



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.6514 of 2014

and

M.P. (MD)No.1 of 2014

Banumathi

... Petitioner

-Vs-

1. The Regional Manager,
New India Assurance Company Limited,
Kamarajar Salai, Madurai-625 009.

2. The Branch Manager,
New India Assurance Company Limited,
Tallakulam Branch, Tallakulam,
Madurai-625 002.

3.Packiam @ Packiaraj

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 and 2 to initiate departmental proceedings against the third respondent for violating the conducts rules in accordance with law.

For Petitioner : Mr.M.Kannan
For R1 and R2 : Mr.Alaguram Jothi
For R3 : Mr.B.Vijay Karthikeyan

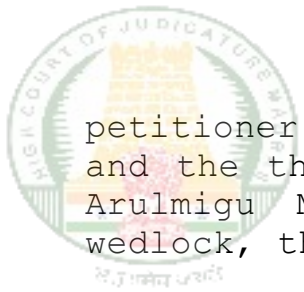
ORDER

The relief sought for in the present Writ Petition is for a direction to direct the respondents 1 and 2 to initiate departmental proceedings against the third respondent for violating the conduct rules in accordance with law.

2.The writ petitioner claims that she is the legally wedded wife of the third respondent and the third respondent is working in the office of the second respondent, which is New India Assurance Company Limited, Tallakulam Branch, Madurai.

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

3.The learned counsel appearing on behalf of the writ



petitioner states that the marriage between the writ petitioner and the third respondent was solemnized on 09.06.1976 at Madurai Arulmigu Meenakshi Sundareswar Temple, Madurai. Out of the wedlock, the writ petitioner had a girl child, namely Miss. Indra.

4. The learned counsel appearing on behalf of the writ petitioner states that the third respondent had developed an illegal intimacy with one Jansirani, who was a married woman with a living spouse and three children. When the writ petitioner questioned the immoral behaviour of the third respondent, he started neglecting the writ petitioner and her child. Ultimately, the third respondent has deserted the writ petitioner and her child. The writ petitioner, thereafter, worked as Noon-Meal Aaya and was leading her life.

5. The writ petitioner filed a petition in H.M.O.P.No.74 of 2001 under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for the relief of restitution of conjugal rights. The Family Court, Madurai dismissed the case on technical ground by stating that there was a delay in instituting the proceedings. Thereafter, the writ petitioner preferred an appeal in C.M.A.No.221 of 2008.

6. The learned counsel appearing on behalf of the writ petitioner states that the third respondent was living in adultery with the said Jansirani. In that petition, the Family Court, Madurai, also held that customary divorce was granted between the third respondent and the writ petitioner.

7. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner came to understand that the name of Jansirani was entered as the wife of the third respondent in all his service records. Thereafter, she filed a Civil Suit in O.S.No.36 of 2005 and the said suit was also dismissed by the Family Court, Madurai.

8. The learned counsel appearing on behalf of the writ petitioner states that the third respondent has violated the Conduct Rules and further, he deserted the writ petitioner, who is the legally wedded wife. In this regard, the writ petitioner submitted several representations to the respondents 1 and 2 for conducting an enquiry and to initiate action. In view of the fact that no action was taken against the third respondent, the writ petitioner is constrained to move the present Writ Petition for initiating departmental action against the third respondent.

9. Pursuant to the directions of this Court, dated 18.07.2019, the Branch Manager, New India Assurance Company Limited, Tallakulam Branch, Tallakulam, Madurai is present before this Court. The Branch Manager was present without any files during the morning session and he brought files, pursuant to the

directions of this Court during the afternoon session.

10. The learned counsel appearing on behalf of the respondents 1 and 2 made a submission that no enquiry was conducted with reference to the complaint submitted by the writ petitioner against the third respondent. However, the respondents 1 and 2 had accepted the judgment of the Family Court in O.S.No.36 of 2005 and allowed the third respondent to retire from service during the year 2015 and all his terminal and pensionary benefits were also settled. Now, he is receiving pension also.

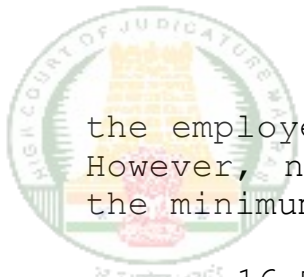
11. The conduct of the officials of the respondents 1 and 2 are certainly to be deprecated. The public officials, on receipt of any such complaints regarding the misconduct or otherwise of the employees, are bound to conduct an enquiry, since the very complaint now raised by the writ petitioner goes to root of the matter and it creates rights regarding the claim for the pensionary benefits as well as family pension.

