



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P. (MD) No.15746 of 2015

and

M.P. (MD) No.1 of 2015

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V.Malki Vedanayagam

... Petitioner

-Vs-

The Superintendent of Prison,
Central Prison, Madurai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the respondent made in No.6031/KiCil/2015 dated 27.07.2015 and quash the same as illegal and consequently, direct the respondent to include the petitioner's wife M.Suryakala as nominee in the petitioner's service records by removing the name of the petitioner's divorced wife A.Gracia Gnanamani considering the petitioner's representation dated 10.01.2001.

For Petitioner : Mr.A.K.Manickam
For Respondent : Mr.D.Muruganantham,
Additional Government Pleader.

ORDER

The order dated 27.07.2015, issued by the respondent / Superintendent of Prison, Central Prison, Madurai, stating that the writ petitioner has to produce the valid decree of divorce, if any obtained from the competent Court of law, for the purpose of entering the name of the second wife as a nominee in the service records and pension book, is under challenge in the present Writ Petition.

2.The writ petitioner, who had served as Jail Superintendent in Sub Jail, Uthamapalayam, Theni District, was allowed to retire from service on 31.10.2015 on attaining the age of superannuation.

3.The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner got married with one A.Gracia Gnanamani, D/o.M.G.Adaikaladas on 09.02.1979. Out of their wedlock, a male child was born, named as Victor Daniel Raj. On account of certain misunderstanding and difference of opinion, the said A.Gracia Gnanamani left the matrimonial home and started living separately.

4.The learned counsel appearing on behalf of the writ petitioner states that in the presence of their parents and by way of mutual consent, which was accepted in their community, they have registered a deed of divorce by way of mutual consent.



5.The learned counsel appearing on behalf of the writ petitioner states that it was a customary practice, prevailing in the family of the writ petitioner and his elders were aware of the customary divorce executed. Subsequently, the writ petitioner entered into the contract for second marriage with one M.Suryakala, D/o.Maasaanam. The second marriage of the writ petitioner was solemnized on 10.05.1988 at Madurai in the presence of his relatives. Out of the wedlock with the second wife, a girl child born named as Glory Nancy Jenifer and thereafter, one son, namely, Solomon Pramodh.

6.The name of the first wife of the writ petitioner, namely, A.Gracia Gnanamani was nominated in the service records of the writ petitioner. Soon after the marriage with the first wife, the competent authorities entered the name of the first wife A.Gracia Gnanamani as a nominee.

7.The claim of the writ petitioner is that he executed a deed of divorce by way of mutual consent and the said deed of divorce is to be accepted by the respondent for the purpose of changing the nominee in the service records as well as in the pension records.

8.The learned Additional Government Pleader appearing on behalf of the respondent opposed the contentions by stating that as per Divorce Act, 1869, more specifically, under Section 10(A), dissolution of marriage by mutual consent is to be obtained from the competent District Court and therefore, the deed of divorce submitted by the writ petitioner cannot be accepted by the competent authorities for the purpose of changing the name of nominee in the service records as well as in the pension records.

9.It is further contended that the consent divorce deed submitted by the writ petitioner is invalid in the eye of law and such deed cannot be considered as a valid document for the purpose of effecting change of nomination in the service records as well as in the pension records. Only, if a decree of divorce granted by the competent Court of law is submitted, then alone, the competent authority can enter or alter the name of the nominee in the service records as well as in the pension records. Admittedly, the writ petitioner has not produced any such decree of divorce granted by the Court of law and therefore, the claim of the writ petitioner has been rejected by the competent authority and there is no infirmity as such.

10.The fact remains that the writ petitioner married one A.Gracia Gnanamani as first wife and entered her name as nominee in the service records. The deed of divorce submitted by the writ petitioner is undoubtedly not valid and null and void in the eye of law. Such a decree of divorce is impermissible and therefore, the first wife remains as a legally wedded wife of the writ petitioner as of now. For all purposes, the said A.Gracia Gnanamani is the legally wedded wife of the writ petitioner and therefore, change of



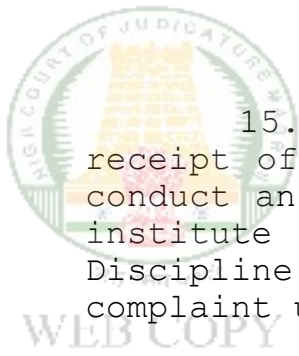
nomination cannot be done in the service records as well as in the pension records of the writ petitioner.

11. The second marriage itself is null and void. Bigamous marriage is not only a misconduct under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, but a criminal offence under the provisions of Indian Penal Code. Thus, the Government servant entering into the contract of second marriage during the life time of the first wife, is undoubtedly liable to be prosecuted under the criminal law. Even the competent authorities on initiation of disciplinary proceedings, imposed punishment, if the allegation of second marriage is established against the public servant.

12. Under Section 494 I.P.C., marrying again during the 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.

13. 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 Tamil Nadu Civil Services (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.

14. 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.



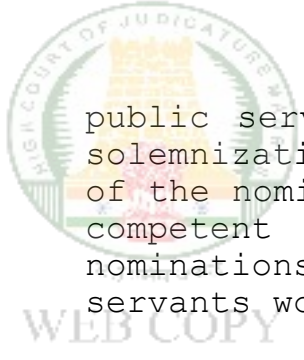
15. Under these circumstances, the Department officials, on receipt of any such complaint or information from any source, must conduct an enquiry and investigation, if necessary and accordingly, institute actions against the public servants both under the Discipline and Appeal Rules as well as by registering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

16. 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.

17. 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.

18. 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.

19. 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



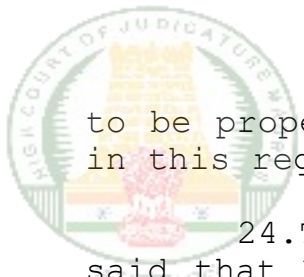
public servants at the time of entering into the service or after solemnization of their marriage are to be verified and the genuinity of the nominations is to be ascertained and if any doubt arises, the competent authority should conduct an enquiry and finalize the nominations to be entered into the service records of these public servants working in various Government Departments.

20.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.

21.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.

22.This being the procedures to be followed, the very claim of the writ petitioner for change of nomination for the purpose of entering his second wife as nominee, cannot be accepted and under these circumstances, the deed of divorce submitted by the writ petitioner is null and void and cannot be relied upon for any purpose to establish that the marriage between the writ petitioner and the first wife A.Gracia Gnanamani is dissolved.

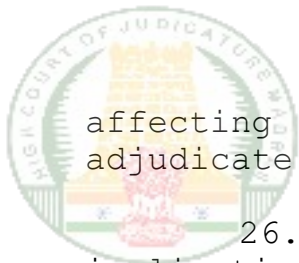
23.The scheme of pension and family pension is a welfare scheme. The State has implemented the concept of family pension in favour of the spouses to protect their livelihood, and enabling them to maintain the standard of life, even in the absence of the respective spouses. The very concept of the welfare 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.

24. 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, inculcating 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.

25. 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 alone can 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.

26. 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 spouses in accordance with the Pension Rules, without causing any 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.

27. Accordingly, this Writ Petition is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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To

The Superintendent of Prison,
Central Prison, Madurai.

+1 CC to MR.A.K.MANICKAM, Advocate (SR-79072[F] dated 01/08/2019)
+1 CC to SPL GP (SR-79269[F] dated 01/08/2019)

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