

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.27317 of 2016
and
W.M.P.No.23513 of 2016

S.Kumarammal

... Petitioner

vs

The Accountant General
Office of the Accountant General (A& E)
Tamilnadu, 361, Anna Salai,
Teynampet, Chennai - 18.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the proceedings of the respondent in its Pen 32/1/PT.12014/15-16 dated 31.03.2016 and quash the same and consequently direct the respondent to continue to grant family pension to the petitioner in light of the judgement passed by this Hon'ble Court in W.P.No.15806/2016 dated 18.6.2015 and W.P.No.12105/2016 dated 31.3.2016.

For Petitioner : Mr.L.Chandrakumar

For Respondent : Mr.V.Vijaya Shankar

ORDER

The relief sought for in this writ petition is to call for the proceedings of the respondent in its Pen 32/1/PT.12014/15-16 dated 31.03.2016 and quash the same and consequently direct the respondent to pay family pension to the petitioner in light of the judgement passed by this Court in W.P.No.15806/2016 dated 18.06.2015 and W.P.No.12105/2016 dated 31.03.2016.

2.According to the petitioner, in the year 1962, she married to one V.Sreenivasan, who was employed in the forest department. After several years of marriage, she came to know about the first marriage between her husband and one Thirumalaammal, who died on 1972, due to illness, leaving behind her three sons and two daughters. Her husband took care of the children born

through the first wife along with the petitioner's children. On 31.07.1996, the petitioner's husband retired from service on attaining the age of superannuation and he died on 15.08.1996. Thereafter, the petitioner was granted family pension, however, it was stopped from March 1997 onwards. She made a representation dated 16.12.2015 to the respondent in this regard, but the same was not considered till date. Hence, this writ petition.

3. Upon notice, the respondent filed a detailed counter affidavit, wherein it is inter alia stated that since the petitioner got married to V.Sreenivasan in the year 1962 during the subsistence of his first marriage with Thirumalammal, who expired on 17.04.1973, she has been identified as the 2nd wife and she is not entitled to family pension as per the Tamil Nadu Pension Rules.

4. Today, when the matter was taken up for consideration, the learned counsel for the petitioner submitted that the issue involved herein is covered by the order dated 23.01.2020 passed in W.P.No.34952 of 2019, wherein, after detailed analysis, it was observed that this Court has to necessarily lean towards the presumption of marriage rather than branding the petitioner as a concubine; and 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. For better appreciation, the relevant passage of the said order is extracted hereunder:

"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 portion 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 Chahatrapati. 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.

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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."

In the light of the said order, the learned counsel prayed for appropriate direction to the respondent in favour of the petitioner, for which the learned counsel for the respondent has no serious objection. सत्यमेव जयते

5.Considering the facts and circumstances of the case, more particularly, that the first wife is no more and after her death, the deceased employee had lived with the petitioner till his death, and having regard to the submissions made by the learned counsel on either side and also following the aforesaid order, this Court finds it appropriate to quash the order impugned herein. Accordingly, the impugned order dated 31.03.2016 passed by the respondent is quashed. The matter is remanded back to the respondent for considering the claim of the petitioner seeking family pension, afresh and disbursing family pension along with arrears, within a period of eight (8) weeks from the date of receipt of a copy of this order.

6.This writ petition is allowed on the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

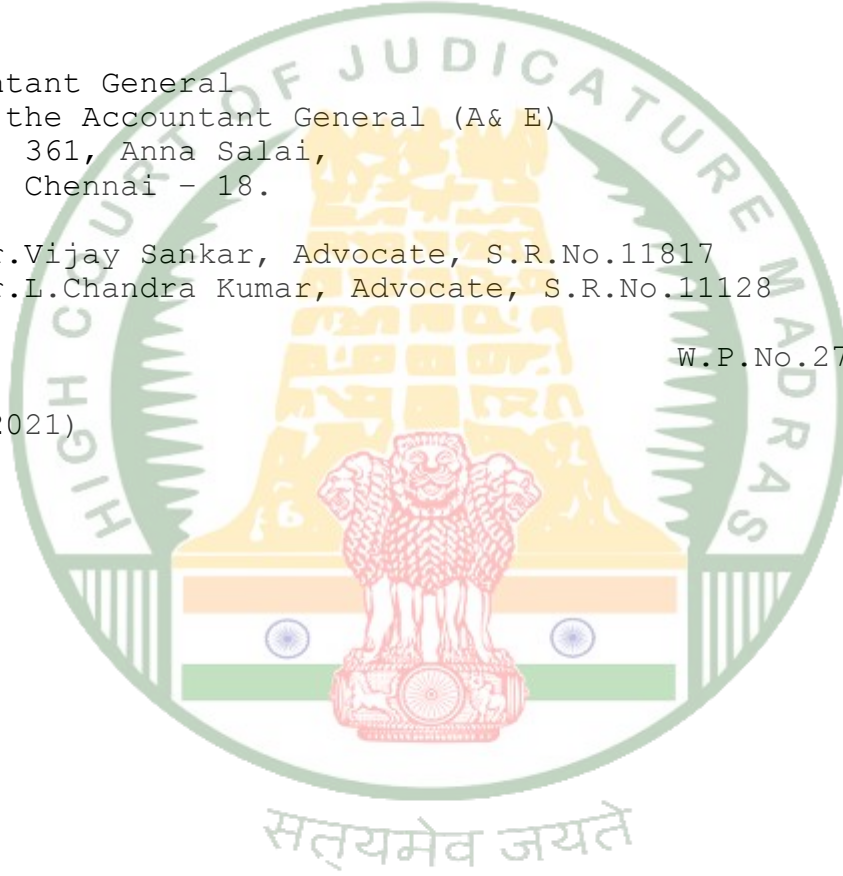
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To
The Accountant General
Office of the Accountant General (A& E)
Tamilnadu, 361, Anna Salai,
Teynampet, Chennai - 18.

+1cc to Mr.Vijay Sankar, Advocate, S.R.No.11817
+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No.11128

W.P.No.27317 of 2016

NMI (CO)
CB(27/04/2021)



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