



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2020

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) No. 15953 of 2014 and
W.M.P (MD) .No. 5847 of 2018

R. Padma

Petitioner

vs.

1. The Accountant General,
Chennai.

2.The District Collector,
Trichirapally.

3.The Sub Treasury Officer,
Trichirapally.

Respondents

PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay family pension to the petitioner herein with all arrears from 20.01.2011, the date of death of petitioner's husband.

For Petitioner	: Mr. R. Sreekumaran Nair
For Respondent No.1	: Mr. P. Gunasekaran
For R2 and R3	: Mr. J. Gunaseelan Muthaiah
	Additional Government Pleader

ORDER

This Writ Petition has been filed for issuing a direction to the respondents to pay family pension to the petitioner herein with all arrears from 20.01.2011 i.e., from the date of death of petitioner's husband.

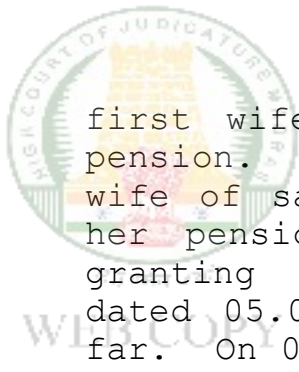
2. The case of the petitioner is that the petitioner's husband by name L.N. Ramalaingam was working as Deputy Tahsildar, Urban Land Tax, Tiruchirapalli and he retired from service on 30.04.1984 and subsequently, he expired on 20.01.2011. His first wife viz., Rajam died on 30.08.1990. With the consent of wife Rajam, the petitioner has been living with L.N. Ramalingam from 10.01.1967. He had two sons viz., Neela Megha Syamala Kannan and



with L.N. Ramalingam and to give legitimacy status to their children, they solemnized their marriage on 01.09.1991, after the death of first wife, in the house of her husband. In the pension proposal, her name was given as second wife as he was entitled to family pension as the legally wedded wife. In the ration card issued by the District Supply Officer her husband's name was mentioned as the head of the family. The Tahsildar, Srirangam has issued a legal heirship certificate in which her name was shown as second wife of Late Ramalingam and the same was issued to her on 01.06.2011. All the above documents are proved that she is the second wife as the first wife Rajam was not alive and she is the only legal heir to receive the family pension on the death of her husband. She has also produced a marriage invitation dated 01.09.1991 and hence, she is entitled to seek family pension as the legally wedded wife. The District Collector, Trichirappalli, forwarded the application to the District Treasury Officer and the same has been rejected by them stating that she being the second wife of said Ramalingam, she is not entitled to family pension and the order has been passed in O.Mu.No.20599/11/G5 dated .09.2011 and the same has been signed by the Additional Treasury Officer. The District Treasury Officer overlooked that there was valid marriage of L.N. Ramalingam and R. Padma on 01.09.1991. During that period, registration of marriage was not compulsory. Even otherwise if a man and woman were living together as husband and wife, valid marriage could be presumed as per law.

3. By producing the Judgment of this Court in the case of **(Visalakshi Ammal Vs. The Director of School Higher Education and others)**, the learned counsel appearing for the petitioner submitted that in that case the Accountant General Sanctioned Family Pension to the second wife of N. Stanunthan Thambi, when there was no dissolution of marriage of N. Stanunthan Thambi with his first wife, Visalakshi Amma. The two wives entered into a compromise to receive the family pension on the death of her husband in equal halves as per Rule 49(7) (a)(1) of the Tamil Nadu Pension Rules 1978, which specifically states that where family pension is payable to more widows than one, the family pension shall be paid to widows in equal halves. If the second marriage is before 02.06.1992, the second wife is entitled to receive family pension was held by this Court and the same was reported in the Hindu dated 10.09.2014.

