



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.10322 of 2021

P.Packiyaraj

... Petitioner

vs.

1.The Accountant General,
(Accounts and Entitlements),
Government of Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

2.The Superintendent of Police,
Virudhunagar District,
Virudhunagar-626 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to calling for the records of the impugned order passed by the first respondent vide his proceedings in Pen 5/I/pt.No.14828/2020-21, dated 21.04.2021 and quash the same as illegal and arbitrary and consequently, direct the first respondent to include the petitioner's second wife's name Jeya in Pension Payment Order.

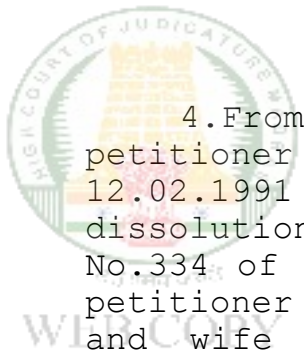
For Petitioner	: Mr.A.Balaji
For R - 1	: Ms.S.Mahalakshmi
For R - 2	: Mr.K.S.Selva Ganesan
	Government Advocate

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned order passed by the first respondent, dated 21.04.2021 and to direct the first respondent to include the petitioner's second wife's name Jeya in Pension Payment Order.

2.Heard Mr.A.Balaji, learned counsel appearing for the petitioner, Ms.S.Mahalakshmi, learned counsel appearing for the first respondent and Mr.K.S.Selva Ganesan, learned Government Advocate appearing for the second respondent.

3.The petitioner was appointed as Grade - II Police Constable and while he was working as Special Sub-Inspector of Police (SSI), retired from service on 31.08.2016 on attaining the age of superannuation.



4.From the materials available on record, it is seen that the petitioner married one Sahayaselvi on 09.09.1984 and divorced her on 12.02.1991 in the presence of the elders and registered the deed of dissolution, on the file of the Sub Registrar, Seithur, in Document No.334 of 1991, dated 12.02.1991. Subsequently, on 23.08.1991, the petitioner married one Jeya and they are living together as husband and wife from that date onwards. After retirement, when the petitioner gave a representation to the respondents to record the name of Jeya as his wife, the same was rejected by the first respondent, by passing the impugned order, dated 21.04.2021, on the ground that the petitioner married Jeya during the subsistence of first marriage with Sahayaselvi and as such, Jeya is not entitled for Family Pension.

5.From the Judgment, dated 07.09.2019, made in H.M.O.P.No.71 of 2019, on the file of the Principal Sub Court, Srivilliputhur, it is seen that the petitioner alleged that his first wife Sahayaselvi refused to live with the petitioner on the ground that she was in love with one Joseph before marriage with the petitioner and she was forced to marry the petitioner. She often used to quarrel with the petitioner and left the matrimonial home. In view of the same, the petitioner and the said Sahayaselvi dissolved their marriage in the presence of elders. After dissolution of marriage, she left the petitioner and their daughter, namely Gnanajothi and she married the said Joseph. Thus, the averments made by the petitioner were not denied by the first wife and she remained ex-parte. The petitioner also registered his marriage with Jeya on 06.02.2020 with effect from 23.08.1991.

6.From the above materials, it is seen that after the dissolution of marriage, between the petitioner and the first wife-Sahaya Selvi, in the presence of elders and after obtaining decree of divorce, dated 07.09.2019, as per law, the petitioner and Jeya are living together as husband and wife. It is well settled that living together for a long time and having cohabitation, it is presumed that both are living as husband and wife. Now the petitioner is receiving pension and payment of Family Pension to Jeya will arise only after the death of the petitioner. In view of the Judgment, dated 07.09.2019 made in H.M.O.P.No.71 of 2019 on the file of the Principal Sub Court, Srivilliputhur, granting dissolution of marriage of the petitioner with Sahaya Selvi, the petitioner and Jeya are living together as husband and wife and they are having long cohabitation, the impugned order, dated 21.04.2021 passed by the first respondent is liable to be set aside and the same is hereby set aside. The respondents are directed to include the petitioner's second wife's name Jeya in Pension Payment Order within a period of four weeks from the date of receipt of a copy of this order.



7. With the above directions, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (Crl)

// True Copy //

WEB 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

1. The Accountant General,
(Accounts and Entitlements),
Government of Tamil Nadu,
No.361, Anna Salai,
Chennai - 600 018.

2. The Superintendent of Police,
Virudhunagar District,
Virudhunagar 626 001.

+1 CC to M/s.SPL GP (SR-22292[F] dated 13/07/2021)

+1 CC to M/s.A.BALAJI, Advocate (SR-22421[F] dated 14/07/2021)

W. P (MD) No.10322 of 2021

12.07.2021

CM(CO)

LR (27.07.2021) 3P 5C