

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 23.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM****W.P. (MD) No.16082 of 2014**

R.Thenmozhi

... Petitioner

vs.

1. The Commissioner of Police
Madurai City, Madurai

2. Deputy Accountant General (Administration)
Office of the Principal Accountant General (A&E)
361, Anna Salai, Teynampet
Chennai-18

3.Muthulakshmi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the first and second respondents herein to pay the death cum Retirement benefits of petitioner's husband including provident Fund, Family Pension, Gratuity, leave salary, etc equally to petitioner and to the third respondent.

For Petitioner : Mr.M.S.Suresh Kumar

For Respondents : Mr.S.Dhayalan
Government Advocate for R1

Mr.R.Aravindan for R2

Mr.P.Saravanakumar for R3

O R D E R

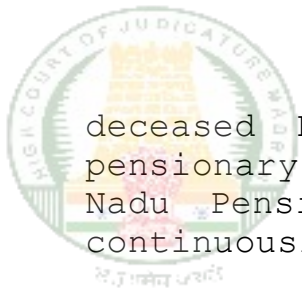
The relief sought for in the present writ petition is for a direction to the respondents 1 and 2 to pay the death-cum-retirement benefits of the writ petitioner's husband and other terminal and monetary benefits, equally to writ petitioner and to the third respondent.



2. The writ petitioner states that her husband joined as Constable in the Police Department and promoted upto the level of Sub-Inspector. The writ petitioner states that due to mutual understanding, she and the deceased Police Officer got married during the year 1982 at Murugan Temple, Usilampatti Town. The second marriage was solemnized between the writ petitioner and the deceased Police Officer. They have adopted the brother's daughter of the writ petitioner as a child. The writ petitioner claims that she lived with her husband for a long time. Only during the year 1994, the writ petitioner came to know that her husband had already married the third respondent and has got three children at Madurai. On account of the difference of opinion arose between the writ petitioner and the deceased Police Officer, a complaint was lodged before Usilampatti Police Station, where a mediation was conducted and the husband of the writ petitioner promised that he would live with the writ petitioner as second wife and the deceased Police Officer would maintain the second family also. The adopted daughter of the writ petitioner Ms.A.Saranyadevi had completed the Air Hostess Course and her marriage was solemnized on 02.11.2011. In the marriage invitation, the name of the deceased Police Officer was shown as father of the bride and gift of gold jewels were also given to the daughter of the writ petitioner. The husband of the writ petitioner died on 01.03.2011, while he was in service. The writ petitioner as well as the deceased Police Officer had built a house at A.Kanniyampatti and the house warming ceremony was held on 19.02.2009. Under these circumstances, the learned counsel for the writ petitioner states that the writ petitioner should be paid half of the pensionary benefits from the pensionary benefits already paid in favour of the third respondent, who is the first wife of the deceased Police Officer proportionately.

3. The learned Government Advocate appearing for the first respondent states that the third respondent is the first wife of the deceased Police Officer. The third respondent is the legally wedded wife and therefore, the name of the first wife was nominated in the service records of the deceased Police Officer. The learned Government Advocate is of the opinion that the writ petitioner is not entitled for any family pension and pensionary benefits on account of the fact that the marriage between the writ petitioner and the deceased Police Officer is null and void. Thus, the case of the writ petitioner cannot be considered. The learned Government Advocate appearing for the respondents 1 and 2 made a submission that family pension and pensionary benefits were already settled in favour of the third respondent / first wife of the deceased Police Officer.

<https://hcservices.ecourts.gov.in/Hcservices/> 4. The learned counsel appearing for the third respondent states that the third respondent is the legally wedded wife of the



deceased Police Officer and she is entitled to get all the pensionary benefits as well as the family pension under the Tamil Nadu Pension Rules, 1978. Further, the third respondent is continuously receiving the family pension.

5. The issues in the *lis* on hand are to be considered in larger perspective. In many number of cases, illegal marriages were not identified, when the public servants are in service and in most of the cases, the counter claims are arising only after the retirement of the public servants or in the event of the death of the public servants. In spite of the Conduct Rules stating that bigamous marriage is a misconduct and an offence under the Indian Penal Code, the authorities competent of the various Departments across the State of Tamil Nadu are absolutely insensitive towards such issues. The consequences of insensitiveness in these issues resulting denial of livelihood to the other woman, who married the public servant as second wife, without even understanding the consequences and the other service conditions. It is duty mandatory on the part of the State to ensure that the interests of women are also to be protected and after the death of the public servants, the pension benefits as well as the family pension are unable to be settled in large number of cases and the civil litigations instituted in this regard are also pending for very long years. Ultimately, the poor widows became dependents of their children or relatives. While the public servants were in service, they lead a decent life and suddenly, they are affected on account of such counter claims. Thus, an effective mechanism is to be provided for the purpose of controlling the bigamous marriages amongst the public servants.