4. The learned counsel appearing for the petitioner further submitted that as the petitioner herein lived with her husband for more than 30 years and married him after the death of his first wife on 10.09.1991, the marriage held between herself and the deceased husband is legally valid. Therefore, she is legally entitled to receive family pension on the death of her husband. It is also stated that her husband never nominated his



first wife as his wife who is entitled to receive the family pension. Hence, it should be construed that the petitioner is the wife of said L.Ramalingam and the respondent ought to have paid her pension as she is already 67 years old and prayed for granting pension by the respondents based on her representation dated 05.08.2014. The said representation was not considered so far. On 02.09.2014, the Treasury Officer had sent a reply stating that the Accountant General alone is competent to issue orders for payment of family pension and hence, with no other alternative she filed the present Writ Petition seeking a direction to the respondents to pay family pension.

5. On perusal of the records it is further seen that the petitioner had two sons through her husband and the first wife had three children through the deceased person. It is also to be seen that the second wife is not entitled to get any benefits. However, the children of the deceased employee's second wife would be entitled to get share in the family pension of benefits after the death of L.N. Ramalingam. The petitioner is not eligible to get family pension and as per Rule 49(6)(i) of the Tamil Nadu Pension Rules, the family pension is payable only to the first wife is being a widow, the family pension is payable to her upto the date of her death or remarriage, whichever is earlier and the second wife is not entitled to get any share in the family pension. As per Section 5 of Hindu Marriage Act, 1955, a marriage may be solemnized between any two Hindus, if the following conditions are fulfilled namely:

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of marriage, neither party;

(a) is incapable of giving a valid consent to it is consequence of unsoundness of mind or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to unfit for marriage and the procreation of children;

(c) has been subject to recurrent attacks or insanity

(iii) the bridegroom has completed the age of (twenty-one years) and the bride, the age of (eighteen years) at the time of marriage

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage government each of them permits of a marriage between the two

(v) the parties are not sapindas of each other, unless the custom of usage governing each of them permits of a marriage between the two".



6. As per the above section, after coming into force of Hindu Marriage Act, 1955, a Hindu male or female cannot marry again during the subsistence of the first marriage. Such a marriage would be void abinitio. Therefore, the submission that the petitioner was separately living, when the first wife was alive cannot be accepted and the production of marriage invitation is not sufficient. That apart the submission made that there was no provision for registration of marriage prevailing at that point of time, they were not in a position to produce the same cannot be accepted. As per the Rule 49(6) of the Tamil Nadu Pension Rules, 1978, which deals with period for which pension is payable reads as follows:

" The period for which the family pension is payable shall be as follows:

- (i) in the case of a widow or widower upto the date of death or remarriage, whichever is earlier;
- (ii) in the case of a son until he attains the age of (twenty five) years;
- (iii) in the case of unmarried daughter, until she attains the age of (twenty five years) or until she gets married whichever is earlier:

7. The above provision makes it clear that if such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor children in the order set out in the clause(iii) of sub-rule (8) until the last minor child attain the age of 25 years and thereafter, the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him/her for life. If there are more than one such son or daughter suffering from disorder or disability of mind (including mentally retarded) or who is physically crippled or disabled the family pension shall be paid. The daughter shall not be eligible for family pension from the date on which she gets married.

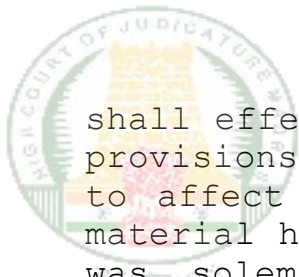
8. The learned counsel appearing for the petitioner relying on the Judgment of the Hon'ble Supreme Court in the case of **Tulsa Devi Nirola and others Vs. Radha Nirola and others (SLP (C) Nos. 23766 of 2017)** submitted that the Hon'ble Supreme Court in that case has held that second wife is entitled for getting family pension. But, in the said case the appellant is the first wife of the deceased Ram Chandra Nirola. During the subsistence of the first marriage, the deceased husband solemnized second marriage with respondent No.1 on 09.05.1987. Three children were born through second marriage. On 30.06.2008 he had executed a



