



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.22457 of 2017

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P.Saroja

.. Petitioner
Vs

1.The Accountant General,
Office of the Accountant General(Accounts and Entitlements)
Tamil Nadu,
361, Anna Salai,
Teynampet,
Chennai-600 018.

2.The Assistant Executive Engineer,
Public Works Department,
Buildings (C&M),
Sub-Division, Medical Works,
Ramanathapuram.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings in PEN 15/11/PT.9512/2017-18/dated 08-November-2017 and quash the same and consequently to direct the respondents to sanction family pension and other consequential benefits to the petitioner on account of death of the petitioner's husband, namely, Paulraj, was working as Superintendent in the office of the Assistant Executive Engineer, PWD, Building Sub-Division, Ramanathapuram within a time frame that may be stipulated by this Court.

For Petitioner : Mr.K.Guhan

For Respondent No.1 : Mr.P.Gunasekaran

For Respondent No.2 : Mr.A.Karthick
Government Advocate

O R D E R

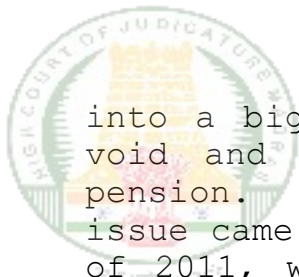
This Writ Petition has been filed for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the 1st respondent in his proceedings in PEN 15/11/PT.9512/2017-18/dated 08-November-2017 and quash the same and consequently to direct the respondents to sanction family pension and other consequential benefits to the petitioner on account of death of the petitioner's husband, namely, Paulraj, who was working as Superintendent in the office of the Assistant Executive Engineer,



PWD, Building Sub-Division, Ramanathapuram within a time frame .

2. The case of the petitioner is that the petitioner's husband, since deceased, namely, Paulraj, was an employee under the 2nd respondent and he was working at PWD Tallakulam, Madurai. Thereafter, he was transferred to various places like Rameswaram, Uthamapalayam, Vaigai Dam and Ramanathapuram etc. It is the averment of the petitioner that the marriage of the petitioner and the deceased was held on 12.11.1982 as per Christian rites and customs. After marriage, they lived at Kuppammal Ponnusamy Compound, Meenambalpuram, Madurai. The petitioner accompanied her husband wherever he transferred. In the year 1996, the petitioner's husband suffered massive heart attack and was admitted in a private nursing home and she was taking care of him during the period of hospitalisation and borrowed huge amounts of money from her relatives to meet out the medical expenses. However, the petitioner's husband breathed his last on 11.1.1996. Whiles, one Shanthi Selvanayagi and her daughter Mary Rani Shanthi have filed S.O.P.No.18 of 1996 on the file of the learned Principal Sub Judge, Madurai seeking the relief of granting Succession Certificate for Rs.2,65,000/- in favour of the said persons to receive the Family Pension of the deceased Paulraj. In the said proceedings, the petitioner is also arrayed as one of the parties and she filed a detailed counter. Even then, the learned Principal Sub Judge, Madurai, without considering the legal aspects allowed the said petition. Aggrieved over the same, the petitioner preferred a CMA.No.52 of 2002 on the file of the Fast Court No.II, Madurai and the same was also dismissed. Thereafter, the petitioner filed CRP (NPD).No.1174 of 2015 before this Court. This Court has closed the said revision petition as infructuous on the ground that the rival, Shanthi Selvanayagi has passed away and liberty was granted to the petitioner to work out her remedy in the manner known to law. Thereafter, the petitioner made a representation to the official respondents for payment of pensionary benefits. However, the first respondent rejected her claim on the ground that as per the second provision to Sub-Rule 7 (a) (i) of Rule 49 of Tamil Nadu Pension Rules, 1978, the second wife is not entitled for the pensionary benefits during the life time of the first wife. Challenging the same, the present writ petition has been filed.