12. This being the nature of the complaint, the authorities competent at the first instance ought to have conducted an enquiry by issuing summons to the writ petitioner and all other persons, who are all connected with the complaint as well as the incidents. However, no such enquiry had been conducted.

13. The learned counsel appearing on behalf of the respondents 1 and 2 relying on the judgment of the Family Court states that customary divorce granted between the writ petitioner and the third respondent was taken into consideration for the purpose of settling the pensionary benefits as well as pension. Under these circumstances, the authorities are also bound to look into the service rules and take a decision in accordance with law.

14. Looking into the facts and circumstances of the lis on hand, factual inference is to be drawn that the respondents 1 and 2 had not acted properly as law warrants. The respondents 1 and 2 knowing facts, wantonly kept the representations submitted by the writ petitioner pending for about 7 years. The third respondent was relieved from service and under these circumstances, this Court is of an undoubted opinion that the officials of the respondents 1 and 2 had committed lapse, negligence and dereliction of duty. They are contributed for the denial of proper relief to the writ petitioner during the appropriate time.

15. The authorities competent waited for many years, which must be at the instance of the third respondent, till the judgment and decree was passed in O.S.No.36 of 2005, dated 19.02.2005. Reasonable question arises why no enquiry was conducted by the authorities till such time. On receipt of any complaint of this nature, the authorities competent are bound to conduct an enquiry, cull out the truth and initiate proper actions against



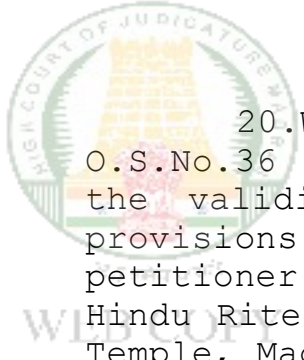
the employee and provide suitable relief to the aggrieved persons. However, no such effort had been taken nor an enquiry, which is the minimum requirement, had been complied with.

16. The contentions of the learned counsel appearing on behalf of the respondents 1 and 2 are neither candid nor convincing. In fact the respondents 1 and 2 have relied upon the civil Court decree and allowed the third respondent to retire from service. However, not even an enquiry was conducted for about 7 years from the date of submission of the complaint by the writ petitioner. The complainant, who is a deserted woman and was working as Noon-Meal Aaya, was consistently pursuing the matter with the respondents Assurance Company. She is going on submitting the representations with the fond hope that the respondents officials would provide remedy by redressing her grievances. But, the same ended with futile exercise.

17. The fact remains that the third respondent was allowed to retire from service and his terminal and pensionary benefits were settled and thereafter, the third respondent had conveniently escaped from the clutches of the disciplinary proceedings as well as from his responsibilities. Undoubtedly, the competent officials of the respondents 1 and 2 also had contributed for such negligence and lapses. Long pendency of the complaint was resulted in such escapement of the employees. The third respondent is working in Madurai for many years. Thus, the officials and the colleagues to the third respondent must be aware of these facts. However, they have not shown any sensitiveness and had not taken any effort to provide some redressal to a poor woman, who was deserted by the employee of the Assurance Company. Such an insensitiveness shown by the authorities are to be deprecated.

18. The lis on hand is a classic case, where the employee / third respondent, who committed serious misconduct, is allowed to escape from the clutches of law, which resulted denial of even the livelihood of maintenance to the legally wedded wife / writ petitioner. Such situation occurred on account of the lapses, negligence and dereliction of duty committed by the competent authorities in conducting an independent enquiry during the relevant point of time, when the complaint was submitted by the writ petitioner.

19. Under these circumstances, the learned counsel appearing on behalf of the writ petitioner is also unable to clarify whether any first appeal is filed against the judgment and decree passed in O.S.No.36 of 2005. If so, the writ petitioner is at liberty to pursue the same in the manner known to law.

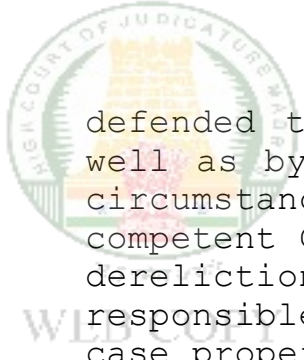


20. With reference to the judgment and decree passed in O.S.No.36 of 2005, the Family Court, Madurai had not considered the validity of the customary divorce with reference to the provisions of the marriage laws. The marriage between the writ petitioner and the third respondent was solemnized as per the Hindu Rites and Customs at Madurai Arulmigu Meenakshi Sundareswar Temple, Madurai. Thus, customary divorce even *prima facie* may not be possible nor be accepted and such a concept of customary divorce is not in prevalence in Madurai City with reference to the Act.

