IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

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

W.P. No. 7462 of 2016

G.Malarkodi ...Petitioner

-vs-

1. The Government of Tamil Nadu,
   Represented by its Secretary,
   Finance Department,
   Fort St. George,
   Chennai – 600 009.

2. The Superintendent of Police,
   Vellore District,
   Vellore.

3. The Principal Accountant General
   (Accounts & Entitlement) Tamil Nadu,
   Office at DMS Compound,
   No. 361, Anna Salai,
   Teynampet,
   Chennai – 600 018. ...Respondents

Prayer:-Writ Petitions filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Third Respondent in respect of the impugned communication bearing No. Pen 32/III/PPT7024/PPOC66621 dated 23.05.2013 and quash the same and consequently direct the Third Respondent to consider the proposal afresh on resubmission by the Second Respondent.

For Petitioner : Mr. S.Mohamed Ansar

For Respondents: Mr. P.Balathandayutham,
Special Government Pleader
(for R1 & R2)

Mr. V.Vijayshankar (for R3)

O R D E R

Heard Mr. S.Mohamed Ansar, Learned Counsel for the Petitioner, Mr. P.Balathandayutham, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. V.Vijayshankar, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2.One C.Govindan, who had retired from service as Sub Inspector of Police on 30.09.2005, was receiving pension till his death on 13.12.2010. Subsequently, his wife, viz., Jambavathi, was paid family pension till 26.09.2012 when she died. The Petitioner, who claims to be the second wife of the said C.Govindan made a representation dated 04.03.2013 for sanction of family pension to her on the death of the said Jambavathi relying on Rule 49(7)(a)(i) and (ii) of the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as 'the Pension Rules' for short), which reads as follows:-

> "49(7)(a)(i) Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal share.
> (ii) On the death of a widow, her share of the family pension shall become payable to her eligible child:
> [Provided that if the widow is not survived by any child, her share of family pension shall be payable to the other widows in equal share or if there is only one such widow, in full to her.]"

3. The Third Respondent by Order No. Pen 32/III/PPT 7024/PPO C 66621 dated 23.05.2013 has rejected the claim made by the Petitioner, which is challenged in this Writ Petition.

4.It is the case of the Petitioner that when Rule 49(7) provides for more than one widow to receive family pension, the authorities cannot deny family pension to the Petitioner and the impugned order is contrary to law.

5.In response to the said contention, the Third Respondent has filed Counter-Affidavit dated 09.01.2019 stating that the Petitioner cannot claim such benefit in view of the explanation made to Rule 49(7) of the Pension Rules, which reads as follows:-

> "For the purpose of this rule, the second wife shall be eligible for the benefits of family pension only if the second marriage is
> (i) solemnized as per the customary law prevailed among the community before the date of commencement of the Hindu Marriage Act, 1955 (Central Act 25 of 1955);

or

(ii)solemnized under the Mohammedan Law in which bigamy is permissible."

Learned Counsel for the Third Respondent has also brought to notice that the Division Bench of this Court in R.Rajathi -vs- Superintendent Engineer, TANGEDCO, Nagapattinam Circle [(2018) 1 WLR 725] has taken into account the divergence of judicial opinion and has ruled that on account of the prohibition in contracting another marriage during the subsistence of an earlier one as per Section 5 of the Hindu Marriage Act, 1955, reliance cannot be placed by the Petitioner Rule 49(7)(a)(i) which is confined only to cases where the second marriage is valid under the personal law applicable to the parties and this case does not come under that exception. The decision of the Division Bench of this Court in Vijayalakshmi -vs- Principal Accountant General (A&E) Tamil Nadu [(2022) 1 WLR 630], where the same view has been reiterated, has also been cited in that regard.

6.It is evident from the materials placed on record that the marriage of the Petitioner with the said C.Govindan had been taken place on 24.04.1983 during the subsistence of the marriage of the said C.Govindan with the said Jambavathi, who has been receiving family pension as his wife till her death. It has not been established by the Petitioner that her marriage with the said C.Govindan is valid under the personal law applicable to them. In such circumstances, the Petitioner cannot derive any benefit from Rule 49(7)(a)(i) and (ii) of the Pension Rules as claimed for grant of family pension to her. There does not appear to be any infirmity in the decision-making process of the Third Respondent while passing the impugned order requiring interference by the Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution.

In the result, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu,
   Finance Department,
   Fort St. George,
   Chennai – 600 009.

2. The Superintendent of Police,
   Vellore District,
   Vellore.

3. The Principal Accountant General
   (Accounts & Entitlement) Tamil Nadu,
   Office at DMS Compound,
   No. 361, Anna Salai,
   Teynampet,
   Chennai – 600 018.

+1cc to Mr.V.Vijay shankar, Advocate, S.R.No.38014

+1cc to the Government Pleader, High Court,Madras, S.R.No.38283

W.P. No. 7462 of 2016

EV(CO)
RGA(29/06/2022)