3. The learned counsel for the petitioner submits that as per the provision to Sub-Rule 7 (a) (i) of Rule 49 of Tamil Nadu Pension Rules, 1978, it is crystal clear that if the Government Servant has more than one wife, on his death, the respective wives are entitled for family pension in equal moieties. Though amendment was made to the said Sub Rule 7 (a) (i), which came into force on 02.06.1992, however, it did not prohibit a bigamous spouse from getting a share in the family pension. It is the further submission of the learned counsel for the petitioner that the explanation to the said Rule was introduced by amending the Rule only with effect from 02.06.1992 and from 2.6.1992, any government servant enters



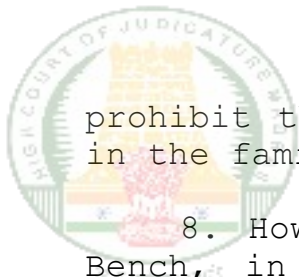
into a bigamous marriage, the said marriage would be deemed to be void and the bigamous spouse would not be entitled for family pension. Learned counsel for the petitioner submits that identical issue came up for consideration before this Court in W.P.(MD)No.4784 of 2011, wherein, this Court, held that any marriage, bigamous in nature, which had taken place on or after 1991, only in cases of such of those persons, the bigamous spouse is not entitled for family pension. In the present case, the petitioner's marriage was solemnized prior to 1991 and, therefore, the said decision is squarely applicable to the case of the petitioner and, accordingly, the petitioner is entitled to family pension.

4. Per contra, learned counsel for the first respondent submits that the said view of the learned Single Judge was subsequently overruled by the Hon'ble Division Bench of this Court in **2018 (1) WLR 725** wherein the Division Bench held that the claim of the second wife to equal share in the family pension is impermissible. It is further submitted that explanation to Sub-Rule 7 (a) (i) of Rule 49 of Tamil Nadu Pension Rules, 1978, makes it clear that in order to enable a second wife to claim family pension, the marriage should have been valid under the Personal Law applicable to the parties, and to hold otherwise would be in violation of the law of the land, viz. the Personal Law of the parties as well as the Criminal Law, which prohibits bigamous marriage. The Hon'ble Division Bench of this Court further held that the family pension is not the property of the Government Servant and it is an allowance given to or an entitlement of his family members, viz. the widow and the children, subject of course to certain conditions. Therefore, the concept of family pension cannot be treated as the estate of the Government servant and the law relating to devolution of the estate of the Government servant cannot be applied in the cases of family pension. Hence, the second wife of the deceased government servant is not entitled for family pension, when the first wife is surviving. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts in the present case are not in dispute. As already stated, admittedly, the petitioner is the second wife of the deceased Paulraj. The pertinent issue that falls for determination in the present case is whether the second wife is entitled for family pension.

7. In support of the said plea, the decision of the learned Single Judge of this Court in W.P.(MD).No.4784 of 2011 is pressed into service, wherein it has been held if there are more than one wife to a deceased Government Servant, they are entitled for family pension in equal moieties, until the amendment which was brought into force on 02.06.1992, as the rule as it stood then did not



prohibit the wife through a bigamous marriage from getting a share in the family pension.

8. However, countering the same, the decision of the Division Bench, in the case of **R.Rajathi v. The Superintendent Engineer TANGEDCO Ltd., & Anr. (2018(1)WLR 725)** which has overruled the said view of the learned single Judge, is placed before this Court and for better appreciation of the case, the relevant portion of the said decision is extracted hereunder:

" 31. In *Tamilselvi's* case, in WP (MD) No.9374 of 2010, cited supra, also the learned Single Judge had in fact rejected the claim of the second wife to the share of the first wife in the family pension. However, while doing so, the learned Single Judge had held that the explanation to Sub Rule 7 of Rule 49 would be applicable only prospectively that is from the date, where the Government servant dies after 02.06.1992. This conclusion of the learned Judge, in our opinion, cannot be sustained.

32. The effect of the explanation is disqualification of the widow of an invalid marriage from seeking family pension. As already pointed out family pension is not the property of the Government Servant, it is an allowance given to or an entitlement of his family members, viz. the widow and the children, subject of course to certain conditions. Therefore, the concept of family pension cannot be treated as the estate of the Government servant and the law relating to devolution of the estate of the Government servant cannot be applied in the cases of family pension. Therefore, the date of death of the Government servant cannot be taken as a guiding factor to decide the question of entitlement of family pension.

