

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

WP.No.34952 of 2019

and

WMP.No.35740 of 2019

C.Sarojini Devi

.. Petitioner

- Vs -

1. The Director of Local Fund Audits,
Chennai-600 108.
2. The Director of Rural Development and
Panchayat Raj,
Chennai-600 015.
3. The Commissioner,
Morappur Panchayat Union,
Morappur, Harur Taluk,
Dharmapuri District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent herein relating to the impugned order in his proceedings in Na.Ka.No.2024/U.O.O.Sa (6)/2016 dated 01.02.2016, quash the same and issue consequential directions to the 1st respondent herein to sanction Family Pension to the petitioner with effect from 20.01.2009 i.e., the date of death of her husband Dr.A.Chinnasamy and disburse the arrears with 18% interest forthwith and continue to pay the same to the petitioner herein.

For Petitioner : Mr.R.Thamaraiselvan

For Respondents : Mr.P.S.Sivashanmugasundaram

Special Government Pleader for R1 & R2

Mr.K.Ravikumar for R3

O R D E R

This writ petition has been filed challenging the impugned order passed by the first respondent dated 01.02.2016

and for consequential direction to the first respondent to sanction Family Pension to the petitioner with effect from 20.01.2009.

2. The case of the petitioner is that one Dr.A.Chinnasamy was married to one Tmt.Pancholai and through his first wife, he had three daughters. During the subsistence of the first marriage, the said Dr.A.Chinnasamy married the petitioner also on 13.02.1975 and two male children and one female child was born through the petitioner. The first wife of the said Dr.A.Chinnasamy died on 02.04.1997.

3. The above said Dr.A.Chinnasamy was initially working as a Rural Medical Practitioner in Morappur Panchayat Union and his services were regularized in the year 1984. He attained superannuation on 31.08.1999 and he was also granted pensionary benefits. The said Dr.A.Chinnasamy, after the death of his first wife Tmt.Pancholai, nominated the petitioner to receive the Family Pension after his death. This nomination was given by him on 11.05.1999.

4. The said Dr.A.Chinnasamy died on 20.01.2009. The petitioner made a representation to the first respondent to continue with the payment of the Family Pension to the petitioner. Ultimately, the impugned order was passed by the first respondent on 01.02.2016 refusing to grant Family Pension to the petitioner on the ground that the marriage between the petitioner and the deceased Government Employee was not valid and the petitioner cannot be considered to be the legal representative of Dr.A.Chinnasamy. Therefore, the petitioner is not entitled for Family Pension. Aggrieved by this order, the present writ petition has been filed before this Court.

5. The learned counsel for the petitioner submitted that the petitioner had married Dr.A.Chinnasamy in the year 1975 and there were three children born out of the marriage. The first wife died in the year 1997 and thereafter, the nomination has been given in favour of the petitioner to receive the Family Pension. The learned counsel submitted that the first respondent ought not have insisted for legal heirship certificate and he should have continued to pay the Family Pension to the petitioner, since the petitioner was nominated by the deceased Dr.A.Chinnasamy to receive the Family Pension.

6. The learned counsel further submitted that this Court had an occasion to deal with a similar issue and following the judgment of the Hon'ble Supreme Court in Dhannulal and Others Vs. Ganesh Ram and others, this Court had held that the long co-habitation has to be taken into consideration and the wife cannot be denied the Family Pension only on the ground that her second marriage was not valid. The learned counsel, therefore,

submitted that the order passed by the first respondent requires interference of this Court and the first respondent must be directed to sanction Family Pension to the petitioner with effect from 20.01.2009.

7. Mr.P.S.Sivashanmugam, learned Special Government Pleader appearing on behalf of the respondent submitted that the petitioner cannot be considered to be the legal heir of the deceased Government Employee. The learned counsel submitted that the petitioner is not eligible for Family Pension, since she does not fall within the requirement of Rule 49(7)(a)(ii) of the Tamil Nadu Pension Rules. The learned counsel submitted that even if the petitioner was nominated by the deceased Government Employee, once it comes to the notice of the Authority that the marriage itself was illegal, the petitioner will not be entitled to receive the Family Pension. The learned counsel, therefore, prayed for the dismissal of the writ petition.

8. This Court has carefully considered the submission made on either side and materials available on records.

9. The facts of this case are not in dispute and therefore, there is no requirement for this Court to analyse the facts and this Court can directly get into the main issue that is involved in the present case.

10. It is an admitted case that the petitioner got married to Dr.A.Chinnasamy on 13.02.1975, when the first marriage was in force. Therefore, there is no difficulty in coming to the conclusion that the so called marriage between the petitioner and the deceased Dr.A.Chinnasamy is illegal and not recognized by Law. The petitioner had given birth to three children through the said Dr.A.Chinnasamy. The first wife fell sick and she expired on 02.04.1997. Even thereafter, the petitioner continued to live with the deceased Dr.A.Chinnasamy till his death on 20.01.2009. Therefore, the petitioner has lived with the deceased Dr.A.Chinnasamy for nearly 12 years even after the death of the first wife. In the meantime, the deceased Dr.A.Chinnasamy had nominated the petitioner on 11.05.1999 to receive the Family Pension after his death.

