

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.01.2020
CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 17762 of 2014
and M.P.1 of 2015

P. Mayileswari

..Petitioner

Vs

1.The Secretary to Government
Government of Tamil Nadu
Finance and Pension Department
Fort St.George,
Chennai - 600 009.

2.The Principle Accountant General
(A & E) Tamil Nadu,
Chennai-600 018.

3.The Assistant Elementary Educational Officer,
Thirurajapuram - 606805
Thiruvannamalai District.

4.The Sub Treasury Officer,
Thiruvannamalai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records culminating in the impugned order passed by the second respondent in Pen13/1/11303425/DAR/11-12/ADK dated 02.04.2012 and quash the same and consequently direct the second respondent to grant Family Pension to the petitioner arising out of the death of her husband Mr. P.Palanisamy Teacher Pension.

For Petitioner : Mr.K.Asokan
For Respondents : Mr.J.Ramesh,AGP -R1 & R4
Mrs. J.Sreevidhya - R2
Mrs. P.Kavitha, GA - R3

O R D E R

The prayer sought for in the Writ Petition is to call for the records culminating in the impugned order passed by the

second respondent in Pen13/1/ 11303425/DAR/11-12/ADK dated 02.04.2012 and quash the same and consequently direct the second respondent to grant Family Pension to the petitioner arising out of the death of her husband Mr. P.Palanisamy Teacher Pension.

2. Brief facts of the case:

The writ petitioner herein is the second wife of late Mr.P.Palanisamy, who served as a Teacher and retired on 31.12.1991. He passed away on 26.11.2009. The first wife of the deceased P.Palanisamy namely P.Kalaimani also passed away on 06.07.2010 even before initiating steps for making claim over Family Pension without any issues. Therefore ever since the death of 1st wife of the deceased, the writ petitioner herein initiated all steps to get Family Pension. She was also paid a sum Rs.25,000/- under the Tamil Nadu Government Pensioner Family Security Funds Scheme. However, her request for Family Pension has been rejected by the second respondent vide impugned order in Pen13/1/11303425/DAR/11-12/ADK dated 02.04.2012. Hence, the present writ petition.

2. Heard both sides and perused the documents available on record.

3. According to the learned counsel for the petitioner, the writ petitioner is entitled for the family pension by relying upon Rule 49 of the Tamil Nadu Pension Rules. He has further submitted that the first wife of the deceased has passed away in the year 2009. Therefore it is an admitted fact that the petitioner is only a survival dependant of the deceased employee as second wife and lumpsum amount of Rs.25000/- was also paid by the Government to the petitioner under Tamil Nadu Government Pensioner Family Security Funds Scheme. Therefore the writ petitioner is entitled to the benefits as prayed in the writ petition.

4. On the other hand, the learned counsel appearing for the 2nd respondent submitted that based on the clarification issued by the Government of Tamil Nadu in letter No. 112351/Pension/90-4, dated 02.06.92 (Finance (Pension) Department), the writ petitioner is not entitled for family pension. Therefore, the proposal sent by the petitioner was returned to the 3rd respondent.

5. In view of the submissions made by either side, it is useful to extract the the clarification dated 02.06.92 issued by the Government in Provision to Rule 49 of Tamil Nadu Pension Rules;

"The second wife gets the status of legal wife in two cases viz. (1) Second marriage solemnized as per the customary law among the Community before coming into

force of the Hindu Marriages Act, 1955 and (2) the second marriage solemnized as per legal requirements in the case of persons governed by Mohammedan Law where bigamy is permissible. Hence these are the two cases where second marriage is to be considered as valid and second wife is eligible for the benefit available to the widow under the Pension Rules."

6. Admittedly, the writ petitioner herein is the 2nd wife of the deceased Palanisamy, who died on 26.11.2009 and the first wife of the deceased was also died on 06.07.2010. In such circumstances, the writ petitioner's marriage with the deceased Palanisamy is valid or not as per the above Rules has to be decided, after considering relevant documents, submitted by the writ petitioner.

7. The Hon'ble Division Bench of this Court in W.A. No. 977 of 2017, dated 06.05.2018, had made detailed discussion with regard to scope of granting family pension to the 2nd wife. The relevant paragraphs are extracted hereunder;

"41. A substantially similar view has been expressed by another learned Judge of this Court in P.Velammal v. The Additional Assistant Elementary Educational Office, Sivagangai District in WP (MD) No.3096 of 2016, wherein, after taking note of the provisions of Section 5 (1) of the Hindu Marriage Act, 1955, as well as the explanation added to Sub Rule 7 of Rule 49, the learned Single Judge has held as follows:

"12. Law is settled that two Hindus cannot contract marriage after the enforcement of the Hindu Marriage Act and if any of them is having a living spouse, the marriage would be a nullity and would also not be protected under the Conduct Rules, as well as, the pension rules. Therefore, the "second wife" as referred to under the pension rules would only include second wife whose marriage is permissible under the Personal Law, but in the case of Hindus, the second wife will have no right, whatsoever, as the law prohibits second marriage, as long as, the Government servant has a spouse who is alive. Thus for harmonious construction of the Rules governing pension, wherever, the rule provides for wives, it has to be interpreted as per the law governing marriage as applicable to the Government servant and in cases where the second marriage is void under the law, second

wife will have no status of a widow of the Government servant and relying on protection of Women from Domestic Violence Act, 2005, in the opinion of this Court, is only taking a shelter."

42. We have discussed the basis on which the various judgments, of course conflicting views, have been rendered. Insofar as the view that the second wife of the Government Servant, who died prior to 02.06.1992 as held in Tamilselvi's case, referred to supra, and the view that a widow of an invalid second marriage that had taken place prior to 14.10.1991, as held in Pushpavalli's case, have given our reasons, as to why, we are unable to subscribe to the said conclusions of the learned Single Judge. We are, therefore, of the opinion that in order to enable a second wife to claim family pension the marriage should have been valid under the Personal Law applicable to the parties, to hold otherwise would be in violation of the law of the land, viz. the Personal Law of the parties as well as the Criminal Law, which prohibits bigamous marriage.

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."

8. In the present case on hand, the writ petitioner married the deceased Palanisamy, when the 1st wife was alive and being a 2nd wife, the writ petitioner is claiming family pension. Therefore, in the light of the judgment of the Hon'ble Division Bench of this Court cited supra and Rule 49 of the Tamil Nadu Family Pension Rules, decision has to be taken whether the petitioner's marriage is valid under personal law.

9. Considering the facts and circumstances of the case on hand and as per the said clarification dated 02.06.1992 issued by the Government in Proviso to Rule 49 of the said Rules and the decision of the Hon'ble Division Bench cited supra, ultimately, the case of the writ petitioner can be considered under Personal Law.

Accordingly, the following order is passed;

- i. The authority concerned/3rd respondent shall decide whether

the marriage of the petitioner as 2nd wife is held to be valid under the personal law and if the writ petitioner is found eligible, the proposal shall be resubmitted to the 2nd respondent for granting family pension to the writ petitioner .

ii.The 3rd respondent shall also consider the writ petitioner's representation after giving opportunity to the writ petitioner as well as other legal heirs of the deceased Palanisamy and pass appropriate orders.

iii.The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

With the above observations and directions, the writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

akTo

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+5ccs to Mr.Chinnasamy , Advocate SR.No. 6410
+1 cc to Government Pleader Sr.No. 7177

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A.SK(19/03/2020)