

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.NO.35339 of 2019  
and  
WMP No. 36165 of 2019

Mrs. M. Jayalakshmi

... Petitioner

-Vs-

1. The Superintending Engineer,  
Gobi Electricity Distribution Circle,  
The Tamilnadu Electricity Generation and  
Distribution Corporation Ltd.  
Gobichettipalayam 638 452  
Erode District.
2. The Internal Audit Officer/Pension,  
Audit Branch,  
The Tamilnadu Electricity Generation and  
Distribution Corporation Ltd.  
No. 144, Anna Salai,  
Chennai 600 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ, order or direction in the nature of Writ of Certiorarified Mandamus calling for the records in order passed by the second respondent herein made in Letter No. 055846/1014/F.7/F.71/PPO. No.53038/2017, dated 19.12.2017 on the file of the second respondent and quash the same and consecutively direct the respondents to grant family pension and monetary benefits to the petitioner.

For Petitioner : Mr. P. Sathish  
For Respondents : Mr. Karthik Rajan  
Senior Standing Counsel.

ORDER

This Writ Petition has been filed challenging the proceedings of the second respondent dated 19.12.2017 and consequently direct the respondents to grant Family pension and other monetary benefits to the petitioner.

2. The case of the petitioner is that one V.Mariappan was working in the Electricity Board. He married one Mariammal, who is the sister of the petitioner. Since they did not have children, the said Mariappan, married the petitioner during the subsistence of the first marriage. Out of the said marriage, they have two sons and two daughters. It is the claim of the petitioner that the marriage took place with the consent of her elder sister and all of them were living under the same roof.

3. The petitioner had claimed for Family pension under the Tamil Nadu Pension Rules 1978. The same was rejected by the second respondent by impugned proceedings dated 19.12.2017 on the ground that the marriage between the petitioner and the deceased Mariappan is a nullity as per the Hindu Marriage Act and therefore, the Tamil Nadu Pension Rules does not provide for grant of family pension to the petitioner. The proceedings of the second respondent has become the subject matter of challenge in the present Writ Petition.

4. Heard Mr. P. Sathish, the learned counsel appearing for the petitioner and Mr.Karthik Rajan, the learned Senior Standing Counsel for the respondents.

5. The issue that has been raised in this Writ Petition is squarely covered by the judgment of the Division Bench reported in (2018) 5 Mad LJ 385 (R.Rajathi vs. The Superintendent Engineer, TANGEDCO Ltd., Nagapattinam and another). The relevant portion of the judgment is extracted hereunder.

"43. 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.

44. 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 marriage would be entitled to family pension."

6. The above judgment was subsequently followed by another Division Bench reported in 2019 SCC Online Mad 2673 (State of Tamil Nadu Vs. G. Kanagavalli).

7. In view of the above settled law on the issue, this Court cannot take a different stand and this Court is bound by the judgment of the Division Bench. The impugned proceedings of the second respondent is in line with the judgments referred supra and therefore, there is no ground to interfere with the same.

8. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions is also closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer,  
Gobi Electricity Distribution Circle,  
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Gobichettipalayam 638 452  
Erode District.

2. The Internal Audit Officer/Pension,  
Audit Branch,  
The Tamilnadu Electricity Generation and  
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No. 144, Anna Salai, Chennai 600 002.

+lcc to Mr.Karthik Rajan, Advocate, S.R.No. 5929

W.P.NO.35339 of 2019

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