



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-06-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.21246 of 2013  
and  
WP No.18713 of 2014

Tmt.K.Rathinammal ..Petitioner in WP 21246 of 2013

Tmt.Bakkiyam ..Petitioner in WP 18713 of 2014

vs.

WP No.21246 of 2013

1.Government of Tamil Nadu  
Represented by Secretary to Government,  
NCC Directorate [TN,P & AN],  
Fort St. George,  
Chennai - 600 009.

2.The Deputy Director,  
National Cadet Corps [NCC],  
Chennai - 600 009.

3.The Commanding Officer,  
11 [TN] Signal Coy NCC,  
Salem.

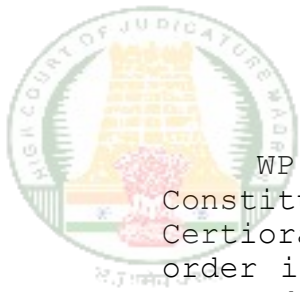
..Respondents

WP No. 18713 of 2014

1.The Principal Secretary to Government,  
Youth Welfare Sports Development Department,  
Government of Tamil Nadu,  
Secretariat,  
Chennai - 600 009.

2.The Assistant Director,  
NCC Directorate, TNP & AW,  
Fort St. George,  
Chennai - 600 009.

..Respondents



WP 21246 of 2013 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order in Pro.No.1333/1/SC/Pen/6489 dated 10.09.2012 of the first respondent, quash the same and issue consequential directions to the respondents to sanction the family pension and including other benefits with effect from 18.03.1999 and to disburse the arrears of monetary benefits thereof with 18% interest.

WP 18713 of 2014 is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order in Letter (ID) No.19 dated 30.06.2014 of the first respondent, quash the same and further direct the respondents to sanction family pension and other benefits to the petitioner from 16.07.2001.

For Petitioner in WP 21246  
of 2013 : Mr.S.Ramkumar for  
Mr.A.Esakkiappan.

For Petitioner in WP 18713  
of 2014 : Mr.S.Parthasarathy

For Respondents-1 to 3 in  
WP 21246/2013 and for  
Respondents 1 and 2 in : Ms.S.Anitha,  
WP 18713/2014 Special Government Pleader.

#### C O M M O N O R D E R

WP No.21246 of 2013 has been instituted questioning the validity of the order dated 10.09.2012 issued by the first respondent-Secretary to Government, NCC Directorate [TN, P & AN], Fort St. George, Chennai-600 009.

2. WP No.18713 of 2014 has been instituted questioning the validity of the order dated 13.06.2014 issued by the first respondent-Principal Secretary to Government, Youth Welfare Sports Development Department, Secretariat, Chennai-600 009.

3. The petitioner in WP No.18713 of 2014 states that she married one (late) Mr.C.Krishnan on 13.11.1972. The husband of the writ petitioner was working as Selection Grade Store Attender at NCC Directorate. The husband of the petitioner expired due to his ill-ness on 18.03.1999. The petitioner submitted her representation on 10.04.2010 to settle the pensionary benefits, including the family pension. The Assistant Director rejected the request of the writ petitioner on



03.05.2010 stating that the petitioner had divorced her husband late Mr.C.Krishnan and got remarried to one Tmt.Rathinammal (petitioner in WP No.21246 of 2013) and therefore, the petitioner-Tmt.Bakkiyam is not entitled for the family pension.

WEB COPY

4. The learned counsel appearing on behalf of the petitioner in WP No.18713 of 2014 made a submission that in the absence of any valid decree of divorce, the petitioner Tmt.Bakkiyam is to be construed as a legally wedded wife of late Mr.C.Krishnan and accordingly, the retiral benefits are to be settled, including the grant of family pension.

5. The learned counsel appearing on behalf of the petitioner in WP No.21246 of 2013 filed by Tmt.K.Rathinammal, who also claims to be the legal wife of late Mr.C.Krishnan, made a submission that her husband late Mr.C.Krishnan divorced his first wife Tmt.Bakkiyam in the year 1973 itself and thereafter he married the writ petitioner-Rathinammal. Thus Tmt.Rathinammal is the legally wedded wife of late Mr.C.Krishnan.

6. To substantiate the abovesaid contention, the learned counsel for the petitioner in WP No.21246 of 2013 relied on the findings of the Family Court, Salem, wherein the Court found that the first wife Tmt.Bakkiyam after divorce was living with one Mr.Kandasamy and therefore, the said Tmt.Bakkiyam is not entitled for maintenance.

7. When two wives are claiming family pension in respect of the deceased employee, the status of the wives are to be declared by the Competent Court of Law. The High Court cannot conduct an adjudication in respect of such disputed facts, which all are to be decided based on the documents and evidences. Roving enquiry cannot be conducted in the writ proceedings under Article 226 of the Constitution of India. The parties under these circumstances are bound to approach the Competent Court of Law for the purpose of an adjudication of the issues and to establish their rights. Only thereafter the Government Department will be in a position to form an opinion for grant of retiral benefits and also the family pension.

8. In these cases, Tmt.Bakkiyam (Petitioner in WP No.18713 of 2014) claims to be the first wife. However, Tmt.Rathinammal (Petitioner in WP No.21246 of 2013) claims that her husband late Krishnan divorced his wife Tmt.Bakkiyam and thereafter he married her. There are findings in favour of the said Tmt.Rathinammal also made by the Family Court.

9. The learned counsel for the petitioner in WP No.21246 of 2013 states that the documents are available to establish the customary divorce granted between Tmt.Bakkiyam and



late Mr.C.Krishnan. However, all such documents are to be adjudicated by way of trial before the Competent Court of Law. Therefore, the decision taken by the Department is in consonance with the principles and there is no infirmity. Only if an appropriate declaration is granted by the Competent Court of Law and the issues between the two wives are resolved, the Department would be in a position to settle the benefits and therefore, the writ petitioners in both the writ petitions are at liberty to approach the Competent Court of Law for establishing their respective rights and only after reaching finality, they are at liberty to approach the Competent Authorities for settlement of retiral benefits, including the family pension.

10. With the abovesaid liberty, both the writ petitions are disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Secretary to Government,  
Government of Tamil Nadu, NCC Directorate [TN,P & AN],  
Fort St. George, Chennai - 600 009.
2. The Deputy Director,  
National Cadet Corps [NCC], Chennai - 600 009.
3. The Commanding Officer, 11 [TN] Signal Coy NCC, Salem.
4. The Principal Secretary to Government,  
Youth Welfare Sports Development Department,  
Government of Tamil Nadu, Secretariat, Chennai - 600 009.
5. The Assistant Director,  
NCC Directorate, TNP & AW,  
Fort St. George, Chennai - 600 009.

+1cc to Government Pleader SR. No. 37663

WPs 21246 of 2013 and  
18713 of 2014

PA (CO)  
PR (04/07/2022)