



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2019

CORAM:

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

W.P.(MD)No.965 of 2014

and

M.P(MD)No.1 of 2014

G.S.Padmavathi

... Petitioner

Vs.

1.The Chairman cum Secretary,
Transport Department,
Secretariat,
St. George Forst,
Chennai-600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Bye-pass Road,
Madurai-625 010.

3.The Administrator,
Tamil Nadu State Transport Corporation,
Pension Fund Trust,
Pallavan House,
Pallavan Salai,
Chennai-600 002.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records of the third respondent herein relating to his proceedings in Letter No.44/முநிக/தஅபோக ஊஒநிதிபொ/2009-7554 dated 18.04.2009 and to quash the same and consequently directing the respondents to consider the petitioner's name as pensioner who is the legally wedded wife of the employee Late.G.K.Subramanian and disburse the family pension to the petitioner.

For Petitioner	: Mr.S.Alagarsamy
For R1	: Mr.D.Muruganandham Additional Government Pleader
For R2 & R3	: Mr.A.Jeyaram

**ORDER**

The order impugned dated 18.04.2009 rejecting the claim of the writ petitioner for grant of family pension is under challenge in the present writ petition.

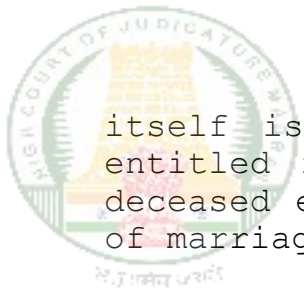
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2. The writ petitioner admittedly is the second wife of the deceased employee Late.Sri.G.K.Subramaniyan. The deceased employee joined in the Transport Corporation as Helper (Fitter) in the maintenance Department on 18.03.1993 and subsequently, promoted as Tradesman. The husband of the writ petitioner died on 6.7.2006 leaving behind him, his first wife and the three children of the writ petitioner as legal heirs. The writ petitioner herself admitted the fact that the first wife is alive even at the time of the death of the deceased employee.

3. The learned counsel appearing on behalf of the writ petitioner states that the deceased employee Mr.G.K.Subramaniyan married the first wife namely Smt. Vimala on 24.08.1980. In view of the fact that no child born, the first wife deserted her husband. She was started living separately along with her parents. It is stated that the parents of the deceased employee arranged the second marriage. The petitioner married the deceased employee on 14.11.1986 at Madurai. The marriage was solemnized as per the Hindu Rites and Customs. The petitioner states that she is having two daughters and one son. After a lapse of 13 years, the first wife of the deceased employee Smt.Vimala filed an application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act in H.M.O.P.No.148 of 1996 on the file of the Family Court, Madurai and she filed a maintenance petition in M.C. 34 of 1985 and further petition was also filed in O.P.No.2 of 1998 for enhancement of her maintenance amount. During the pendency of the above court proceedings, a compromise was arrived between the deceased employee and his first wife Smt.Vimala. It is stated by the writ petitioner that one time alimony was paid to the first wife. Thus, the deceased employee had nominated the writ petitioner as his wife, for the purpose of receiving his death cum retirement benefits. The deceased employee died on 6.7.2006.

4. The learned counsel appearing on behalf of the writ petitioner states that except the family pension, all other benefits were settled in favour of the second wife as well as her children. Thus, the family pension also to be paid to the writ petitioner in accordance with the pension scheme.

5. The learned Additional Government Pleader appearing on behalf of the first respondent opposed the contentions by stating that the writ petitioner admittedly the second wife of the deceased employee and during solemnisation of the second marriage, the first wife of the deceased employee is alive and therefore, the marriage



itself is invalid and consequently, the writ petitioner is not entitled for family pension as per Pension Rules in force. The deceased employee also filed H.M.O.P.No.63 of 1997 for dissolution of marriage and the decree of divorce was granted on 08.03.1999.

6. Relying on the said decree of dissolution of marriage, the learned counsel for the petitioner states that now the writ petitioner is the wife of the deceased employee and therefore, the family pension is to be paid.