settlement deed with regard to movable and immovable properties between two wives before his retirement on 30.06.2009. On 13.04.2005 he passed away. Subsequently, the appellant, who is the first wife and children applied for succession certificate, which was denied in view of settlement deed dated 30.06.2008, the appeal was dismissed. The appellant filed SLP before the Hon'ble Supreme Court staking their claim for family pension under the Sikkim services (Pension) Rules, 1990. Wherein the learned counsel appearing for the appellant submitted that the equitable distribution of the family pension between the two wives was a statutory right of appellant No.1 under Rule 40(6) of the Pension Rules. Relying on Smt. Violet Issaac and ors. Vs. Union of India and others (1991) 1 SCC 725, it was submitted that family pension was not a part of the estate of the deceased to justify debarring the appellant No.1 by reference to the settlement deed. Rule 38 provides for nomination with regard to entitlement to receive death cum retirement gratuity only and not for the receipt of the family pension. In any event, a nomination only identifies the recipient who then is required to share it with other legal heirs. The second marriage with respondent No.1 during the subsistence of the first marriage with appellant No.1 was void in view of Rule 1 of the Rules to provide for registration and solemnization of a form of marriage in Sikkim vide Notification No. 1520/H dated Gangtok, 03.01.1963 promulgated by his highness the Maharaja of Sikkim. These Rules held the field in Sikkim before the Hindu Marriage Act was extended to the state of Sikkim Vide SO.No.950(E) dated 12.10.1988 and the Act was enforced on 01.05.1989 vide SO.No.311 (E) dated 28.04.1989. Therefore, the second respondent marriage itself being void, the first respondent is not entitled to family pension.

9. It was the further submission of the learned counsel appearing for the respondent therein that in the absence of any assertion that the marriage with respondent No.1 was solemnized under the Sikkim Rules, the said rules have no application in the facts of the case in view of Rule 27. The second marriage of respondent No.1 with the deceased, during the subsistence of the first marriage therefore, does not stand invalidated. The deceased had nominated the respondent alone under Rule 38 of the Pension Rules for receipt of the family pension. The deceased consciously did not nominate appellant no.1 for receipt of family pension or for equal share in the same in view of the partition deed where he equitably balanced the interest of both his wives.

10. The Court has considered the above said facts come to the conclusion that the deceased solemnized his second marriage with the respondent No.1 on 09.05.1987, on that date the Hindu Marriage Act had not been brought into force in the State of Sikkim. Rule 27 of 1963 states that nothing contained in this Rule



shall effect the validity of any marriage not solemnized under its provisions; nor shall this Rule be, deemed directly or indirectly to affect the validity of any mode of contracting marriage, "No material has been placed by the appellant that the second marriage was solemnized under 1963 Ruels, and therefore, we have no hesitation in holding that it does not invalidate the second marriage of the deceased with respondent No.1. The family pension undoubtedly is not part of the estate of the deceased and will be regulated by the Pension Rules which confer a statutory right in the beneficiary eligible to the same. The family pension would be payable to more than one wife only if the Government servant had made a nomination to that effect and which option was open to him under the Pension Rules. The pension Rules therefore recognized the nomination of a wife or wives for the purpose of family pension. As the family pension does not constitute a part of the estate of the deceased. It is also found that that the Hon'ble Supreme Court had accepted the claim of the second wife inter alia pension based on nomination since, like the present case, the deceased was residing with the second wife to the exclusion of the first. The grant of succession certificate to the second wife was held valid. However, the Court has granted 1/5th share to the first wife in the properties. Further, the balancing equities if the deceased had not executed a settlement deed with regard to his movable and immovable properties which was accepted and acted upon by the first appellant.

11. But, in this case, it is not made clear that while the petitioner being the second wife and how she is entitled to get pension based on the nomination. Further, in the case on hand, the petitioner has not showed any valid proof for the marriage being solmenized between herself and deceased person after the death of the first wife. As far as our State is concerned, the Pension rules clearly bar the second wife from claiming any pension. The District Treasury Officer rightly rejeceted the claim of the petitioner stating that the second wife is not entitled to family pension. It is also clear that the person, who seeks family pension, should be legally wedded wife.

