



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) .No.18943 of 2014

and

W.M.P. (MD) No.17518 of 2017

P.Shanmugavel Vadivu

... Petitioner

-Vs-

1.The Chief Doctor,
Employees State Insurance Corporation Hospital,
Thathaneri, Madurai-625 018.

2.The Superintendent,
Office of the Superintendent,
Employees State Insurance Corporation Hospital,
Thathaneri, Madurai-625 018.

3.R.Manjula

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the 2nd respondent to sanction the family pension and other funeral benefits for the death of the petitioner's husband Ponnudurai S/o. Kasimayan retired Male Nursing Assistant died on 13.11.2014 by considering her representation dated 17.11.2014 within the period stipulated by this Court.

For Petitioner : Mr.A.Haja Mohideen

For Respondents : No Appearance
(for R-1 and R-2)

Mr.R.Vijayakumar (for R-3)

ORDER

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The relief sought for in the present writ petition is for a direction to direct the 2nd respondent to sanction family pension



and other funeral benefits for the death of the petitioner's husband Ponnudurai S/o. Kasimayan, retired Male Nursing Assistant, who died on 13.11.2014, by considering the representation of the writ petitioner, dated 17.11.2014.

2.The learned counsel appearing on behalf of the writ petitioner states that the petitioner is the legally wedded wife of the deceased employee Mr.K.Ponnudurai. The writ petitioner married the deceased employee on 08.12.1967 and out of the said wedlock, two children born to them. The husband of the writ petitioner was working as a Male Nursing Assistant in the Employees State Insurance Corporation Hospital at Thathaneri. On account of certain misunderstanding between the writ petitioner and her husband, the deceased employee deserted the writ petitioner and was living separately. The writ petitioner claimed maintenance by filing a petition in M.C.No.14 of 1997 and the maintenance claim petition was allowed by the competent Court on 04.04.1997 and an amount of Rs. 500/- was directed to be paid on monthly basis. Subsequently, the maintenance amount was enhanced to Rs.1,400/-. The husband of the writ petitioner was paying the maintenance amount till the date of his death. The writ petitioner claims that in view of the fact that she was receiving the maintenance amount from the deceased employee, she is entitled to get the pensionary benefits as well as the family pension as per the Tamil Nadu Pension Rules. To substantiate the claim of the writ petitioner, the learned counsel for the writ petitioner states that the deceased employee himself had made a statement before the Family Court that the writ petitioner is legally wedded wife and accordingly, the Family Court considered the statement given by the deceased employee and granted maintenance and the writ petitioner was receiving the maintenance till the date of death of the deceased employee. Based on the said statement given by the deceased employee before the Family Court, the case of the writ petitioner is to be considered.

3.The learned counsel appearing on behalf of the third respondent made a submission that the third respondent is the first wife of the deceased employee. The name of the third respondent was entered as a nominee in the service records of the deceased employee. In view of the fact that the name of the third respondent was in the nomination, the competent authorities considered the case of the writ petitioner and accordingly, granted the family pension and pensionary benefits in favour of the third respondent. The third respondent is now receiving the family pension for the past about 5 ½ years and therefore, the claim of the writ petitioner cannot be accepted at this length of time and moreover the writ petitioner was not a legally wedded wife of the deceased employee and further, the deceased employee deserted the writ petitioner and mere filing of the maintenance claim petition cannot be a ground of family pension in accordance with the Tamil Nadu Pension Rules 1978.



4. Considering the facts and circumstances of the case on hand, this Court is of the considered opinion that in the event of any counter claim, the parties concerned must submit a decree of declaration from the competent Civil Court of law. In the absence of any such valid declaration, this Court is of the opinion that mere statement by the deceased employee before the Family Court in a maintenance case cannot be a ground of accept the statement of the writ petitioner that she is the legally wedded wife of the deceased employee. Such statements are given by the Government employees in order to escape from the clutches by the Government Departmental Disciplinary Proceedings as per the Service Conduct Rules bigamous marriage is a misconduct warranting major penalty. Therefore, the Government servants who are leading such a waivered life and continuing the illicit relationship with other persons are adopting various tactics to escape from the clutches of law and to safeguard their employment with the Government. In such circumstances, such statements are given here and there and those statements given by the employee cannot be considered as a valid document for the purpose of arriving a decision, that a particular woman is legally wedded wife of the Government employee.

5. The status of the marriage is to be decided by way of complete adjudication. Thus, the status of marriage regarding the spouse is to be declared by the competent Civil Court of law, in the event of any counter claim or dispute. In the absence of any such valid decree, this Court cannot come to the conclusion that whether the writ petitioner or the third respondent is the legally wedded wife of the deceased employee. This Court cannot grant a finding in respect of status of the wife of a deceased employee. Under these circumstances, there cannot be any finding by this Court in a writ proceedings, whether the writ petitioner or the third respondent is the legally wedded wife of the deceased employee. However, the fact remains that the respondents 1 and 2 on verification of the records available, as well as the service records of the deceased employee grant family pension and educational benefits to the third respondent. In the absence of any such valid declaration from the competent Civil Court of law, the actions are to be initiated by the respondents 1 and 2 are undoubtedly in consonance with the provisions of the pension rules in force. Thus, this Court do not find any infirmity in respect of the actions taken by the respondents 1 and 2 in granting the family pension to the third respondent. The writ petitioner has not established or produced any valid decree from the competent Civil Court of law in respect of the status of marriage with the deceased employee. In the absence of any such valid decree from the competent Civil Court of law, this Court cannot come to the conclusion, thus the writ petitioner is the legally wedded wife of the deceased employee. This being the factum, the writ petitioner has not established her case in respect of the status of marriage for the purpose of granting relief as sought for in the present writ petition.



6. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar (CS)

+1 CC to M/s.A.HAJA MOHIDEEN, Advocate (SR-77390[F] dated 24/07/2019)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-77393[F] dated 24/07/2019)

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KK/SAR/02.08.2019/4P-3C/