33. It would also be seen that the second proviso to Rule 7(a)(i), makes it clear that if the widow is not survived by a child, such share in the family pension shall be payable to the other widows in equal share, if there is only one such widow in full to her. This makes it clear that the family pension is not the estate of the Government servant. It will also be relevant to point out that the Division Bench of this Court in *Krishhaveri and others v. Mera @ Devaki and others*, rendered in OSA. No.154 of 2004 dated 07.03.2012 had held that while the children born to a second wife, whose marriage is void would be



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entitled family pension, the second wife as such will not be entitled to family pension. This is the view of the Hon'ble Supreme Court in Rameshwari Devi's case reported in 2000 (2) SCC 431, cited supra, which accepted the position of law that a second wife of Hindu, whose marriage is otherwise invalid, is not entitled to family pension. However, the learned Judge went on to make a distinction based on the Tamil Nadu Pension Rules, 1978. As we have already pointed out the Sub Rule 7 of Rule 49 of the Pension Rules 1978, will have to be read only in the context of there being two widows for a Government servant, both of whose marriages would have been validly performed prior to the coming into force of the Hindu Marriage Act, 1955. The explanation introduced to Rule 7 in 1992 would also clarify the position regarding the entitlement of family pension. We are therefore, unable to agree with the conclusion of the learned Judge to the effect that the explanation introduced to Rule 7 will take effect only from 02.06.1992 and will apply only if the Government servant dies after the said date that is 02.06.1992.

34. In Pushpavalli's case, in WP (MD) No.7817 of 2011, cited supra, the learned Single Judge has not only chosen to follow the conclusion of the Tamilselvi's case, in WP (MD) No.9374 of 2010, cited supra, but also concluded that any wife of the void marriage, whose marriage had taken place on or after 14.10.1991 alone is not entitled to family pension, inasmuch as the second proviso to sub Rule 7 of Rule 49 was introduced with effect from 15.10.1991. This conclusion of the learned Judge, in our considered opinion, cannot be sustained, The second proviso is only an enabling provision, which provides that if one of the widows is not survived by any child her share in the family pension will be payable to the other widow in equal share or if there is only one such widow in full to her. In order to get the benefit of the proviso there should have been a valid marriage and the claimant should be a widow within the meaning of Rule 49 of the Tamil Nadu Pension Rules and the second wife, whose marriage is void cannot claim to be a widow in the eye of law. We have concluded that family pension is not the estate of the Government servant, it is an entitlement to a widow, whose marriage is a valid



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marriage, under the Personal Law applicable to the parties. Therefore, we are unable to subscribe to the views expressed by the learned Judge either in *Tamilselvi's* case, in WP (MD) No.9374 of 2010, or in *Pushpavalli's* case, in WP (MD) No.7817 of 2011, referred to *supra*.

35. In *S.Kamatchi v. The Accountant General & Another*, reported in CDJ 2014 MHC 3594, the learned Judge has not given his own reasons, but he has only chosen to follow the judgment of another Single Judge of this Court. As already adverted to in WP(MD) 13372 of 2012, dated 04.04.2014, the learned Single Judge, who decided the case, as in fact held that a widow, whose marriage is otherwise invalid, cannot be termed as a widow in the strict sense, as per the Sub Rule 7 Rule 49 of the Tamil Nadu Pension Rules. Therefore, we do not think, the judgment in *S.Kamatchi's* case reported in CDJ 2014 MHC 3594, cited *supra*, will not also advance the case of the petitioner.

36. In *Suseela @ Mary Margaret v. The Superintendent of Police, Coimbatore District, Coimbatore 18 and another*, in WP No.15806 of 2015, the learned Judge has not referred to either Rule 49 of the Tamil Nadu Pension Rules or the provisions of Section 5(1) of the Hindu Marriage Act. The learned Judge concludes that in view of the fact that the Hon'ble Supreme Court had held that the marriage could be presumed on the basis of long cohabitation the second wife would be entitled to family pension as per the Rule 49. This view of the learned Judge, according to us is not in consonance either with Rule 49 of the Pension Rules or Rule 19 of the Tamil Nadu Government Servant's Conduct Rule, 1973, or the provisions of Section (5) (1) of the Hindu Marriage Act.

