



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.04.2022

CORAM:

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE PARESH UPADHYAY

W.A(MD)No.152 of 2022

Vijayalakshmi

... Appellant /Petitioner

Vs.

1.The Principal Accountant General (A&E),
Tamil Nadu,
361, Anna Salai,
Teynampet,
Chennai-600 018.

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

... Respondents

Appeal filed under Clause 15 of Letters Patent, against the order of this Court made in W.P(MD)No.19711 of 2017 dated 27.02.2019.

Prayer in WP(MD). 19711 of 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified mandamus calling for the records of the impugned proceedings in Pen.33/1/13313895/15-16 dated 02/11/2015 passed by the 1st respondent and quash the same as illegal and consequently direct the 1st respondent to sanction the family pension to the petitioner within the time frame fixed by this Honble Court.

For Appellant	:	Mr.K.P.Narayanakumar
For R1	:	Mr.P.Gunasekaran
For R2	:	Mr.J.Ashok
		Additional Government Pleader

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

By this writ appeal, a challenge is made to the judgment dated 27.02.2019 whereby, the writ petition to challenge the order dated 02.11.2015 to deny the benefit of family pension to the petitioner/appellant was dismissed. It was dismissed on the ground that the appellant, who is stated to be the second wife of the



deceased Government employee, was not entitled to family pension.

2. Learned counsel for the writ appellant has made a reference to Rule 49 of the Tamil Nadu Pension Rules of 1978 (in short, 'the Rules of 1978') and submits that Rule 49 permits family pension to more than one widow. The petitioner/writ appellant, being the second widow to the deceased erstwhile Government servant, is entitled to receive the family pension on the death of the Government Servant.

3. Giving out the facts of the case, it is stated that erstwhile Government servant died in the year 2013 and before that, his first wife died in 1996. She was otherwise suffering from mental disorder and, therefore, the appellant was staying with the erstwhile deceased employee from the year 1979 itself. In view of the above, a relation of husband and wife, may be even live-in relationship developed and thereby, the petitioner/writ appellant became entitled to receive the family pension after the death of erstwhile Government employee.

4. To substantiate the argument, learned counsel for the appellant has made a reference of the judgment of this Court in in the case of **C.Sarojini Devi vs. The Director of Local Fund Audits, Chennai and two others, MANU/TN/0413/2020**, wherein the claim made by the second wife to receive the family pension was considered and the impugned order was quashed with a direction to the respondents to pass necessary orders to sanction family pension in favour of the petitioner therein.

5. A further reference of the judgment of this Court in the case of **Malarkodi @ Malar vs. The Chief Internal Audit Officer, Chennai and 3 others, MANU/TN/4006/2021**, has been given, stating that the learned Single Judge has taken into consideration the judgment of the Division Bench in the case of **R.Rajathi vs. The Superintending Engineer TANGEDCO Ltd., Nagapattinam District, 2018-1-Writ L.R 725** and referred the matter to the Larger Bench. It is for the reason that this Court in **R.Rajathi's case** (supra) did not accept the claim of family pension in the hands of second wife married during the life time of the first wife. The second marriage during the life time of the first wife was illegal as per the Hindu Marriage Act, 1955 and, therefore, claim of family pension under Rule 49(7)(a)(1) read with Rule 3(1)(e) of the Rules of 1978, was held to be Untenable. It is stated that disagreeing with the view of the Division Bench, the learned Single Judge in **Malarkodi's case** (supra) referred the matter to the Larger Bench. In view of the above, the prayer is either to await the decision of the Larger Bench or this matter may also be referred to the Larger Bench.

6. Learned Additional Government Pleader has contested the writ appeal and submits that the judgments in **Malarkodi's case** (supra)



and **C.Sarojini Devi's case** (supra), have no application on the facts of this case. Thus, there is no reason to await the outcome of the decision by the Larger Bench or to refer the appeal to the Larger Bench in view of the decision of the learned Single Judge in **Malarkodi's case** (supra).

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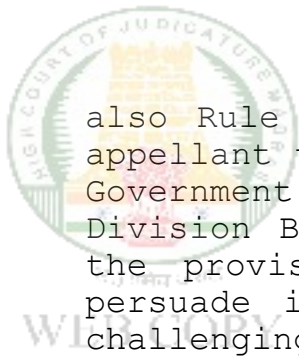
7. Learned Additional Government Pleader referring to the facts of this case submits that the writ petition was filed claiming the benefit of family pension, but to substantiate the facts, no document was submitted to prove the marriage. The appellant came out with a case that the erstwhile Government Servant died in the year 2013 and a death certificate dated 02.07.2013 has been enclosed along with the petition, so also the death certificate of the first wife, Mrs.Saroja, dated 09.06.1996. There is nothing on record to show that the first wife was suffering from mental disorder and, therefore, the pleading remains for the sake of it and without any proof. The facts would not end there, because there is nothing on record to even prove the marriage.

