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W.P.No.20433 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.20433 of 2020

T.Ramachandran

... Petitioner

Vs.

1.The Principal Accountant General,
(Accounts and Entitlements),
Office of the Principal Accountant General,
No.361, Anna Salai, Teynampet,
Chennai - 600 018.

2.The Chief Educational Officer,
Perambalur,
Perambalur District.

3.The Assistant Educational Officer,
Office of the Educational Department,
Veppur, Kunnam Taluk,
Perambalur District.

4.The Tahsildar,
Kunnam Taluk,
Perambalur District.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in the proceedings vide



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PEN16/III/PT.No.6309/2017-18 dated 04.08.2017 and to quash the same and consequently direct the first respondent to consider the claim of the petitioner and to grant family pension to the second wife of the petitioner viz., Manimegalai.

For Petitioner : Mr.G.Ilamurugu

For Respondents : Mr.V.Vijayashankar
Standing Counsel
for R1

Mr.E.Sundaram
Government Advocate
for R2 to R4

ORDER

The only issue that arises for consideration in this Writ Petition is whether the second wife who has married the deceased employee, prior to 02.06.1992, is entitled for family pension.

2. An explanation was introduced to Rule 49 (7) in the Tamil Nadu Pension Rules, 1978 on 02.06.1992, clarifying that a Hindu second wife is entitled for family pension only if she had married the deceased employee prior to coming into force of the Hindu Marriage Act, 1955.



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3. The petitioner's representation, seeking to include his second wife (Manimegalai) as a beneficiary for the family pension, has been rejected by the respondents under the impugned order dated 04.08.2017 and the same is put to challenge in this Writ Petition. The following are the undisputed facts:

a) The petitioner, while the first marriage was in subsistence, has married a second wife (Manimegalai) on 08.07.1981;

b) The explanation to Rule 49 (7) of the Tamil Nadu Pension Rules, 1978 was introduced by the Tamil Nadu Government on 01.01.1995 which came into effect on 02.06.1992;

c) The explanation referred to supra reads as follows:

"Explanation: For the purpose of this rules, 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) *Solemnized under the Mohammadan*

Law in which bigamy is permissible."

4. The learned counsel for the petitioner contends that prior to 02.06.1992, even two widows are entitled to receive family pension. He relied upon a Judgment of a learned Single Judge of this Court dated **23.01.2020** in the case of ***C.Sarojini Devi Vs. The Director of Local Funds Audits and Others*** passed in ***W.P.No.34952 of 2019***, in support of his contention that a second wife is entitled for family pension.

5. Per contra, learned Standing Counsel for the respondents would submit that the issue involved in this Writ Petition is no longer *res-integra* in view of the decisions rendered by two Division Benches of this Court which are as follow:

a) ***R.Rajathi Vs. The Superintendent Engineer and Another in W.A.No.977 of 2017 dated 05.06.2018;***

b) ***Vijayalakshmi Vs. The Principal Accountant General (A&E), Tamil Nadu and Another reported in 2022-1-Writ L.R.630.***



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6. Learned Standing Counsel would refer to various paragraphs in the aforementioned Judgments and would submit that in both the Judgments only if the marriage is held to be valid, a person is entitled for family pension. He would submit that since the petitioner's marriage with the second wife is admittedly a bigamous marriage and is a void marriage, the question of granting family pension to the petitioner's second wife will not arise. According to him, the respondents have rightly rejected the petitioner's request for including his second wife as being entitled to receive family pension.