11. The only issue that requires consideration is whether this long co-habitation will enure to the benefit of the petitioner and make her eligible to receive the Family Pension. To decide this issue, the judgment that was cited by the learned counsel for the petitioner becomes very relevant. This Court, in S.Suseela @ Mary Margaret Vs. The Superintendent of Police and another made in WP.No.15806 of 2015 dated 18.06.2015, had dealt with the similar issue. The relevant portions in the

judgment is extracted hereunder:-

"2.The husband of the petitioner one K.M.Stanley was employed as a Head Constable in the Police Department. While he was in service, he married one Suganthi on 06.06.1973 and out of the said wedlock, they have a female child namely, Rooth Epsia. There were some difference of opinion between K.M.Stanley and Suganthi and they lived separately from 1975 onwards. While so, K.M.Stanley married the petitioner herein on 23.06.1976, when the first marriage with Suganthi was subsisting. Out of the wedlock, one male child namely, Nakeeran was born and he is now aged around 35 years.

3.The first wife namely Suganthi approached the learned Principal District Judge, Erode, by filing IDOP No.25 of 2001 seeking dissolution of marriage and the District Judge allowed the said petition on 05.11.2003 and the marriage between K.M.Stanley and Suganthi was dissolved. Furthermore, the said Suganthi died on 02.12.2005.

4.While so, K.M.Stanley retired from service on 31.07.2001. After retirement, he has drawn pension and he died on 28.10.2011. During his life time, K.M.Stanley gave a representation dated 26.06.2007 to the first respondent to include the name of the petitioner herein as his nominee for the purpose of getting family pension.

5.The first respondent sent a proposal dated 04.09.2014 to the second respondent to sanction family pension to the petitioner recognizing that the petitioner is the wife of the deceased Government servant. But, the second respondent passed the impugned order dated 13.02.2015, rejecting the proposal stating that since, the marriage between the deceased Government servant and the petitioner herein took place on 23.06.1976, when the marriage between the deceased Government servant and his first wife namely Suganthi was in subsistence, the petitioner herein is not eligible for family pension.

6.The petitioner has now filed this writ petition seeking to quash the impugned proceedings of the second respondent in No.Pen.33/2/pt 11155/FP/14-15 dated 13.02.2015 and to direct the second respondent to accord sanction for grant of family pension to her.

10. At this juncture, the learned counsel for the petitioner placed reliance on a judgment of the Hon'ble Supreme Court in Dhannulal and others v. Ganeshram and another (ILC-2015-SC-civil), wherein in paragraph Nos.14 and 15, it has been held as follows:-

"14. In the case of Gokal Chand vs. Parvin Kumari, AIR 1952 SC 231, this Court observed that continuous co-habitation of woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long co-habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15. It is well settled that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a long time. However, the presumption can be rebutted by leading unimpeachable evidence. A heavy burden lies on a party, who seeks to deprive the relationship of legal origin. In the instant case, instead of adducing unimpeachable evidence by the plaintiff, a plea was taken that the defendant has failed to prove the fact that phoolbasa Bai was the legally married wife of Chhatrapati. The High Court, therefore, came to a correct conclusive by recording a finding that Phoolbasa Bai was the legally married wife of Chhatrapati."

11. In these circumstances, the first respondent thought it fit to send proposal for family pension to the petitioner. However, the second respondent by way of the impugned order rejected the same.

12. In view of the aforesaid facts, the second respondent was not correct in rejecting the proposal for family pension to the petitioner on the sole ground that when the petitioner married the deceased Government servant, the marriage between the Government servant and his first wife was subsisting.

13. In view of all the above, I am of the view that the second respondent while passing the impugned

order failed to take into account the entire facts of the case, particularly, the dissolution of marriage between the deceased Government servant and his first wife in the year 2003; the death of the first wife of the deceased Government servant in the year 2005 and the continuous living together of the deceased Government servant with the petitioner from 1976 till the death of the deceased Government servant in the year 2011. Hence, the first respondent has rightly thought it fit to send proposal for family pension to the petitioner. If it is so, I am of the view that the second respondent is not correct in rejecting the proposal for family pension. It is now accepted that without the formal marriage, living together relationship has conferred every right for the parties aggrieved to claim for their legal rights. In the aforesaid facts and circumstances of the case, the order passed by the second respondent is liable to be interfered with."

12. Even in the above judgment, the petitioner therein had married the Government Employee during the subsistence of the first marriage. The only difference is that in that case, the first marriage got dissolved in the year 2003 and the first wife died in the year 2005. This Court took into consideration the judgment of the Hon'ble Supreme Court in Dhannulal's case. The Hon'ble Supreme Court, in the said case has held that Law presumes in favour of marriage and against concubinage, when a man and woman have co-habitated continuously for a long time. By relying upon this judgment, this Court held that after the dissolution of marriage with the first wife and after her death, the petitioner therein was living with the deceased Government servant till his death. This was taken into consideration by this Court and this Court held that the petitioner therein must be considered to be the wife of the deceased Government servant atleast after the dissolution of the first marriage and the subsequent death of the first wife.