37. In *P.S.Shanthi Balakrishnan v. The Director of Medical Education, Kilpauk, Chennai and others*, in WP No.9856 of 2015, the learned Single Judge of this Court had only relied upon the judgments in *S.Kamatchi's* case reported in CDJ 2014 MHC 3594, and the *Pushpavalli's* case, in WP (MD) No.7817 of 2011, referred to *supra* to conclude that the second wife would be entitled to the family pension. Similar is a case in *J.Rajakumari v. The Superintendent of Police, Trichy*, in WP No.12105 of 2016, where the learned



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Single Judge of this Court had chosen to follow Pushpavalli's case, in WP (MD) No.7817 of 2011, referred to supra. We have already given our reasons for disagreeing with the views expressed by the learned Single Judge in Pushpavalli's case.

38. In *R.Sulochana v. The State of Tamil Nadu, Rep. by Principal Secretary to Government, Revenue Department, Secretariat, Chennai 9*, in WP No.26377 of 2014 dated 20.10.2016 also another learned Single Judge of this Court has chosen to follow the earlier judgments in *Tamilselvi's case*, referred to supra.

39. In *K.Muthulakshmi v. The Principal Accountant General, (Accounts and Entitlement), Tamil Nadu, 261 Anna Salai, Madras 600 018*, in WP No.45 of 1996, the learned Single Judge of this Court had, after adverting to Sub Rule 7 of Rule 49, as well as the amendments there to had concluded that the second wife is not entitled to family Pension.

40. In *A.Palaniammal v. The Accountant General, Office of the Account-General, 261 Anna Salai, Chennai 600 018 and others*, in WP No.44823 of 2006, the learned Judge had, after taking note of the provisions of Sub Rule 7 of Rule 49, the explanation added thereto in 1992 as well as the provisions of Section 5(1) Hindu Marriage Act had concluded as follows:

"24. With reference to the contention that the Government cannot clarify the Tamil Nadu Pension Rules, 1978 which is statutory in character, it must be noted that the present Pension Rules were inherited from the Rules which were in force before the Hindu Marriage Act came into existence. Even after the Hindu Marriage Act came into existence, the personal law of government servants belonging to different religions are also different. Therefore, the Government Servants' Conduct Rules contemplated a situation, where a government servant having a personal law providing for more than one marriage can get married after getting prior permission from the Government. Therefore, the Rule contemplated different situations. But it was never the intention of the Rule makers that by making the Pension Rules, they have granted a defacto recognition to an illegitimate wife of a Government servant who belonged to Hindu religion.



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Whatever may be the earlier position, the clarification dated 02.06.1992 clearly brought the Pension Rules in accordance with the correct legal position. As the clarification brought the law in conformity with the correct legal position, it cannot be said to be either illegal or void or contrary to the statutory rules. Infact by subsequent clarification, the State Government had correctly laid the Rules in accordance with the law of the land and no exception can be taken."

"28. Even if the Larger Bench answers the question in favour of a woman, who claims to be the wife on account of long living as husband and wife is only in relation to Section 125 of Cr.P.C. and not in connection with the State's obligation to pay family pension. It is always open to the Government to define the term 'Family' and exclude persons who do not qualify to be termed as 'wife'. No exception can be taken if any such clarification is issued by the State Government. It is one thing to talk about the obligation of a man being husband to his wife. The other thing is the State's obligation towards a Government servant in affording protection to him as well as to his family during his tenure as well as after retirement. But that cannot be over stretched to include even for provision of pension for a second wife, which if granted not only will fritter away the limited resources vest with the State but also will encourage bigamous marriages which had been prohibited not only by family law and the criminal law of the land but even as per the Government Servants' Conduct Rules."