21. Section 29 of the Act provides that "Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act".

22. Section 29 of the Act, cannot have any applicability with reference to the marriage solemnized between the writ petitioner and the third respondent. A person, claiming any such customary divorce as a valid dissolution of marriage, must establish that such a custom is in prevalence in the society or in the particular community. Thus, an undisputable proof is required for the purpose of establishing a customary divorce. The concept of customary divorce is not normally accepted in our society or under the provisions of law. In the current day circumstances, such customary divorce can never be encouraged and the same is to be established by way of prevalence of custom in a particular area or society as well as in the community. Thus, a strict proof is required for the purpose of establishing the validity of the customary divorce and in all other circumstances, the dissolution of marriage granted by the competent Court of law alone must be taken for the purpose of ascertaining the marriage status of the person. In respect of the present case on hand, there is no such probability or possibility of granting customary divorce, more specifically, in Madurai City. Even if there is any such customary divorce, such divorce is invalid in the eye of law. The writ petitioner is residing in Madurai, so also the third respondent. As far as the Madurai District and various districts across the State of Tamil Nadu are concerned, practice of customary divorce at present is not in prevalence and even if it is in prevalence, it is for the parties to establish beyond any doubt. Thus, the findings of the Family Court, Madurai in this regard are to be declared as null and void.

23. Even the civil suit is in connection with the service benefits of the third respondent. New India Assurance Company is also a party defendant in the civil suit. Unfortunately, the New India Assurance Company had not contested the suit properly. The company has not contested the case for the reasons not known to this Court. The officials are unable to establish that they had



defended the case properly by put forth legal submissions as well as by placing conduct rules with reference to the facts and circumstances of the third respondent. Thus, even before the competent Civil Court, the respondents 1 and 2 committed an act of dereliction of duty and lapses. The officials, who are all responsible for such lapses, dereliction of duty in defending the case properly before the Court of law, must be prosecuted.

24. Reading of the judgment and decree passed in O.S.No.36 of 2005 reveals that not even a reference is made with regard to the validity of the customary divorce with reference to Section 29 of the Act. In the absence of any such specific findings, which led to the conclusion, the Family Court had committed an error in approving the customary divorce pleaded by the third respondent. The judgment and decree, which is not legal in the eye of law, cannot be executed with reference to the provisions of the Code of Civil Procedure. Such judgments and decrees are to be declared as non-executable decree.

25. Plain reading of the judgment dated 19.02.2005 in O.S.No.36 of 2005, there is not even a whisper about the legal principles to be followed for grant of customary divorce and the object and spirit of Section 29 of the Act with reference to the evidences to be provided and the strict proof to be provided and the practice of customs etc., to be established, are totally missing. In the absence of any such elaborate adjudication to uphold the validity of the customary divorce in a particular society, the civil Court cannot grant any judgment or decree, validating such customary divorce. In the event of allowing such wrong precedents to be in force, the same will lead pathway to many such similarly placed persons to claim customary divorce for the purpose of escaping from the misconducts as well as offences, which all are enumerated in Chapter XX of the Indian Penal Code. Thus, the judgment and decree, which is in violation of the provisions of the statutes as well as the basic principles of law, must be declared as null and void allowing such judgment and decree will lead to wrong precedent and further, will provide cause for such similarly placed persons to escape from the clutches of criminal prosecution as well as misconducts in service rules.

26. The learned counsel appearing on behalf of the writ petitioner states that not even a single witness was examined by the civil Court nor any document is produced to establish that there was a custom prevailing in the particular area or in the society for grant of such customary divorce. No evidences or documents are provided to establish any such practice, which was prevailing in the particular community in Madurai City, which is in violation of the marriage laws and no such customary divorce can be approved by the High Court.



27. The scheme of pension and family pension is a welfare scheme. The State has implemented the concept of family pension in favour of the spouses to protect their livelihood, and enabling them to maintain the standard of life, even in the absence of the respective spouses. The very concept of the welfare scheme, like, family pension scheme, cannot be diluted on account of such illegal activities of the employees and on account of the inactions on the part of the employers. The employers are duty bound to protect the interest of those spouses in view of the fact that the family pension is also being paid from the "taxpayers money" and under the welfare scheme and to provide social protection and therefore, the same must be paid to the right persons and in accordance with law. Under these circumstances, the nominations, validity of the marriage, legal validity of the decree of divorce granted, are all to be properly scrutinized by the employers before taking decisions in this regard.