12. The learned Additional Government Pleader appearing for the respondent also relied on the Judgment of this Court reported in **2018-1-Writ-L.R.725** in the case of **R.Rajathi Vs. The Superintending Engineer, TANGEDCO Ltd., Nagapattinam Circle, Nagapattinam District).**

13. Praying for granting the family pension for the second wife is not valid, where the second wife had contracted the marriage during the subsistence of the first marriage. In this csae, though it is stated that the marriage between the peittoiner and the deceased took place after the death of the first wife,

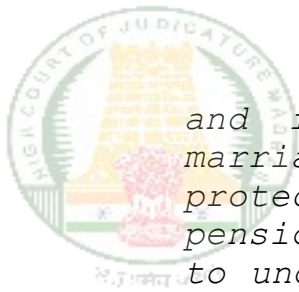


the petitioner is not in a position to prove the same. If the marriage had taken place as per the Hindu Marriage Act, 1955, the said marriage would have been valid in the eye of law. The applicability of the Sub Rule 7(a)(i) is confined only to cases where the second marriage is valid under the Personal Law applicable to the parties, only in such cases, widows of the servant, would be entitled to family pension. The Rule which is enabling the provision cannot be extended to the second wife, when the marriage is void in view of the proviso of Section 5(1) of the Hindu Marriage Act. In his case the deceased had three children out of the first marriage and two children were born to the petitioner and only after the death of the first wife they have alleged to have solemnised the second marriage is not supported by any material evidence the children were born earlier to the alleged marriage. As per the Rule 19 of Tamil Nadu Government Servant's Conduct Rules 1973 bigamous marriage (1) (i) No Government shall, enter into or contract, a marriage with a person having a spouse living and no government servant having a spouse living shall enter into contract a marriage with any persons provided that the Government may permit a Government Servant to enter into, or contract, any such marriage as is referred to in clause (i) or clause (ii) if they are satisfied that (a) such marriage is permissible under the personal law applicable to such Government Servant and the other party to the marriage and there are other grounds for so doing (2) No Government servant involve himself in any act involving moral turpitude in his part including any unlawful act, which may cause embarrassment or which may bring discredit to Government.

14. From the above it is clear that Bigami marriage is prohibited and it is not permissible under the personal law applicable to such Government servant and the other party to the marriage. Sub Rule 7(a)(i) and 49 of the Tamil Nadu Pension Rules would apply if the marriage solemnized as per the customary law prevailed among the community before the date of commencement of the Hindu Marriage Act, 1955 (Central Act 25 of 1955). Hence, it is made clear that the alleged marriage between the petitioner and the deceased person is not valid. The petitioner married the deceased after the death of the first wife is also not accepted as she got children on her own in the year 1990 itself. The Hon'ble Division Bench of this Court in the Judgment reported in **2018 - 1 - Writ - L.R. 725** in the case of **(R. Rajathi Vs. The Superintending Engineer, TANGEDCO Ltd., Nagapattinam Circle and another)** has held that the second wife would not be entitled to family pension irrespective of the marriage being void. The relevant portion of the said Judgment reads as follows:

12. Law is settled that two Hindus cannot contract

<https://hcservices.courts.mil/joservices/> 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 not 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.

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."

15. Hence, in view of the above provisions and facts it is made clear that State cannot afford protection to second wife by other stretching its limit and if it grants will further away the limited sources tested in it and would definitely encourage the second marriage which is invalid.

16. Accordingly, the prayer of the petitioner cannot be granted and this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar (CS)



To

1. The Accountant General,
Chennai.

2. The District Collector,
Trichirapally.

3. The Sub Treasury Officer,
Trichirapally.

+1 CC to M/s.K.SREE KUMARAN NAIR, Advocate (SR-12875[F] dated
23/03/2020)

+1 CC to M/s.SPL.GP (SR-12932[F] dated 24/03/2020)

W.P (MD) No. 15953 of 2014 and
W.M.P (MD) .No. 5847 of 2018
23.03.2020

KG (CO)

TR (25.06.2020) 9P 6C