6. As far as the present writ petition is concerned, Usilampatti Police Station conducted a mediation. It is great surprise for this Court in respect of the second marriage of a Police Officer, the Police Station is conducting mediation. Such a situation is not only painful, but illegal. On what basis, these Police officials on duty are conducting mediation in respect of the second marriage by a public servant, more specifically, Police Officer. In such an event, it is to be construed that the competent officials themselves are indirectly and impliedly encouraging such bigamous marriages under the pretext that such second marriages are common amongst the public servants.

7. Uniformed services in this State are undoubtedly sensitive. The uniformed service personnel are the law enforcing authority. If they are allowed to commit the offence of bigamous marriage, then it would be very difficult for such law enforcing agency to maintain the law and order, morale and discipline in the service. These Police officials are openly solemnizing the second marriages in Temples and in some isolated places.



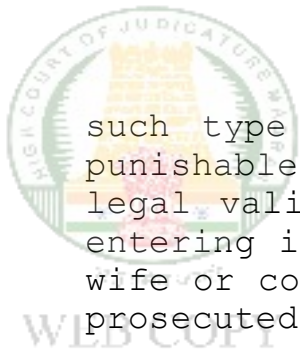
These Police officials are solemnizing the second marriages even with the knowledge of their relatives, however, without the knowledge of the first wife.

8. Under these circumstances, the authorities competent as well as the higher officials in the Police Department, on information of any such offence of bigamous marriage, must immediately act and initiate all further actions against the public servants. In the event of initiating swift actions, the evil consequences of such bigamous marriages can be brought down to the extent possible. Thus, swift actions are imminent and the public servants should understand that in the event of solemnizing second marriage during the lifetime of the first wife, they will have to face the consequences under the service law as well as the penal law.

9. Under Section 494 I.P.C., marrying again during lifetime of husband or wife is a punishable offence with an imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Section 495 I.P.C. enumerates the same offence with concealment of former marriage from person with whom subsequent marriage is contracted. Section 496 I.P.C., deals with marriage ceremony fraudulently gone through without lawful marriage. Even Section 493 I.P.C., denotes that cohabitation caused by a man deceitfully inducing a belief of lawful marriage. Thus, Chapter-XX of the Indian Penal Code of offences relating to marriage categorically enumerates various kinds of offences, which all are punishable under the Indian Penal Code.

10. In all such cases, where the bigamous marriages are established or the offences falling under Chapter-XX I.P.C., are established, then the authorities competent are empowered to institute not only the departmental disciplinary proceedings, but also to register a complaint before the jurisdictional Police Station for appropriate prosecution under the Criminal Law. Simultaneous actions both under the Discipline and Appeal Rules with reference to the Conduct Rules as well as under Chapter-XX of the Indian Penal Code are to be taken in respect of all such cases, where the Department has received information of such offences.

11. When the offences relating to marriages are declared as offences against the State, this Court would like to ask a prime question how the State Government employees can commit such offences and such offences committed are taken lightly by the authorities competent. When it is established that the offences against the marriages are punishable under the Indian Penal Code and the public servants are committing such offences against the State, they are left without any action in many number of cases. The concept of social acceptance or otherwise cannot be pleaded in



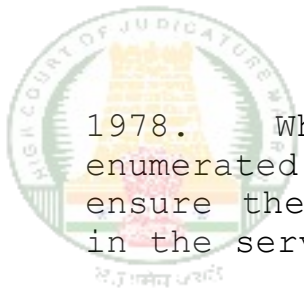
such type of cases whether such nature of offences are already punishable under the Indian Penal Code. The acceptance has no legal validity in the eye of law. Thus, the public servants on entering into the second marriage during the lifetime of the first wife or contracted with any other woman for marriage are all to be prosecuted under the provisions of the criminal law.

12. Under these circumstances, the Department officials, on receipt of any such complaint or information from any source, must conduct an enquiry and investigation, if necessary and accordingly, institute actions against the public servants both under the Discipline and Appeal Rules as well as by registering a police complaint under the Indian Penal Code.

13. As discussed above, such misconducts of offences relating to marriages are resulting denial of livelihood to the women in general and they are further subjected to harassment. The social implications are also vital and to be seriously taken note of as far as the public servants are concerned. Denial of livelihood is undoubtedly violation of Article 21 of the Constitution of India. A decent life to all the citizens is an integral part of Article 21 of the Constitution of India. Thus, the State is duty bound to protect the interest of these women, who all are suffering on account of the illegal act of the public servants by committing offences against marriages. Neither of the wives are unable to get their pensionary benefits on account of such disputes. Resolving the issues through Civil Court takes decades. These department officials are bound to regulate the nomination procedures in the service records at the first instance and thereafter, if any complaint is noticed, institute action against the public servants both under the criminal law as well as under the Discipline and Appeal Rules.

