



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.7738 of 2017

H.Tamilselvi

... Petitioner

vs.

1.The Chief Internal Audit Officer,
TANGEDCO,
144, Anna Salai, Chennai -2.

2.The Superintending Engineer,
Karur Electricity Distribution Circle,
TANGEDCO, Karur.

3.Pitchaimmal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the second respondent's order in Reference No.Na.Ka.No.11780/1805/Ni.Pi-2/Ou-1/2015, dated 13.11.2015 to quash the same and to further direct the respondents to sanction 50% of family pension to the petitioner.

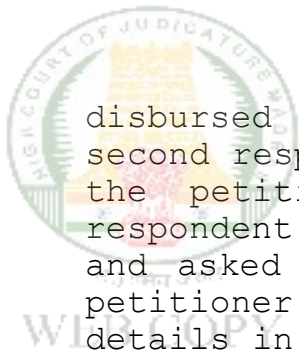
For Petitioner	: Mr.C.Venkateshkumar for M/s.Ajmal Associates
For R1 and R2	: Mr.S.M.S.Johnny Basha
For R3	: Ms.Devishreenatchiyar

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of second respondent, dated 13.11.2015, and to direct the respondent to sanction 50% of family pension to the petitioner.

2.Heard Mr.C.Venkatesh Kumar, learned Counsel appearing for the petitioner, Mr.S.M.S.Johnny Basha, learned Counsel for R1 and R2 and Ms.Devishreenathiyar,.learned Counsel appearing for the third respondent.

3.The petitioner states that her husband V.Harivel, was appointed as Helper in 01.11.1971 and later he was promoted as Wireman and retired on 31.08.2005. It is the admitted case of petitioner that she married late V.Harivel on 21.08.1978. Though the petitioner admitted that her husband had married the third respondent before marrying the petitioner and her husband died on 11.11.2014, the petitioner has applied for 50% family pension to be



disbursed to the petitioner. When the petitioner approached the second respondent for family pension, the second respondent directed the petitioner to approach the first respondent. The first respondent stopped the payment of pension to the third respondent and asked the petitioner to approach the second respondent. The petitioner's husband appears to have omitted to mention the family details in his pension proposals. However, the second respondent, by the impugned order, dated 13.11.2015, refused to consider the petitioner's claim for family pension on the ground that the petitioner's name is not found in the nomination as wife. Hence, the present Writ Petition is filed.

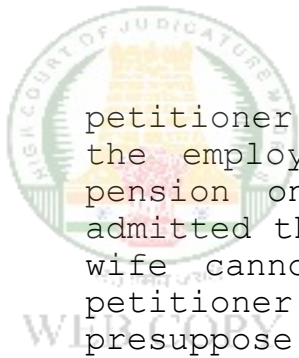
4.The third respondent has filed an independent counter affidavit *inter alia* pointing out that the marriage between herself and her husband was on 11.07.1968 at Madurai Shri Meenakshi Amman Sannathi. It is now admitted that the third respondent has three children through her husband. It is also stated by the third respondent that the petitioner got married to another and started living with her husband at Chennai.

5.Though this Court is not inclined to go into the factual issues in detail about her present status, on the admitted facts, this Court is unable to consider the request of the petitioner. Admittedly, the marriage between Thiru.V.Harivel and the petitioner was on 21.08.1978 long after the marriage between the third respondent and V.Harivel. It is admitted by the petitioner that she is the second wife. Since the marriage between said V.Harivel and the petitioner was during the subsistence of first marriage, it does not give her the status of a legally wedded wife. In the absence of a valid marriage between the petitioner and Thiru.V.Harivel, this Court cannot recognize the petitioner as the lawful heir to claim a share in family pension.

6.Since the deceased Government Employee had left behind his first wife and three children, the petitioner, who claims to be the second wife, does not have a right to claim family pension. The petitioner has not produced any rule or executive direction, so as to make her eligible for the claim to share family pension along with legal heirs of the deceased employee.

7.The learned Counsel for the petitioner submitted that as per Tamil Nadu Pension Rule, the petitioner is entitled to 50% of family pension, as the two widows are entitled to claim the same on the death of the pensioner. Stating that the marriage between the petitioner and the Government employee was solemnized on 21.08.1978, and that petitioner was living together as the wife for a long time, it is submitted that the petitioner cannot be deprived of the benefit of family pension.

8.The submission of the learned Counsel appearing for the petitioner is not supported by the Rule, which is relied upon by the



petitioner. It may be true that if there are more than one wife to the employee who died, both of them may be entitled to family pension on equal proportion in certain cases. However, it is admitted that the petitioner's marriage is invalid and her status of wife cannot be recognized in law. In such circumstances, the petitioner does not come within the meaning of "Widow" which presuppose a marriage that can be considered legal.

9.Hence, Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (A.D I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

TO

1.The Chief Internal Audit Officer,
TANGEDCO,
144, Anna Salai, Chennai -2.

2.The Superintending Engineer,
Karur Electricity Distribution Circle,
TANGEDCO, Karur.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-31050[F] dated
04/10/2021)

Order made in
W.P. (MD)No.7738 of 2017
30.09.2021

NSN (CO)

RS (27.10.2021) 3P 4C