service regard. However, after retirement, the petitioner came to know that the said entry was not found in the pension book. Thus he made a representation and subsequently had approached this Court.

4.The learned counsel appearing for the respondents also admitted the fact that the name of the second wife Panchavarnam was entered in the service records during the year 1995. However, the learned counsel for the respondent is unable to establish whether any enquiry was conducted with reference to the dissolution of marriage with the first wife of the writ petitioner and its validity and the nominations were accepted. The fact remains that no enquiry was conducted and based on the nomination given by the writ petitioner, the name of the first wife was deleted and the name of the second wife has been incorporated in the service records of the writ petitioner as nominee.

5.The learned counsel for the writ petitioner states that writ petitioner had secured customary divorce through some villagers. The customary divorce was executed by way of "Panchayat Muchalika" during the year 1990. Five elderly persons from the Panchayat has signed the Muchalika relying on the said agreement, the petitioner states that the customary divorce was effected.

6.The writ petitioner is unable to establish that the practice of customary divorce was prevailing in that particular community in that particular area. Customary divorce is not permitted and there is no deep-rooted practice, acceptable in the eye of law. In the



prevailing nor accepted by any of provisions of law. The writ petitioner is residing in Karaikudi Taluk, Sivagangai District and as far as the Sivagangai District is concerned, there is no such practice if any prevailing was established by the writ petitioner so as to accept the customary divorce, now signed by the parties concerned.

7. Such a customary divorce is unknown to law. Section 29 of the Hindu marriage Act contemplates customary divorce only on exceptional circumstances where in a particular community such practice of customary law is prevailing and the same is accepted under the provision of law. In the event of not establishing any such customs and practice, mere signing of agreement will not amount to a valid dissolution of marriage. The dissolution of marriage is to be obtained by adjudication before the Competent Court of law. It is not as if the husband can get a dissolution of marriage with the help of few panchayadars. Such a dissolution of marriage is invalid in the eye of law and the same will not form a basis for the purpose of changing the nominations at all.

8. The learned counsel for the respondent is unable to establish that whether an enquiry was conducted before accepting the application for change of nomination. It is duty mandatory on the part of the authority to ascertain the genuinity or otherwise of the nominations or the relevant form submitted by the employees concerned. It is pertinent to note that the nomination constitute a legal right for the spouse in the event of the death of an employee. It provides right of a family pension and pensionary benefits. Thus, the enquiry must be conducted and the competent authority must ensure that the nomination submitted by the spouse of the employees are genuine and thereafter, make entries in the service records. The competent authority cannot change the nomination in a routine manner. In such an event, the employees may get such divorce illegally and enter the name of the second wife in violation of law and based on such violation, the family pensions are settled and the respondents are also committing an illegality in support of such illegal claims. Thus, the verification of nominations and ascertaining the genuinity of such nominations are also of paramount importance. It is a practice prevailing amongst the employees that they are neglecting/deserting the first wife and entering into a contract for second marriage and without even the knowledge of the first wife and more specifically, during the life time of the first wife, they are changing the nomination by including the name of the second wife. Such a practice are to be effectively monitored and controlled by the authorities in order to ensure that the legally wedded spouse alone get the family pension as per the rules in force. This apart, bigamous marriage is a misconduct under the Conduct Rules. Even bigamous marriage can lead to the imposition of major penalty of termination. This apart, an offence against the marriage or offences under the IPC. IPC.



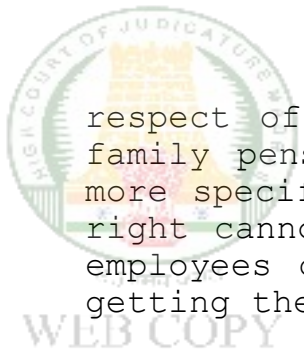
accordingly bigamous marriage, more specifically by a public servant is an offence under IPC. Thus, the competent authorities are bound to institute departmental disciplinary proceedings as well as register a police complaint for prosecution under IPC.