28. This Court would like to place on record that the officers of the respondents 1 and 2, who all are attending the Court, must realize that they must attend the Court with files in order to assist the learned counsels properly. Contrarily, they are coming to the Court with empty hands and just watching the Court proceedings. Thus, in the event of not coming with the files and in the event of not instructing the learned counsels properly, the respondents 1 and 2 must treat such conducts as negligence, lapse and dereliction of duty and institute appropriate disciplinary proceedings against all those officials, who all are not showing any devotion to duty.

29. The great philosopher Bertrand Russell authoritatively said that National policy is the best policy. Internationalism is an Ethiopian world. Regionalism is a bad policy. Thus, nationalism is the best policy and therefore, injecting nationalism in the minds of the people for development of our great Nation is of paramount importance. Internationalism is not possible. Regionalism will paralise the unity and stop the developmental activities. Thus, Courts and Statesmen cannot recognize or encourage regionalism. But, they have to promote nationalism.

30. Our Indian society is now more concerned about women empowerment. We are speaking much about equal employment opportunity to women. Special reservations are made for women to bring them up on par with their counter parts (male candidates). As far as our Indian society is concerned, divorce is a "social evil". The concept of family is to be protected for the development of our Nation. Characteristically molded individuals constitute a good family. A good family constitutes good Nation. A good Nation alone can prosper in developmental activities. Thus, good families are the foundation for the



development of our great Nation. The concept of family, even during ancient times, considered as the root for unity and for individual developments. When these all are the concepts being adopted by the Indian Society, even during primitive days, still we love and recognize the concept of family. The man being a social animal cannot live separately. Under these circumstances, on the one hand we are talking about women empowerment, opportunity for women in all fields and at all levels, however, we are neglecting certain other factors, like, grant of divorce, non-maintenance etc. Even after the development of the constitutional principles and in the presence of ever so many welfare legislations in favour of women, the Courts are recognizing the customary divorces, which can never be accepted nor be approved. Customary divorce undoubtedly is a social evil. Customary divorces undoubtedly are happening on account of the attitude of ill-minded male chauvinists. Customary divorces are decided by few persons, who may not have much idea about the social developments and the constitutional perspective. May that it be, the only concern of this Court is that such customary divorces are approved by the Civil Courts even without ascertaining the basic factors regarding the customs prevailing as well as practice. Customary divorce can never be approved nor recognized by the law. The Hindu Marriage Act, which was enacted in the year 1955, recognized such customary divorce and now, after a lapse of 64 years, the practice of granting customary divorce can never be adopted nor be followed and the Courts should not approve any such customary divorce granted by few men from the community or the relatives of the husband or wife. In the event of approving such customary divorces, then the implications would be large and we will be marching towards backward and that can never be accepted. Such customary divorces are affecting personal liberty and fundamental rights of the women to adjudicate their issues before the competent forum. Under these circumstances, this Court has no hesitation in coming to the conclusion that the Judgment and Decree, dated 19.02.2005, passed in O.S.No.36 of 2005, by the learned Judge, Family Court, Madurai, is null and void and it cannot be relied on by the respondents for the purpose of acceptance of dissolution of marriage between the writ petitioner and the third respondent. Under these circumstances, the following orders are passed:

- i. The Judgment and Decree, dated 19.02.2005, passed in O.S.No.36 of 2005, by the learned Judge, Family Court, Madurai, cannot be accepted as a valid dissolution of marriage between the writ petitioner and the third respondent.
- ii. The respondents 1 and 2 are directed to initiate all suitable actions against the officials / employees, who all are accountable and responsible for their negligence, lapse, and dereliction of duty in the matter of dealing with the complaints and allowing the third respondent to retire from service with all



terminal and pensionary benefits.

- iii. The respondents 1 and 2 are directed to issue Circulars to all the Branches to initiate action against all such complaints or informations regarding the bigamous marriage etc., and conduct enquiry and institute appropriate actions under the Discipline and Appeal Rules as well as to file criminal case before the competent authority.
- iv. The writ petitioner is at liberty to approach the competent Court of law for the purpose of claiming maintenance from the third respondent by following the procedures contemplated under law.
- v. The respondents 1 and 2 are directed to verify the genuinity or otherwise of the nominations given by the respective employees of the Corporation before entering the same in their service records and pension records. Such a procedure must be adopted in the interest of protecting the respective spouses.

31. With these directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to Mr.M.KANNAN, Advocate (SR-77352[F] dated 24/07/2019)

+1 CC to Mr.K.MUTHUMALAI, Advocate (SR-77371[F] dated 24/07/2019)

W. P (MD) No. 6514 of 2014
22.07.2019

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