



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.M. SUBRAMANIAM**

W.P. (MD) .No.8695 of 2014

and

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

N.Kamalakumari

... Petitioner

-Vs-

1.The Principal Accountant General,
(Accounts and Entitlements),
No.361, Annasalai,
Chennai-600 018.

2.The Director of Pension,
No.259, Annasalai,
Block III, 2nd Floor,
DMS Campus, Teynampet,
Chennai.

3.The Assistant Elementary Educational Officer,
Periyakulam, Theni District.

4.The Assistant Treasury Officer,
Sub Treasury, Periyakulam,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari and Mandamus, to call for the records relating to the impugned order made in Lr.No.6925/J1/2005, dated 28.02.2008, on the file of the second respondent and to quash the same and consequently direct the respondents to sanction the family pension to the petitioner from the date of death of her husband M. Neeraru i.e. on 13.11.2003.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.P.Gunasekaran (for R1)

Mr.M.Jeyakumar
Additional Government Pleader
(for R2 to R4)



ORDER

The order of rejection, dated 28.02.2008, rejecting the claim of the writ petitioner for grant of family pension with reference to Rule 49 (a) of the Tamil Nadu Pension Rules 1978, is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner made a submission that the husband of the writ petitioner Mr.M.Neeraru was employed as Teacher and retired from service on 30.06.1989. He was receiving pension till his date of death on 13.11.2003. The petitioner, admittedly, is the second wife of the deceased employee. The first wife of the deceased employee Mr.M.Neeraru was employed as Secondary Grade Teacher and she died on 16.01.1990. The name of the first wife is Smt.K.Sivakami. The husband of the writ petitioner had no issues through his first wife and he was receiving the family pension of his first wife also till his date of death. The marriage between the petitioner and the deceased employee was solemnized on 28.05.1966 as per the Hindu Rites and Customs. It is an admitted fact that the second marriage was solemnized during the lifetime of the first wife.

3.Under these circumstances, the writ petitioner claims that she is entitled for family pension with reference to rule 49 (7) (a) (i) of the Tamil Nadu Pension Rules. The learned counsel for the writ petitioner states that the rules 49 (7) (a) (i) states that "Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares". Relying on the said rules, the learned counsel is of the opinion that the deceased employee passed away and therefore, she is entitled for family pension under the Tamil Nadu Pension Rules.

4.The impugned order states that as per the explanation provided under Rule 49 (7) of the Tamil Nadu Pension Rules, the second wife shall be entitled for the benefits 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 (Central Act 25 of 1955). As the marriage between the writ petitioner and the deceased Government employee was solemnized during the year 1966, after, the commencement of the Hindu Marriage Act 1955 and through the solemnization of the marriage, the first wife was relieved, therefore, the petitioner is not eligible for family pension. The explanation to rule 49 (7) reads as under:-

"Explanation:- For the purpose of this rule, the



second wife shall be eligible for the benefits of family pension only if the second marriage-

(i) Solemnized as per the customary law prevailed among the community before the date of commencement of the Hindu Marriage Act, 1955 (Central Act 25 of 1955); or

(ii) Solemnized under the Mohammedan Law in which bigamy is permissible."

5.The second marriage during the lifetime of the first wife is a misconduct under the Tamil Nadu Service Conduct Rules. This apart, bigamous marriage is a punishable offence under the Indian Penal Code. Thus, the public servant, after the commencement of the Hindu Marriage Act 1955, cannot enter into a contract for second marriage and if at all any marriage is solemnized, after the commencement of the Hindu Marriage Act, such a marriage itself is null and void and the second wife is not entitled for family pension, after the death of the deceased employee. This apart, if an information is received by the department during the service against the employee, then they are liable to be punished under the Discipline and Appeal Rules for the misconduct of bigamous marriage. This being the legal provisions in respect of the services of the Government employees, this Court is of the opinion that the writ petitioner, who married the deceased employee during the lifetime of his first wife, cannot be treated as a wife for the purpose of granting of family pension in accordance with the provisions of the Tamil Nadu Pension Rules 1978. In view of the fact that the marriage between the deceased employee and the writ petitioner is null and void, she is not entitled for family pension. In this view of the matter, the reasons stated in the impugned order is undoubtedly candid and convincing and in consonance with the provisions of the Tamil Nadu Pension Rules.

6.Thus, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Principal Accountant General,
(Accounts and Entitlements),
No.361, Annasalai,
Chennai-600 018.

2.The Director of Pension,
No.259, Annasalai,
Block III, 2nd Floor,
DMS Campus, Teynampet,
Chennai.

3.The Assistant Elementary Educational Officer,
Periyakulam, Theni District.

4.The Assistant Treasury Officer,
Sub Treasury, Periyakulam,
Theni District.

+1 CC to M/s.M. THIRUNAVUKKARASU, Advocate (SR-83719[F] dated 28/08/2019)

+1 CC to M/s.P. GUNASEKARAN, Advocate (SR-83738[F] dated 28/08/2019)

+1 CC to M/s.SPLGP (SR-83813,83988[F] dated 28/08/2019)

sjj

W.P. (MD) .No.8695 of 2014
27.08.2019

KM/(10.09.2019) 4P 8C