14. Pension or family pension is the livelihood of the pensioner or family pensioner. Pension is not a bounty. It is a deferred portion of the wages in respect of the services rendered by the public servants. The principles regarding the importance of pension and family pension are well enumerated by the Constitution Bench of the Apex Court in the case of **D.S.Nakara & Others v. Union of India**, reported in **1983 (1) LLJ 104 = (1983) 1 SCC 305 = AIR 1983 SC 130**. Thus, the principles laid down by the Honourable Supreme Court, in this regard, are to be implemented by prosecuting such public servants, who all are committing such offences and misconducts.

15. As per the provisions of the Tamil Nadu Pension Rules, 1978, a Government servant is bound to nominate the spouse alone for the purpose of grant of family pension. In other words, the legally wedded wife or husband of the public servant alone is entitled for family pension under the Tamil Nadu Pension Rules,



1978. When the entitlement of the spouse is unambiguously enumerated in the Pension Rules, the authorities competent must ensure the authenticity or genuinity of the nominations recorded in the service records of these public servants.

16. In view of the importance of such nominations, a full proof standard procedure is to be adopted by all the Government Departments and Government Organizations across the State of Tamil Nadu for the purpose of entering name of the nominees in the service records of the public servants. The nominations provided by the public servants at the time of entering into the service or after solemnization of their marriage are to be verified and the genuinity of the nominations is to be ascertained and if any doubt arises, the competent authority should conduct an enquiry and finalize the nominations to be entered into the service records of these public servants working in various Government Departments.

17. The nominations once entered should not be altered at the choice of the public servants then and there. Only in case of death of the spouse or in case of dissolution of the marriage with the spouse granted by the competent Court of law, the public servants can alter the nominations. They cannot alter the nominations at their whims and fancies or at their choice as far as the family pension is concerned.

18. The present trend of altering the nominations for the purpose of grant of family pension by the public servants cannot be followed and a strict procedure is to be followed and the genuinity of the nominations is to be verified and recorded in the service records properly. In the event of any violation, all suitable actions are to be initiated both under the Discipline and Appeal Rules as well as under the Criminal law. In respect of the present writ petition, admittedly, the writ petitioner is the second wife and the third respondent is the first wife of the deceased Police Officer. When the name of the third respondent had already been entered as nominee in the service records of the deceased Police Officer, the Department has rightly settled the pensionary benefits and family pension in favour of the third respondent and there is no infirmity as such.

19. Considering the importance of the issue, social implications and the consequence of such bigamous marriages amongst the public servants resulting denial of livelihood to the spouses, this Court is of the opinion that consolidated instructions / directions are to be issued by the Government to all the Government Departments and Government Organizations across the State of Tamil Nadu to verify genuinity of the nominations and ensure that the family pensions are paid to the legally wedded spouse in accordance with the Pension Rules, without causing undue delay or without driving these spouses to approach the Civil



Court of law, wherein they may not get speedy and efficacious remedy. Thus, this Court is inclined to pass the following orders:

- i. The relief as such sought for in the present writ petition stands rejected.
- ii. The Secretary to Government, Personal and Administrative Reforms Department, Secretariat, Chennai-600 009, is directed to issue a consolidated instructions / guidelines as well as the procedures to be followed. Accordingly, the names of the spouses in the respective service records of the public servants are to be entered into after ascertaining the genuinity of the same and after conducting proper verification in order to protect the interest of the legally wedded spouse of the public servants in the Government Department.
- iii. The Secretary to Government, Personal and Administrative Reforms Department, Secretariat, Chennai-600 009, is directed to enter a clause in the instructions by stating that in the event of identifying any misconduct or the offence of bigamous marriage or otherwise, as the case may be, departmental disciplinary proceedings will be instituted and a criminal case also will be registered under the provisions of the Indian Penal Code.

20. With these observations, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To:

1. The Secretary to Government,
Personal and Administrative Reforms Department,
Secretariat, Chennai-600

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Director General of Police,
Mylapore, Chennai-600 004



3.The Commissioner of Police,
Madurai City, Madurai.

+1 CC to Mr.M.S.SURESH KUMAR, Advocate (SR-77102[F] dated
24/07/2019)

+1 CC to Special Government Pleader (SR-77226[F] dated 24/07/2019
)

+1 CC to Mr.P.SARAVANAKUMAR, Advocate (SR-77186[F] dated
24/07/2019)

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