9.A Government Servant has to maintain discipline and good conduct in his public life. The public servants are receiving salary from the tax payers money, people expect that they should work to the expectation of public in general. Thus any such misconduct or immoral life will lead to inefficient performance and all these aspects are to be considered. The framers of the Conduct Rules should also emphasise that the good conduct of public servants are of paramount importance only with a view to perform efficient and effective public services in consonance with the constitutional principles and perspective. Thus, the Conduct Rules has got its own importance purpose and object. Thus, the public servants cannot be compared with their counter part, who all are working in the private sector. A public servant is to be treated with reference to the conduct rules and they cannot compare with the service of the private employees and they are duty bound to serve the public in general and more specifically without even restricting the time limit. This being the very concept of public service enunciated in the constitution of India, the conduct rules are to be implemented by the authorities concerned scrupulously.

10.Even in case of dissolution of marriage, the valid documents or the orders of the competent court of law must be produced by the employee for the purpose of changing the nominations, only after getting the dissolution of marriage. The public servant can enter into another marriage and certainly not during existence of the marriage with the first wife.

11.This being the principles to be followed, the very procedure followed by the respondents are not in consonance with the conduct Rules and they have committed a gross violation in not ascertaining the genuinity of the nominations produced by the writ petitioner, after solemnization of the second marriage. The respondents have not even cared to verify whether the first wife got a legal divorce from the employee concerned. Without even ascertaining the fact whether the first wife is living or not and without even ascertaining the fact that the valid divorce was granted by the competent court of law, mechanically the respondents had changed the nominations and thereby deprived the legal right of the first wife from getting the family pension under the pension rules.

12.Family pension is a welfare scheme to the spouse. Family pension is a right of the spouse under the Rules. Thus, the family pension must be granted only to legally wedded spouse and not to the wife whose marriages are not valid in the eye of law. Thus, the respondents/competent authorities are bound to ascertain the genuinity of the fact that certain rights are involved in



respect of grant of family pension to the spouses. Such right of family pension is a valuable right and created by virtue of rules more specifically welfare schemes. Thus, the legally wedded wife's right cannot be deprived and the immoral life of these some of the employees cannot deprive the right of the legally wedded wife from getting their family pension in accordance with the law.

13.This being the factum, the very nominations accepted during the year 1995 is to be verified and the genuinity are to be ascertained and as of now the case presented before the writ petitioner is sufficient to establish that the first marriage was not legally dissolved and the first wife still remain as legally wedded wife of the employee. Thus, one opportunity may be given to the writ petitioner to submit the documents if he is in possession of the valid order of dissolution of marriage. In the event of production of any valid document to show that the marriage between the first wife and the writ petitioner was dissolved and thereafter he married the second wife, then alone the change of nominations can be effected and not otherwise.

14.The learned counsel for the petitioner is also relying on the "Panchayat Muchalika" and made a submission that the divorce with the first wife was obtained only by way of customary divorce. Then if the same is the definite submission made by the writ petitioner, this Court is of the opinion that such a divorce is impermissible and is in violation of the provision of law and Hindu Marriage Act does not permit such a dissolution of marriage in the absence of any strong customary practice in that particular community and in that particular area. Thus, the dissolution of marriage has not been established by the writ petitioner and therefore, the change of nominations cannot be effected and accordingly, the respondents are bound to restore the name of the first wife alone in the nominations for grant of family pension and other benefits in respect of the writ petitioner.

15.With these observations, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(AD-II)

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Sub Assistant Registrar

To
1.Tamil Nadu State Transport Corporation,
Rep by its General Manager,
Divisional Head Office,
Maruthpathi, Karaikudi,
Sivagangai District.



2.Tamil Nadu State Transport Corporation Employees,
Pension Fund Trust,
Rep by its Administrator
Thiruvallur Illam,
Pallavan Salai,
Chennai-2.

+1. C.C. to M/S.D.Sivaraman, Advocate SR.No. 78569
+1. C.C. to M/S.S.M.Mohan Gandhi, Advocate SR.No. 78178

W.P. (MD) No.14457 of 2014
29.07.2019

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