



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.24078 of 2010

1. Poomalai

2. Maharani

.. Petitioners

Versus

1. The Office of the Accountant General,
Accounts and Entitlements,
Chennai - 18.

2. The District Registrar, Kallakurichi,
Villupuram.

3. C.Tamilarasi

(R3 impleaded as per the orders, dated 11.02.2011

in M.P.No.2 of 2010 in W.P.No.24078 of 2010) ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified to call for the records on the file of the first respondent in proceedings P2/3/ORD/1927/07-08/329, dated 14.03.2008 and consequential order of the second respondent in proceedings Na.Ka.1204/A1/2008, dated 24.03.2008 and quash the same.

For Petitioner : Mr.Sunny

For R1 : Mr.Vijayashankar

For R2 : Mrs.E.Ranganayaki
Additional Government Pleader

For R3 : No Appearance

ORDER

This Writ Petition was originally filed by one Poomalai, the first petitioner and Maharani, the second petitioner, aggrieved by the orders, dated 14.03.2008 and 24.03.2008,



whereby, the respondents had refused to register the second respondent as legally wedded wife. The second petitioner is not granted family pension on account of the impugned orders, since she was not recognised as 'wife' in the appropriate registers. Pending the Writ Petition, the first petitioner died on 24.04.2016 and hence, the second petitioner alone pursued the Writ Petition.

2. The case of the second petitioner is that the first petitioner was originally married to one Tamilarasi. She had deserted the first petitioner and thereafter appropriate proceedings in H.M.O.P.No.27 of 2003 was filed before the Principal Sub-Court, Vridhachalam and parties entered into compromise and a sum of Rs.1,50,000/- was settled as alimony to the said wife and the marriage was declared as null and void and therefore, once the said marriage was declared as null and void, the marriage between the first and second petitioners has to be treated as valid and therefore, the respondents erred in not entering the name of the second petitioner as the legally wedded wife and consequently disbursing the family pension.

3. Per contra, it is the contention of the respondents that originally, deceased first petitioner got married to one Tamilarasi on 25.01.1969 and that the marriage was valid and subsisting until the decree of divorce, which was granted on 25.11.2004. The second petitioner got married to the deceased first petitioner on 12.11.1989 i.e., during the subsistence of the first marriage and therefore, as per the relevant service rules, the second petitioner's name cannot be validly entered into as wife and therefore, the impugned orders have correctly been passed and subsequently, the second petitioner's claim has rightly been rejected for grant of family pension.

4. Heard Mr.Sunny, learned Counsel for the petitioners, Mr.Vijayashankar, learned Counsel for the first respondent and Mrs.E.Ranganayaki, learned Additional Government Pleader, appearing for the second respondent. As far as the first contention of the learned Counsel for the petitioners, it is useful to extract the relevant portion of the Judgment of the Principal Sub-Court, Vridhachalam in H.M.O.P.No.27 of 2003, which is as follows:-

“இந்த ஒத்திசைவு ஏற்றுக்கொண்டு மனுவை செலவன்னியில் அனுமதித்து மனுதாரருக்கும் எதிர்மனுதாரருக்குமிடையே 25.01.1969 நடந்த திருமணத்தை ரத்து செய்து தீர்ப்பளிக்க மனுதாரரும் எதிர்மனுதாரரும் வேண்டுகிறார்கள். ஒம்/பபுமாலை மனுதாரர் ஒம்/பி தமிழரசி எதிர்மனுதாரர்.”



Therefore, it is clear that it is an order of divorce by mutual consent and is not a petition to declare the earlier marriage as null and void. Therefore, the respondents are right in contending that on the date when the second petitioner contracted the marriage with the deceased first petitioner, the earlier marriage was subsisting.

5. To this, the learned Counsel for the petitioners would reply by making an alternate argument by highlighting the following facts, that it is not in dispute that immediately after the first marriage, the said Tamilarasi deserted the deceased first petitioner. The second petitioner thereafter married the deceased first petitioner as per Hindu rights and customs. The said Tamilarasi thereafter got alimony and the marriage was dissolved. Pursuant to the said marriage, the deceased first petitioner and the second petitioner were living as man and wife and their marital status was unquestionable and they got children and had long cohabitation and has been viewed by the society as husband and wife and even Legal Heir-ship Certificate has been granted and therefore, for every other purpose, she has been treated as wife and therefore, she is entitled for the relief.

6. The learned Counsel for the petitioners relied upon the judgments of Hon'ble Supreme Court of India in Chanmuniya Vs. Virendra Kumar Singh Kushwaha & Anr.¹ And D.Velusamy Vs. D.Patchaiammal² for the proposition that such cases have been held to be valid as husband and wife for the purpose of grant of reliefs under the Domestic Violence Act, 2005 as well as for maintenance under Section 125 of the Code of Criminal Procedure.

7. However, I am unable to accept the said contention. The second petitioner may be treated as eligible for receipt of maintenance under Section 125 of the Code of Criminal Procedure and even to get benefits under the Domestic Violence Act, 2005, in view of her long and unquestionable cohabitation, pursuant to the marriage ceremony. But, however, as far as the grant of family pension is concerned, the respondents are bound by the rules. As a matter of fact, the conduct rules clearly prohibit any Government servant from contracting second marriage during the subsistence of the earlier marriage and it is a misconduct and a disqualification for being a government servant. It is in this context, the rule to grant of family pension has to be strictly interpreted and the respondents have gone by the said

¹ (2011) 1 SCC 141

² (2010) 10 SCC 469



interpretation and therefore, the judgments rendered in the context of grant of benefit under Section 125 of the Code of Criminal Procedure or Domestic Violence Act, 2005 cannot be pressed into service for the purpose of claim of service benefits and therefore, I am unable to accept the contention of the learned Counsel for the petitioners and therefore, this Writ Petition fails and is accordingly dismissed. No costs. Consequently, M.P.No.1 of 2010 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

grs
To

1. The Office of the Accountant General,
Accounts and Entitlements,
Chennai - 18.
2. The District Registrar, Kallakurichi,
Villupuram.

+1 CC to Mr.V.Vijayashankar, Advocate sr 25406.
+1 CC to The Special Government Pleader sr 26156.

W.P.No.24078 of 2010

SKM(CO)
SP(02/05/2022)