13. This Court is in complete agreement with the proposition of law that has been enunciated in the above judgment. It is very easy to brand the petitioner as a concubine and deprive her of her livelihood. However, the fact remains that the petitioner lived with the deceased Dr.A.Chinnasamy from the year 1975 up to his death in the year 2009. This means that she lived with him for nearly 34 years. The petitioner also gave birth to three children. If the petitioner had made this claim when the first wife is alive, then obviously the petitioner will not be entitled for Family Pension, since her relationship is not recognized by law.

14. The march of law happens only while considering the co-habitation that continues after the death of the first wife. That is the most crucial factor that was taken into consideration by this Court while granting the Family Pension to the petitioner in the case cited supra. Even in the present case, the first wife died on 02.04.1997. Thereafter, the petitioner lived with the deceased Dr.A.Chinnasamy till his death on 20.01.2009. During this period, it can always be construed that the petitioner and the deceased Dr.A.Chinnasamy were living as husband and wife and their long co-habitation itself raises that presumption of marriage. Added to that the deceased Dr.A.Chinnasamy had also nominated the petitioner on 11.05.1999 to receive the Family Pension after his death.

15. In the considered view of this Court, this Court has to necessarily lean towards the presumption of marriage rather than branding the petitioner as a concubine. This will be the most appropriate way to deal with the facts of the present case, if justice has to be done to the petitioner.

16. In view of the above discussion, this Court has no hesitation to quash the impugned order passed by the first respondent on 01.02.2016 and accordingly, the same is quashed. The first respondent is directed to pass necessary orders and sanction Family Pension to the petitioner with effect from the date of death of Dr.A.Chinnasamy i.e., from 20.01.2009 and disburse the arrears of pension to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order. The petitioner shall be continued to be paid with the Family Pension till her life time.

17. This Writ petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Director of Local Fund Audits,
Chennai-600 108.

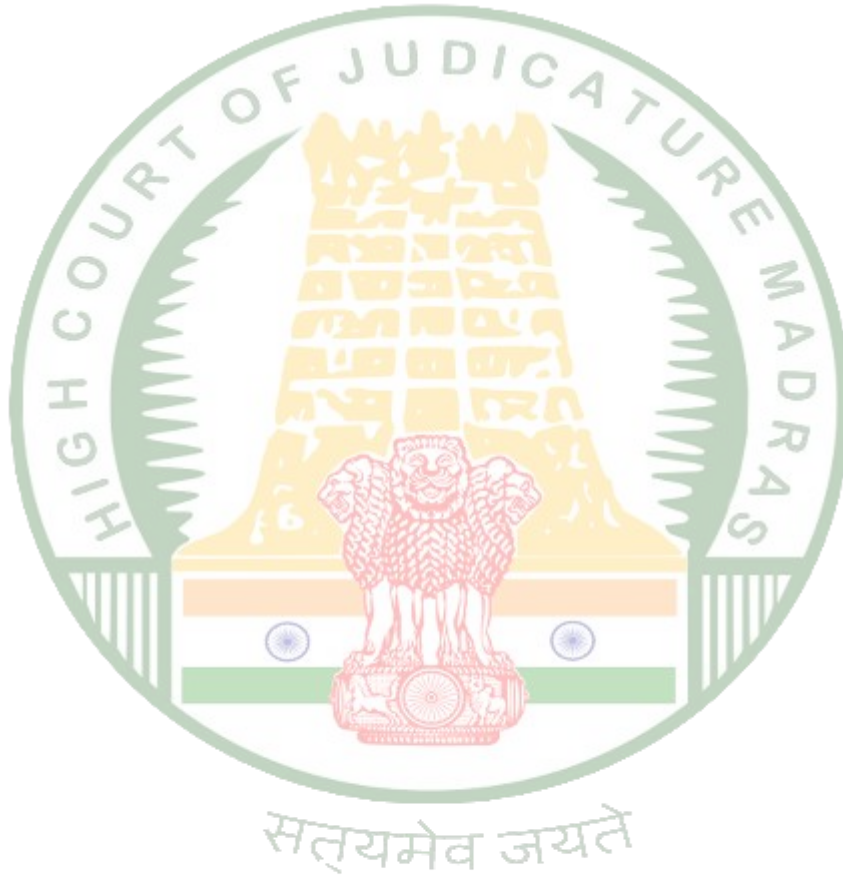
2. The Director of Rural Development and Panchayat Raj,
Chennai-600 015.

3. The Commissioner,
Morappur Panchayat Union,
Morappur, Harur Taluk,
Dharmapuri District.

+1cc to Mr.R.Thamaraiselvan, Advocate, S.R.No. 4635
+1cc to the Government Pleader, S.R.No. 5737

WP.No.34952 of 2019

RR(CO)
GN(24/02/2020)



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