



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
W.P (MD)No.7836 of 2021

R.Vasuki

... Petitioner

vs.

The Superintendent of Police,
Sivagangai District,
Sivagangai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to sanction family pension to the petitioner with effect from 07.06.1988 ie., the date of death of her husband S.Rajeshwaran and disburse the arrears with 18% interest forthwith and continue to pay the same to the petitioner.

For Petitioner : Mr.M.Gururaj

For Respondent : Mr.C.Ramesh
Special Government Pleader

ORDER

This Writ Petition is filed seeking a Writ of Mandamus, directing the respondent to sanction family pension to the petitioner with effect from 07.06.1988 ie., the date of death of her husband S.Rajeshwaran and disburse the arrears with 18% interest forthwith and continue to pay the same to the petitioner.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

3.According to the petitioner, her husband-S.Rajeshwaran worked as Inspector of Police in the respondent Department and while he was in service, died on 07.06.1988. The said S.Rajeshwaran earlier married one Rengammal and both got separated without any records, before the family elders, as per the Customs. After that, he married the petitioner in the year 1975 and from that year onwards, the petitioner and the deceased employee were living together as husband and wife till his life time and in the wedlock, two sons were born. The deceased employee has nominated the petitioner to receive the service benefits. After the death of her husband on 07.06.1988, the petitioner made a request before the respondent for family pension to be paid to her. The first wife, namely Rengammal, also made a



claim for family pension and retirement benefits of the deceased employee. The respondent directed both the petitioner and the first wife-Rengammal to obtain a Legal Heirship Certificate from the competent authority. The first wife-Rengammal died on 31.12.2000. The petitioner filed a suit in O.S.No.251 of 2005, on the file of the District Munsif Court, Uthamapalayam, for declaration that the petitioner, the first wife children and her children are legal heirs of the deceased employee-S.Rajeshwaran. By Judgment and decree, dated 12.12.2007, the District Munsif Court, Uthamapalayam, dismissed the suit against the petitioner and declared the other plaintiffs as legal heirs of the deceased employee-S.Rajeshwaran.

4.From the materials available on record, it is seen that the petitioner was living with the deceased employee as wife from the year 1975 and in cohabitation, two male children were born. The two children along with three children of the first wife were declared as legal heirs of the deceased employee-S.Rajeshwaran.

5.The learned counsel appearing for the petitioner relied on the order of this Court dated 23.01.2020, made in W.P.No.34952 of 2019 (C.Sarojini Devi Vs. the Director of Local Fund Audits and others). In the said order, this Court, after considering the earlier order of this Court, held that when two persons lived as husband and wife and had cohabitation for a long time, she has to be presumed as a wife and not a concubine. The ratio in the said order is squarely applicable to the facts and circumstances of the present case and the relevant portion of the said order reads as follows:-

"11. The only issue that requires consideration is whether this long cohabitation will ennure 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 cohabitation 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."

6.Further, the deceased employee-S.Rajeshwaran has nominated the petitioner to receive all the terminal benefits. The employee died on 07.06.1988, but the first wife alive till 31.12.2000. The first wife was not divorced by the deceased employee as per law. In view of the same, the first wife is entitled to Family Pension from 1988 to 2000. The petitioner, in view of the long cohabitation with the deceased employee from the year 1975 evidenced by the birth of two male children and the deceased employee nominated the petitioner to receive the terminal benefits, is entitled to receive the Family Pension from 01.01.2001, after the death of the first wife of the deceased employee.

7.The learned Special Government Pleader appearing for the respondent submitted that the respondent paid DCRG equally to five children of the deceased employee and also arrears of Family Pension payable to the first wife, by proceedings, dated 14.08.2009.

8.In view of the above, the petitioner is entitled to Family Pension from 01.01.2001, after the death of the first wife of the deceased employee. The respondent is directed to disburse arrears of Family Pension along with interest at the rate of 6% p.a., to the petitioner from 01.01.2001 and continue to pay Family Pension every month.



9. With the above directions, the Writ Petition is disposed of.
No costs.

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Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Superintendent of Police,
Sivagangai District,
Sivagangai.

+1 CC to M/s.SPL GP (SR-17943[F] dated 28/04/2021)

W.P(MD)No.7836 of 2021

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