



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2019

CORAM:

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

W.P.(MD)No.2664 of 2015

and

M.P(MD)No.1 of 2015

Chellathai

... Petitioner

Vs.

1.The Accountant General of Tamil Nadu,
(Pension & Entitlements),
Teynampet, Anna Salai,
Chennai.

2.The Director General of Police,
Admiralty House,
Government Estate,
Anna Salai, Chennai-600 002.

3.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

4.The Treasury Officer,
District Treasury Office,
Tirunelveli.

5.The Sub Treasury Officer,
Sub Treasury Office,
Sivagiri, Sivagiri Taluk,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned letter issued by the third respondent herein in Na.Ka.No.F1/Pen/75/1977, dated 08.12.2014, quash the same and consequently direct the respondents herein to disburse the family pension with all arrears, which is legally entitled to the petitioner on the death of her husband namely Murugaiah.

For Petitioner : Mr.S.Veeranasamy
For R2 to R5 : Mr.S.Dhayalan,
Government Advocate



For R1

: Mr.P.Gunasekaran

ORDER

The order of rejection, rejecting the claim of the writ petitioner for grant of family pension on the ground that the writ petitioner is the second wife of the deceased employee and the second marriage was solemnized during the life time of the first wife, is under challenge in the present writ petition.

2. The husband of the writ petitioner Late. Shri.Murugaiah joined in the Police Department and he served as a Sub Inspector of Police. Even during the life time of the deceased employee, he made a representation on 6.3.1989 to the respondents 2 and 3 with a request to include the name of the writ petitioner as nominee in the service records. It is pertinent to note that during the relevant point of time, the first wife of the deceased employee was also alive. As per the writ petitioner, the marriage between the deceased employee and the writ petitioner was solemnized in the year 1973, however, no such records were produced and the representation submitted by the deceased employee was also not considered.

3. The learned counsel for the writ petitioner states that the deceased employee married the writ petitioner and was living with the deceased employee all along. She had taken care of the deceased employee until his death and therefore, the writ petitioner must be sanctioned with the family pension. A child also born to the deceased employee and the writ petitioner. This apart, the first wife of the deceased employee also died after the death of the deceased employee. Under these circumstances, the family pension is to be granted to the writ petitioner.

4. The learned counsel appearing on behalf of the respondents 2 to 5 states that even as per the petitioner she married the deceased employee in the year 1973. After the death of the deceased employee, the first wife of the deceased employee was receiving the family pension. The family pension was sanctioned as per the nomination to the first wife and she was continuously receiving till the date of her death. Now, the said family pension granted in favour of the first wife cannot be further granted to the second wife of the deceased employee.

5. This Court is of the considered opinion that the marriage between the deceased employee and the writ petitioner was solemnized during the life time of the first wife. After the death of the deceased employee, the family pension was rightly sanctioned to the first wife of the deceased employee, who in turn



had continuously received the family pension and died. Under these circumstances, the said pension cannot be further paid to the second wife of the deceased employee as the pension rules does not permit any such continuation of family pension to the second wife, whose marriage was not legally valid. In this regard, the Division Bench also considered the scope of rule 49 in W.A.No.977 of 2017 dated 5.6.2018 reported in 2018(1) WLR 725 in para 43 is relevant, which is extracted hereunder:-

"43.We are, therefore, constrained to conclude that the judgments which conclude that a second wife would be entitled to family pension, irrespective of her marriage being void, under the provisions of their relevant Personal Law's applicable to the parties do not reflect the correct position of law and therefore will stand overruled. The applicability of Sub Rule 7(a)(i) is confined only to cases where the second marriage is valid under the Personal Law applicable to the parties, only in such cases, widows of such marriages would be entitled to family pension."

6. This being the legal principles settled, the writ petitioner, who is the second wife of the deceased employee, is not entitled for family pension and the marriage between the deceased employee and the writ petitioner was solemnized during the life time of the first wife of the deceased employee, who in turn received the family pension, till her date of death. Accordingly, there is no infirmity in respect of the reasons stated in the impugned order and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Accountant General of Tamil Nadu,
(Pension & Entitlements),
Teynampet, Anna Salai,
Chennai.



2.The Director General of Police,
Admiralty House,
Government Estate,
Anna Salai, Chennai-600 002.

3.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

4.The Treasury Officer,
District Treasury Office,
Tirunelveli.

5.The Sub Treasury Officer,
Sub Treasury Office,
Sivagiri, Sivagiri Taluk,
Tirunelveli District.

+1 CC to M/s.P. GUNA SEKARAN, Advocate (SR-82801[F] dated
21/08/2019)

+1 CC to M/s.SPL GP (SR-83193[F] dated 22/08/2019)

AM

W.P. (MD) No.2664 of 2015
21.08.2019

_KM/ (05.09.2019) 4P 8C