41. A substantially similar view has been expressed by another learned Judge of this Court in *P.Velammal v. The Additional Assistant Elementary Educational Office, Sivagangai District* in WP (MD) No.3096 of 2016, wherein, after taking note of the provisions of Section 5 (1) of the Hindu Marriage Act, 1955, as well as the explanation added to Sub Rule 7 of Rule 49, the learned Single Judge has held as follows:

"12. Law is settled that two Hindus cannot contract marriage after the enforcement of the Hindu Marriage Act and if any of them is having a living spouse, the marriage would be a nullity and would also not be protected under the Conduct Rules, as well as, the pension rules. Therefore, the "second wife" as referred to under the pension



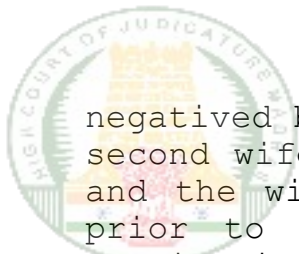
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rules would only include second wife whose marriage is permissible under the Personal Law, but in the case of Hindus, the second wife will have no right, whatsoever, as the law prohibits second marriage, as long as, the Government servant has a spouse who is alive. Thus for harmonious construction of the Rules governing pension, wherever, the rule provides for wives, it has to be interpreted as per the law governing marriage as applicable to the Government servant and in cases where the second marriage is void under the law, second wife will have no status of a widow of the Government servant and relying on protection of Women from Domestic Violence Act, 2005, in the opinion of this Court, is only taking a shelter."

42. We have discussed the basis on which the various judgments, of course conflicting views, have been rendered. Insofar as the view that the second wife of the Government Servant, who died prior to 02.06.1992 as held in *Tamilselvi's* case, referred to *supra*, and the view that a widow of an invalid second marriage that had taken place prior to 14.10.1991, as held in *Pushpavalli's* case, have given our reasons, as to why, we are unable to subscribe to the said conclusions of the learned Single Judge. We are, therefore, of the opinion that in order to enable a second wife to claim family pension the marriage should have been valid under the Personal Law applicable to the parties, to hold otherwise would be in violation of the law of the land, viz. the Personal Law of the parties as well as the Criminal Law, which prohibits bigamous marriage."

9. Keeping the principles laid down by the Division Bench in the decision in *Rajathi's* case (*supra*), a perusal of the materials in the case on hand reveals that the petitioner jointly claims family pension along with the first wife while surviving and after her demise claims family pension as the surviving wife. However, it is to be pointed out that after the death of the first wife of the deceased, at the time of filing of the case, the daughter of the deceased through his first wife is alive and is very much the legal heir of the deceased to claim family pension. The marriage of the petitioner with the deceased is a void marriage as the same is invalid as per the Personal Law.

10. A perusal of the decision in *Rajathi's* case (*supra*) makes it abundantly clear that the view as held in *Pushpavalli's* case was



negatived by the Division Bench and the Division Bench held that the second wife of the government servant, who died prior to 02.06.1992 and the widow of an invalid second marriage, that had taken place prior to 14.10.1991, is not entitled to a share in the family pension in equal moieties with the first wife. Further, explanation to Sub-Rule 7 (a) (i) of Rule 49 of Tamil Nadu Pension Rules, 1978, makes it clear that in order to enable a second wife to claim family pension, the marriage should have been valid under the Personal Law applicable to the parties and to hold otherwise would be in violation of the law of the land, viz., the Personal Law of the parties as well as the Criminal Law, which prohibits bigamous marriage. The decision in *Rajathi's case (supra)* is squarely on the issue as raised in the case on hand and is attracted to the case of the petitioner and in such a scenario, the petitioner is not entitled for the relief of family pension as sought for.

11. For the reasons aforesaid, this petition sans merit and, accordingly, the same is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

PJL

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,
Office of the Accountant General(Accounts and Entitlements)
Tamil Nadu,
361, Anna Salai,Teynampet, Chennai-600 108.

2. The Assistant Executive Engineer,
Public Works Department,
Buildings (C&M),Sub-Division, Medical Works,
Ramanathapuram.

+1 CC to M/s.SPL GP (SR-10146[F] dated 10/03/2021)

+1 CC to M/s.K.GUHAN, Advocate (SR-10461[F] dated 11/03/2021)

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