7. As seen from the Division Bench Judgments relied upon by the learned Standing Counsel for the respondents, the issue involved in this Writ Petition is no longer *res-integra*. In the Division Bench Judgment dated **05.06.2018 in W.A.No.977 of 2017** referred to supra, the following paragraphs will make it clear that a person who has married subsequent to the coming into force of the Hindu Marriage Act, 1955, will have to contract a valid marriage to enable her to receive family pension in respect of a retired / deceased employee. The relevant paragraphs are extracted hereunder:



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28. From a reading of the above provision particularly the provisions of Section 5 of the Hindu Marriage Act, 1955 and Rule 19 of the Tamil Nadu Government Servants' Conduct Rules, 1973, it is clear that a Bigamous Marriage is prohibited and is a punishable offence unless the Personal Law applicable to such Government servant and the other party to the Marriage permit such Bigamous Marriage. The provisions of Sub Rule 7 (a)(i) of Rule 49 of the Tamil Nadu Pension Rules, is only an enabling provision intended to take care of a situation where there may be two widows for a Government servant, whose marriage was valid. In case of a Hindu, if marriage has taken place prior to the coming into force of the Hindu Marriage Act 1955, such a Bigamous Marriage would have been valid. Therefore, in our considered opinion, the operation of Sub Rule 7(a)(i) of Rule 49 should be restricted only to those marriages which are validly contracted. For example, where a Government servant contracted two marriages prior to the coming into the force of the Hindu Marriage Act, 1955 and dies after the introduction of the Pension Rules, both the marriages would be valid and both the widows would be entitled to Family Pension. But the said Rule, which is an enabling provision, cannot be extended or over



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stretched to cover the cases of second wives whose marriages will be void, in view of the provisions of Section 5(i) of Hindu Marriage Act, 1955. That is precisely the reason why the Government, thought it fit, to include the explanation to Sub Rule 7 in the year 1992. The said explanation was introduced with retrospective effect from 2 nd June 1992, in view of the clarification issued by the Government in its letter dated 02.06.1992.

29. This would not limit the applicability of the explanation to marriages which are contracted in contravention of Section 5(1) of the Hindu Marriage Act, 1955, after coming into the force of the said enactment. The very explanation is clearly worded where it says that the second wife shall be eligible for the benefits of family pension, only if the second marriage is solemnised, as per the Customary Law prevailing among the community, before the date of commencement of the Hindu Marriage Act, 1955. Therefore, the essential element of the Rule is that the marriage should have been contracted before the commencement of the Hindu Marriage Act, 1955 and not thereafter.



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33. *It would also be seen that the second proviso to Rule 7(a)(i), makes it clear that if the widow is not survived by a child, such share in the family pension shall be payable to the other widows in equal share, if there is only one such widow in full to her. This makes it clear that the family pension is not the estate of the Government servant. It will also be relevant to point out that the Division Bench of this Court in Krishhaveni and others v. Mera @ Devaki and others, rendered in OSA. No.154 of 2004 dated 07.03.2012 had held that while the children born to a second wife, whose marriage is void would be entitled family pension, the second wife as such will not be entitled to family pension. This is the view of the Hon'ble Supreme Court in Rameshwari Devi's case reported in 2000 (2) SCC 431, cited supra, which accepted the position of law that a second wife of Hindu, whose marriage is otherwise invalid, is not entitled to family pension. However, the learned Judge went on to make a distinction based on the Tamil Nadu Pension Rules, 1978. As we have already pointed out the Sub Rule 7 of Rule 49 of the Pension Rules 1978, will have to be read only in the context of there being two widows for a Government servant, both of whose marriages would have been validly performed prior to the coming into*



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force of the Hindu Marriage Act, 1955. The explanation introduced to Rule 7 in 1992 would also clarify the position regarding the entitlement of family pension. We are therefore, unable to agree with the conclusion of the learned Judge to the effect that the explanation introduced to Rule 7 will take effect only from 02.06.1992 and will apply only if the Government servant dies after the said date that is 02.06.1992.

42. We have discussed the basis on which the various judgments, of course conflicting views, have been rendered. Insofar as the view that the second wife of the Government Servant, who died prior to 02.06.1992 as held in Tamilselvi's case, referred to supra, and the view that a widow of an invalid second marriage that had taken place prior to 14.10.1991, as held in Pushpavalli's case, have given our reasons, as to why, we are unable to subscribe to the said conclusions of the learned Single Judge. We are, therefore, of the opinion that in order to enable a second wife to claim family pension the marriage should have been valid under the Personal Law applicable to the parties, to hold otherwise would be in violation of the law of the land, viz. the Personal Law of the parties as well as the Criminal Law, which



prohibits bigamous marriage.