7. This Court is of the considered opinion that one Smt.Vimala is the first wife of the deceased employee and during the life time of the first wife, the deceased employee married the writ petitioner as second wife during the year 1986. The decree of divorce was granted after a lapse of many years during the year 1999. Thus, the second marriage solemnised during the year 1986 with the writ petitioner by the deceased employee is null and void and the marriage cannot be considered as a valid marriage in the eye of law.

8. When the second marriage itself is null and void, a Government servant had not only committed misconduct, bigamous marriage is an offence under the Indian Penal Code. A public servant contracting a second marriage during the life time of the first wife is committing a punishable offence under the Indian Penal Code and it is stipulated as a misconduct under the Conduct Rules of the public servants. The respondent corporation ought to have initiated appropriate action during the relevant point of time under the Discipline and Appeal Rules. This Court is witnessing such misconducts and the offences are not seriously prosecuted by the employees. The public servants are bound to maintain discipline both inside the office as well as in their public life. In the event of committing any such misconducts of bigamous marriage, which is a punishable offence, then the employer must prosecute those employees as well as to initiate all suitable disciplinary actions under the discipline and appeal rules in force. Contrarily, these employers are compromising the issues which is certainly impermissible and beyond the jurisdiction of these competent authorities. The competent authorities of the corporation are also committing a misconduct in abiding to such crime of punishable offence and misconducts noticed and identified by them in respect of the employees working in the transport corporations. Therefore, suitable instructions are to be issued to all the competent authorities of the State Express Transport Corporation that in the event of any information or complaint of bigamous marriage which is a punishable offence, then immediately, all suitable departmental disciplinary proceedings are to be initiated as well as the criminal case is to be registered under the Chapter-20 of the Indian Penal Code.



9. As far as the present writ petition is concerned, admittedly, the writ petitioner is the second wife of the deceased employee. The second marriage solemnised between the deceased employee and the writ petitioner is null and void. Thus, the writ petitioner cannot be considered as a legal heir for the purpose of sanctioning the family pension. Undoubtedly, the children born out of the wedlock may be eligible to share the estates and as far as the family pension is concerned, it is exclusively to be granted to the legally wedded wife. Thus, a legally wedded wife or the husband alone is entitled to get the benefit of family pension under the pension rules.

10. A public servant cannot nominate any other person other than the spouse for the purpose of receiving family pension. This being the purpose and object of the family pension, the same cannot be granted in respect of a spouse whose marriage is null and void and not a valid marriage.

11. Under these circumstances, the writ petitioner admittedly being a second wife of the deceased employee and the marriage between the deceased employee and the writ petitioner was solemnized during the life time of the first wife, the marriage between the writ petitioner and the deceased employee undoubtedly is null and void and the writ petitioner is not entitled for family pension under the pension rules.

12. In view of the fact that large number of such cases with the knowledge of the competent authorities are left without any action, the authorities competent must ensure that all appropriate actions are initiated because all such cases where an offence of misconduct of bigamous marriage are come to their knowledge or a complaint is filed or informations are provided. Accordingly, the following orders are passed:-

(i) The relief as such sought for in the present writ petition stands rejected.

(ii) The respondents 1 & 2 are directed to issue suitable instructions/guidelines to all the competent authorities across the state of Tamil Nadu to ensure that all appropriate actions are to be initiated against all such misconduct of bigamous marriage, both under the discipline and appeal rules as well as by registering a criminal case before the competent authority. Such an action must be initiated in order to ensure proper settlement of pensionary benefits as well as the family pension only to the legally wedded spouse. The very purpose of the family pension is to secure the livelihood of the spouses of the public servants. Thus, it must be paid to the person who is eligible as per law.



13. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To

1. The Chairman cum Secretary,
Transport Department,
Secretariat,
St. George Forst,
Chennai-600 009.

2. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Bye-pass Road,
Madurai-625 010.

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 81145

W.P. (MD) No. 965 of 2014
08.08.2019

PK(CO)
TR (28.08.2019) 5P 4C