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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.26616 OF 2014

AND

M.P.NO.1 OF 2014

&

W.M.P.NO.4101 OF 2019

D.R.Santha

... Petitioner

.Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Finance (Pension) Department,
Fort St. George,
Chennai - 600 009.
2. The Chief Executive Engineer (General),
Public Works Department,
Chepauk, Chennai - 600 005.
3. The Executive Engineer,
Public Works Department,
Planning and Design Division,
Melmanavur, Vellore - 10.
4. The Accountant General,
Accountant General Office,
No.361, Anna Salai,
Chennai - 18.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified mandamus, calling for the records relating to the order Pen.15/II/Urg66/PPO No.121040/190, dated 14.07.2005 passed by the fourth respondent and quash the same thereby consequently and direct the 1st Respondent to grant family pension to the petitioner from 30.08.2009.



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For Petitioner : Mr.A.R.Nixon

For Respondents : Mr.C.Selvaraj
Additional Government Pleader
[for R1 to R3]

Mr.V.Vijay Shankar
[for R4]

ORDER

Some of the undisputed facts of the case are as follows:-

The petitioner herein, is a widow of late D.L.Ramakanthan, who was employed in the Public Works Department. The Government employee was originally married to one Subbulakshmi. During the subsistence of the first marriage, the petitioner herein had married the Government employee on 06.04.1986. Based on the complaint given by the first wife, the Government employee was convicted for the offence of bigamy on 10.01.1991. In view of the offence, the Government employee was imposed with the punishment of compulsory retirement on 05.04.1991 and he was drawing pension in P.P.O.No.121040.

2. The Government employee does not have any children either from the first wife or through the petitioner.

3. The first wife namely Subbulakshmi died on 07.02.2005. Subsequently, the Government employee also died on 30.07.2009. The petitioner's claim for family pension has been rejected by the fourth respondent herein, through the impugned proceedings passed in the month of July, 2005, stating that since the Government employee had married to the petitioner/2nd wife when his first wife was alive, she is not entitled for the family pension.

4. The learned counsel for the petitioner submitted that though the second marriage during the lifetime of the first wife is void, in view of the death of the first wife, the petitioner would be entitled for family pension. It is also his case that after the death of the first wife, the petitioner herein had once again married the Government employee when he was 80 years old. Since the first wife was not living at that point of time, she is deemed to be the legal wife.

5. Rule 49(7)(a)(i) of the Tamil Nadu Pension Rules, 1978 provides as follows:-



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"49. Family Pension

(7) (a) (i) Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares.

(ii) On the death of widow, her share of the family pension shall become payable to her eligible child;

[Explanation.- For the purpose of this rule, the second wife shall be eligible for the benefits of family pension only if the second marriage-

(i) solemnised 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) solemnised under the Mohammadan Law in which bigamy is permissible."

6. The aforesaid Rule provides that for the purpose of drawing family pension, the second wife should either have married prior to the commencement of the Hindu Marriage Act, 1955 or the Personal law should provide for second marriage.

7. The Division Bench of this Court in the case of 'R.Rajathi Vs. The Superintendent Engineer, TANGEDCO Ltd. & other' passed in W.A.No.977 of 2017 dated 05.06.2018, had ratified the aforesaid Rule proposition and by quoting the various orders passed by the learned single Judge, had held that in order to enable the second wife to get family pension, marriage should have been valid under the Personal law's applicable to the parties. This aspect has been ratified against the Government employee, in view of the judgment of the Criminal Court, punishing him for having contracted a bigamous marriage.

8. Furthermore, the petitioner's claim that she was married to the Government employee during 'Sadhabishegam', when he reached his 80th year of age. Such a marriage is not deemed to be a fresh marriage and the customs and rites performed therein will not create a new marital relationship between a Hindu Couple. Even otherwise, no proof is available for such a marriage, except for some photographs, which is not conclusive.

9. In view of the aforesaid Rule and in the light of the decision of the Hon'ble Division Bench of this Court, I do not find any infirmity in the reasoning adopted by the fourth



respondent while rejecting the petitioner's claim for family pension.

9. Accordingly, the Writ Petition stands dismissed.
No costs. Connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to State of Tamil Nadu,
Finance (Pension) Department,
Fort St. George,
Chennai - 600 009.
2. The Chief Executive Engineer (General)
Public Works Department,
Chepauk, Chennai - 600 005.
3. The Executive Engineer,
Public Works Department,
Planning and Design Division,
Melmanavur, Vellore - 10.
4. The Accountant General,
Accountant General Office,
No.361, Anna Salai,
Chennai - 18.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.28299
+1cc to Mr.A.R.Nixon, Advocate, S.R.No.28468
+1cc to the Government Pleader, S.R.No.28904

W.P.NO.26616 OF 2014

JP-II(CO)
PBS/27/05/2022