



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)No.10823 of 2015
and
M.P.(MD).No.1 of 2015

M.Vellathai

... Petitioner

Vs.

1.The Traffic Manager,
Traffic Department,
V.O.C.Port Trust Cargo Labour Division,
Tuticorin.

2.Rani

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to pay full monthly family pension to the petitioner along with all arrears with suitable interest within a time frame that may be stipulated by this Court.

For Petitioner : Mr.R.Ponkarthikeyan

For R1 : Mr.A.Arivuchandran

For R2 : Mr.K.Appadurai

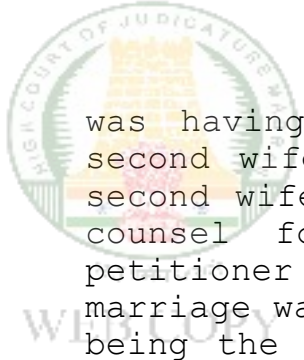
ORDER

The relief sought for in the present writ petition is for a direction to direct the first respondent to pay full monthly family pension to the writ petitioner along with arrears and the interest.

2.The learned counsel for the writ petitioner states that the husband of the writ petitioner namely late K.Mahalingam was employed as Winchman of CHD, Traffic Department, V.O.C Port Trust, Tuticorin. The marriage between the writ petitioner and the deceased employee was solemnized during the year 1975, when he was working as a Mazdoor in the Port Trust during kangany system. Out of the wedlock between the writ petitioner and her husband Mr.K.Mahalingam, 8 children were born. The husband of the writ petitioner was retired from service under the Voluntary Retirement Scheme.

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

3.The petitioner states that her husband was a spendthrift and



was having illicit relationship and he married another woman as second wife. However, the marriage was illegal and therefore, the second wife is not entitled for any benefit. However, the learned counsel for the first respondent also states that the writ petitioner is the first wife of the deceased employee and the second marriage was solemnized during the life time of the first wife. This being the factum, the name of the first wife alone is also to be nominated for the purpose of payment of family pension, as per the Pension Rules.

4. Sharing of pension would not arise in respect of the facts and circumstances of the present case is concerned. The family pension can be shared between the two wives provided, the second marriage was solemnized before the year 1956 and after 1956, the second marriage is impermissible and if any second marriage was solemnized during the life time of the first wife, the second marriage is null and void and the second wife cannot be considered as a legal wedded wife of the deceased employee and therefore, the second wife is not entitled for family pension, as per the Pension Rules in force.

5. Sharing of family pension is impermissible. Though the Rule contemplates sharing of family pension amongst two wives, the said rule was intended to provide family pension to the wives, if the marriage was legally valid. In other words, sharing of family pension is permissible, if two marriages are valid in the eye of law. For instance, the marriage if solemnized prior to the year 1956, the second marriage is a valid marriage. Under those circumstances, the family pension can be shared between the two wives. The Pension Rules framed during the relevant point of time there were second wives which were subsistence. Under those circumstances, even the Rule, which was framed during the relevant point of time has an object that the second wife shall be eligible for the benefit of family pension only if the second marriage was solemnized as per the customary law prevailed among the community before the date of commencement of the Hindu Marriage Act, 1955 or if the second marriage was solemnized under the Mohammed in Law, in which bigamy is permissible. Even in that case, the bigamy is a misconduct under the Government Servant Conduct Rules. Therefore, the second circumstance narrated in the Pension Rules cannot have any implications with reference to the Government Employees, who are all Mohammedans. Even in case of Mohammedan, the Government servant cannot marry the second wife and such a bigamous marriage by any Government servant irrespective of religion, caste etc., is a misconduct under the Conduct Rules.

6. Under these circumstance, the relevant point to be considered is that whether the second marriage between the employee and the second wife is a valid marriage under the provisions of law?. In the present case on hand, the second marriage by the deceased employee was solemnized during the life time of the first wife and after enactment, viz., the Hindu Marriage Act.



7.This being the factum, the second marriage is invalid and the petitioner, who is the first wife, is entitled for the family pension under the Pension Rules applicable to the first respondent Organization. This being the position, the first respondent is directed to settle the family pension in favour of the writ petitioner and arrears if any to be paid and the same also is directed to be settled within a period of 12 weeks from the date of receipt of a copy of this order.

8.With the above direction, this Writ Petition stands allowed. No costs. Consequently, the connected M.P is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

To
The Traffic Manager,
Traffic Department,
V.O.C.Port Trust Cargo Labour Division,
Tuticorin.

+1 CC to M/s.R.PON KARTHIKEYAN, Advocate (SR-76489[F] dated 19/07/2019)

+1 CC to M/s.A.ARIVUCHANDRAN, Advocate (SR-76498[F] dated 19/07/2019)

+1 CC to M/s.K.APPADURAI, Advocate (SR-76538[F] dated 22/07/2019)

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