



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2021

CORAM

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THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. (MD) No. 11645 of 2016

A.Tamilarasi ... Petitioner
Vs.

1.The District Collector,
Theni District, Theni.

2.The Regional Transport Officer,
Theni District, Theni.

3.A.Arunachlam,
Watchman,
Regional Transport Office,
Theni District, Theni.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the Second Respondent to pass suitable orders to include the Petitioner's name and her two children's name as legal heirs of the Third Respondent in his service register according to law based on the Petitioner's representation dated 22.04.2016, within the stipulated time limit.

For Petitioner: Mr. A. Prasanna Rajadurai

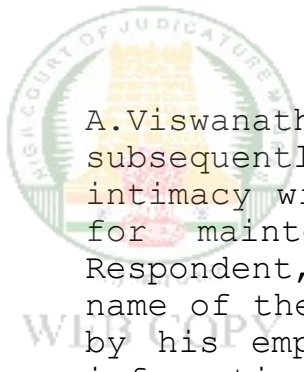
For R-1 & R-2 : Mr. D. Ghandhiraj, Government Advocate

For R-3 : Mr. Nihil for Mr.B.Saravanan

**ORDER
(through video conference)**

Heard Mr. A.Prasanna Rajadurai, Learned Counsel for the Petitioner, Mr. D.Ghandhiraj, Learned Government Advocate appearing for the First and Second Respondents and Mr.Nihil, Learned Counsel for the Third Respondent and perused the materials placed on record apart from the pleadings of the parties.

2. The Third Respondent viz., A.Arunachlam, is employed in the office of the Second Respondent viz., Regional Transport Officer, Theni. According to the Petitioner, the Third Respondent married her on 30.08.1983 and out of their wedlock, two children viz.,



A.Viswanathan and Rajalakshmi were born and the Third Respondent subsequently deserted her and the said children due to illegitimate intimacy with some other person. It is stated that in proceedings for maintenance filed by the Petitioner against the Third Respondent, it was agreed by the Third Respondent to include the name of the Petitioner as his wife in the service records maintained by his employer, but she has subsequently come to know from the information received under the Right to Information Act, 2005, that the Third Respondent has included the name of one A.Gandhimathi as his wife and Pandi Prabhu and Banu Priya as his children. In that backdrop, the Petitioner had made a representation on 22.04.2016 to the Second Respondent for correcting the entries in that regard, but as no action has been taken by the Second Respondent, this Writ Petition has been filed for issuing suitable direction to include the name of the Petitioner and her two children in the service records relating to the Third Respondent.

3. The Second Respondent has filed Counter-Affidavit dated 18.07.2016 confirming the aforesaid entries of the name of the said A.Gandhimathi as wife of the Third Respondent and Pandi Prabhu and Banu Priya as his children and further stated that the Petitioner has not produced any proof of her marriage with the Third Respondent. Though the Third Respondent has entered appearance through Counsel, no counter affidavit has been filed by him.

4. The question that arises for determination in this Writ Petition is whether the Petitioner is entitled for inclusion of her name as the wife of the Third Respondent, and that of her two children viz., A.Viswanathan and Rajalakshmi, in the service record of the Third Respondent maintained by the Second Respondent? It is the obligation of the Second Respondent, as the employer of the Third Respondent, to ensure that the names of the persons included as his wife and children in his service record are supported by proper evidence. Though it is contended by the Second Respondent that the Petitioner has not produced any evidence of the marriage with the Third Respondent, there is also nothing to show that the Second Respondent has acceptable materials in respect of the rival claim of the Third Respondent and the said A. Gandhimathi to the contrary. In this context, reference must be made to the decision of the Hon'ble Supreme Court of India in the case of **Rameshwari Devi -vs- State of Bihar** [(2000) 2 SCC 431] wherein the Hon'ble Supreme Court of India has explicated the legal position as follows:-

"13..... When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required, the State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long-drawn affair. The doors of civil courts are always open to any party after and even before a decision is



reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. The decision has to be taken in a bona fide, reasonable and rational manner."

Having regard to the aforesaid legal position, it is incumbent upon the Second Respondent to conduct enquiry after due notice to the Petitioner, the Third Respondent, the said A.Gandhimathi and the children of the Third Respondent and depending upon its outcome, proper entries of the names of the wife and children of the Third Respondent shall have to be made in his service record maintained and the decision taken communicated to all parties concerned by 30.09.2021 under written acknowledgement. It is needless to clarify here that such exercise carried out by the Second Respondent shall not be in derogation of the entitlement of any of the contesting parties to seek declaration of their matrimonial status and legitimacy of children in a suit instituted under Section 7 of the Family Court Act, 1984, impleading all necessary parties and in that event, the ultimate outcome of such proceeding shall be binding upon all parties including the Second Respondent, as employer, who shall thereupon act in accordance with the same.

In the result, the Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sm/NS/SRM

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 District Collector,
Theni District, Theni.
2. The Regional Transport Officer,
Theni District, Theni.

+1 CC to M/s.SPL GP (SR-19897[F] dated 22/06/2021)

W.P. (MD) No.11645 of 2016
21.06.2021

srk(CO)

TR(12.07.2021) 3P 4C

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