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8. Similarly in the subsequent Division Bench Judgment reported in **2022-1-Writ L.R.No.630** referred to supra, the Division Bench has followed the Judgment of the Division Bench dated **05.06.2018** passed in **W.A.No.977 of 2017** and has held that the pre-condition for receiving family pension is that the marriage should be a valid marriage. In the instant case, admittedly, the second marriage contracted by the petitioner is a void marriage, as he has married her while the first marriage was subsisting.

9. The Division Bench has also observed, as seen from the above extracts, that precisely, only for the purpose of the correct interpretation to Sub Rule 7 of Rule 49, the Government thought it fit to include the explanation to Sub Rule 7 under the Tamil Nadu Pension Rules on 02.06.1992. Admittedly, the marriage contracted by the petitioner with his second wife (Manimegalai) is a void marriage as per the Hindu Marriage Act, 1955 to which religion the petitioner belongs.



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10. The explanation to Rule 49 (7) of the Tamil Nadu Pension Rules which was introduced on 01.01.1995 which came into effect on 02.06.1992 reads as follows:

"Explanation: *For the purpose of this rules, 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) Solemnized under the Mohammadan Law in which bigamy is permissible."

11. It is very clear from the explanation that the second wife is eligible for the benefit of family pension only if the second marriage is a valid marriage. Being a Hindu, the petitioner is allowed to have only one wife as per the Hindu Marriage Act, 1955. Admittedly, while the first marriage was subsisting, the petitioner has married (Manimegalai) and therefore, the second marriage is a void marriage.



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12. Rule 19 of the Tamil Nadu Government Servants (Conditions of Service) Rules, 1973 also prohibits a Government servant from entering into a marriage contract with a person when there is already a subsisting marriage.

13. The Division Benches of this Court has considered extensively the various Judgments rendered by learned Single Judges of this Court for and against the proposition as to whether a second wife being a Hindu is entitled to receive family pension and only thereafter has come to the conclusion that a Hindu second wife while the marriage with the first wife is still subsisting is not entitled to receive family pension.

14. Learned counsel for the petitioner has relied upon a Judgment of a learned Single Judge of this Court dated **23.01.2020** passed in ***W.P.No.34952 of 2019*** in the case of ***C.Sarojini Devi Vs. The Director of Local Funds Audits and Others***. The said Judgment dealt with presumption of marriages. By virtue of a long cohabitation, the learned Single Judge has held that it is presumed that there was a husband and wife relationship. The issue involved in that Writ Petition pertains to a different set of facts. In that



case, the first wife died in the year 1997 and thereafter, the nomination was given by the employee in favour of the petitioner to receive the family pension. The issue involved in that decision was as to whether the nominee is a legally wedded wife of the employee or not. In that Writ Petition, the Government contended that the person claiming family pension after the death of her husband (employee) is not a legally wedded wife. Only under those circumstances, the learned Single Judge after taking note of the fact that the Writ Petitioner in the said Writ Petition was having long cohabitation with the deceased employee, held that she is a legally wedded wife. In that case, the claimant seems to have married the deceased employee only after the death of his wife as the claimant was made as a nominee to receive family pension only after the death of the first wife of the employee. Therefore, that decision relied upon by the learned counsel for the petitioner has no bearing to the facts of the case on hand. The Division Benches of this Court has considered extensively the Judgments rendered by the learned Single Judges of this Court and only thereafter, has come to the conclusion that only when the marriages are held to be valid, any person is entitled to receive family pension.



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15. For the foregoing reasons, this Court does not find any merit in this Writ Petition and there is no infirmity in the order passed by the respondents which is the subject matter of challenge in this Writ Petition. In the result, this Writ Petition is dismissed. No Costs.

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Index : Yes/No
Speaking Order : Yes / No
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To

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(Accounts and Entitlements),
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No.361, Anna Salai, Teynampet,
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ABDUL QUDDHOSE. J.,

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