



WEB COPY



W.P.No.26869 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 07.07.2022**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

W.P.No.26869 of 2014

and

M.P.No.1 of 2014

Mrs.R.Premavathy

...Petitioner

Vs.

1.The State Transport Corporation I/II,  
Represented by the General Manager,  
State Transport Corporation,  
Chennai.

2.The Assistant Manager (Pension)  
Metropolitan Transport Corporation Ltd.,  
Chennai – 600 002.

..Respondents

**PRAYER** : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned (No.34592/Pension 2/ MTC/2013) order dated 31.12.2013 passed by the 2<sup>nd</sup> respondent and quash the same as illegal and direct the respondents to grant family pension from December 2013 to the petitioner.



W.P.No.26869 of 2014

For Petitioner : M/s.A.Arulmozhi  
For Respondents : Mr.C.Gauthamaraj  
[For R1 & R2]

### **ORDER**

The order of rejection, rejecting the family pension to the writ petitioner is under challenge in the present writ petition.

2. The writ petitioner states that she got married to Late M.Radhakrishnan on 05.01.1994. The husband of the writ petitioner Mr.M.Radhakrishnan was serving as Conductor in the Tamil Nadu State Transport Corporation. He was promoted to the post of Checking Inspector on 30.12.1986 and further promoted as Traffic Inspector and retired from service on 21.03.2003.

3. The petitioner states that her husband earlier married one Smt.Meenakshi and the said Meenakshi has deserted the husband of the writ petitioner in the year 1972. The petitioner states that the said Meenakshi had severed in the marital Bond in the year 1993 by receiving a settlement of alimony at Rs.45,000/-. Though the deceased employee married the writ petitioner on 05.01.1994, her name was not included in the nomination



W.P.No.26869 of 2014

since the deceased employee had not divorced first wife during the relevant point of time. Therefore, the deceased employee subsequently filed a Divorce Petition in F.C.O.P.No.1114 of 2000 before the II Additional Principal Court, Chennai and an exparte decree was issued on 06.05.2002. After obtaining the decree of divorce, the deceased husband of the writ petitioner entered the name of the writ petitioner as nominee in the Service Records. The husband of the writ petitioner passed away on 25.11.2012 and thereafter, the petitioner was receiving family pension. However, the family pension was suddenly stopped and the impugned order has been passed by the 2<sup>nd</sup> respondent on 31.12.2013. In the impugned order, the 2<sup>nd</sup> respondent has furnished the reason by stating that the marriage between the deceased employee and the writ petitioner was null and void.

4. The learned counsel for the writ petitioner made a submission that the deceased employee admittedly married the writ petitioner on 05.01.1994. However, he entered the name of the writ petitioner in the nomination only after the decree of divorce and therefore, the family pension is to be paid to the writ petitioner.

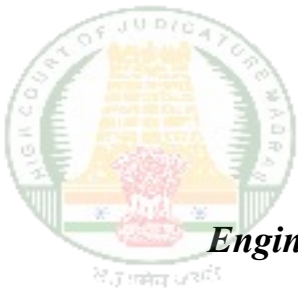


W.P.No.26869 of 2014

5. The learned counsel for the respondents raised an objection by stating that the writ petitioner is not entitled for family pension, in view of the fact that the second marriage between the deceased employee and the writ petitioner was solemnized during the life time of the first wife. Admittedly, there was no decree of divorce at the time of marriage between the deceased employee and the writ petitioner and this factum was traced out subsequently and accordingly, the respondents had stopped the family pension.

6. As per the pension scheme, the family pension is to be paid only to the spouse i.e., legally wedded spouse of an employee. Once the authorities came to know that the family pensioner is not a legally wedded spouse of the deceased employee, then they cannot continue to pay the family pension. In such circumstances, the spouse has to establish that he/she is the legally wedded spouse of the deceased employee.

7. The scope of Tamil Nadu Pension Rules for grant of family pension under Rule 49 was elaborately considered by the Hon'ble Division Bench of this Court in the case of ***R.Rajathi Vs. The Superintendent***



W.P.No.26869 of 2014

***Engineer dated 05.06.2018 in W.A.No.977 of 2017.*** That apart, Rule 49 (7)

of Pension Rules contemplates the pension is payable for more than one widows. The language employed is “payable”. Thus, if more than one widow is eligible for family pension and such family pension is payable to the second widow, then only the question of sharing the pension under Rule 49 of the Pension Rules would arise, but not otherwise. The payability/eligibility of family pension for more than one widow would arise, only if two wives are permissible. Such a situation was considered by the Rule makers since the marriage was solemnized prior to Hindu Marriage Act, 1955 was considered as valid. Prior to the year 1955, contracting a second marriage during the lifetime of the first wife was permitted and therefore, the sharing of family pension arouse and the provision was enacted. However, after the year 1955, second marriage is not only misconduct under the Government Servants Conduct Rules, but prohibited. Therefore, the question of now sharing of family pension would not arise at all.

8. In the present case, the writ petitioner admittedly married the deceased employee in the year 1994 during the lifetime of the first wife of



W.P.No.26869 of 2014

the deceased employee Smt.Meenakshi and therefore, the petitioner is not eligible for family pension under the pension scheme. Thus, this Court has no reason to interfere with the decision taken by the respondents.

9. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

**07.07.2022**

Index : Yes  
Speaking order: Yes  
*kak*

To

- 1.The General Manager,  
State Transport Corporation I/II,  
State Transport Corporation,  
Chennai.
- 2.The Assistant Manager (Pension)  
Metropolitan Transport Corporation Ltd.,  
Chennai – 600 002.



WEB COPY



W.P.No.26869 of 2014

**S.M.SUBRAMANIAM, J.**

*kak*

**W.P.No.26869 of 2014**

**07.07.2022**