8. The petitioner/writ appellant has enclosed the decree in O.S.No.128 of 2014 declaring her to be the legal heir of the deceased government servant to substantiate her claim that she had married to the deceased, the charges framed against the government servant show that the government servant married the appellant during January, 1979, when his first wife was alive. Therefore, the said marriage is illegal, as has been held by the Division Bench in **R.Rajathi's case** (supra).

9. The widow certificate and other documents have been filed without any document to prove the marriage of the appellant with the erstwhile government servant in the year 1979 and could not have been during the life time of the first wife and, therefore, the marriage was illegal as per the Hindu Marriage Act, 1955. It cannot be recognised for any purpose in the light of the judgment in the case of **R.Rajathi's case** (supra). The widow certificate has been obtained from the Tahsildar having no authority to issue it and otherwise he has not given the date of marriage and necessary information to prove the appellant to be widow of the erstwhile government servant. The status of the widow can be conferred only when the appellant married the erstwhile government servant and if the statement of facts in reference to the marriage in the year 1979 is taken to be correct, then the marriage was illegal during the life time of the first wife and, thus, cannot be recognised for any purpose.

9. We have considered the submissions of the parties and perused the records.

10. The issue has already been dealt with extensively by the Division Bench in **R.Rajathi's case** (supra), referring to Rule 49 and

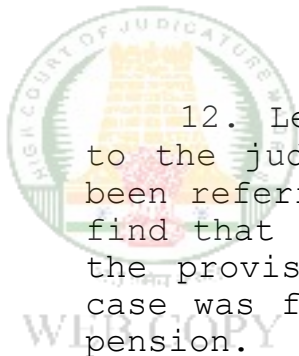


also Rule 3 of the Rules of 1978, where a claim was made by the appellant therein as second wife, who entered into marriage with the Government Servant during the life time of the first wife. The Division Bench had considered the issue in reference to Rules and the provisions of the Hindu Marriage Act, 1955, and could not persuade itself to accept the claim and thereby the writ appeal challenging the judgment of the learned Single Judge was dismissed. The relevant paragraphs of the judgment in **R.Rajathi's case** (supra) are quoted hereunder for ready reference:-

'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.

42. We are, therefore, constrained to conclude that the judgments which conclude that a second wife would be entitled to family pension, irrespective of her marriage being void, under the provisions of their relevant Personal Law's applicable to the parties do not reflect the correct position of law and therefore will stand overruled. The applicability of Sub Rule 7(a)(i) is confined only to cases where the second marriage is valid under the Personal Law applicable to the parties, only in such cases, widows of such marriages would be entitled to family pension.'

11. The Division Bench has concluded the issue in reference to the Rules of 1978 with regard to the claim by second wife for family pension married during the life time of the first wife. In the case on hand, there is no document to prove the second marriage, though it is alleged in the charges framed against the government servant that he married the appellant in January, 1979. It is during the life time of the first wife. The appellant has managed to obtain widow certificate without proof of marriage. In any case, there is allegation of marriage during the life time of the first wife, it is not legal so as to maintain the claim of family pension in the light of the judgment in **R.Rajathi's case** (supra).



12. Learned counsel for the appellant has drawn our attention to the judgment in **Malarkodi's case** (supra), where the matter has been referred to the Larger Bench. We have perused the judgment and find that based on the statement regarding live-in relationship and the provisions of the Domestic Violence Act, 2005, a prima facie case was found in favour of the petitioner therein to claim family pension. The legal position in that regard was clarified by the Division Bench in the case of **R.Rajathi's case** (supra) and there being no conflicting judgment of any other Division Bench, the learned Single Judge could have followed the judgment of the Division Bench, being a binding precedent. In any case, we do not find the said judgment to be applicable to the facts of this case. It is for the reason that even if the statement pertaining to live-in relationship of the appellant with the deceased from the year 1979 is considered, the aforesaid cannot result in valid marriage or give a status of wife out of a marriage during the life time of the first wife. The provisions of the Domestic Violence Act, 2005 cannot be read in conflict with the provisions of the Hindu Marriage Act, 1955 where certain marriages are declared to be illegal, which includes the marriage during the life time of the first wife. The live-in relationship to claim benefit of the Domestic Violence Act, 2005 cannot be applied herein for a woman claiming a status of wife during the life time of the first wife. It cannot be read in conflict with the Hindu Marriage Act, 1955.

13. In view of the above, we do not find that the judgment in **Malarkodi's case** (supra) would be applicable on facts of this case. Otherwise, judicial discipline requires a Single Bench to follow the judgment of the Division Bench. We are bound by the judgment of the Co-ordinate Bench in **R.Rajathi's case** (supra) and there is no reason for us to disagree with the said judgment, rather to maintain judicial discipline, we would follow the said judgment. The Court is required to maintain the judicial discipline which has been referred to and decided by the Hon'ble Apex Court in the case of **Official Liquidator vs. Dayanand and others, (2008) 10 SCC 1**. The relevant paragraphs of this judgment are quoted herein for ready reference:-

'There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia vs. Administrator General of W.B. [1960 (3) SCR 578], this Court observed:

"If one thing is more necessary in law than any



other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.""

14. In the case cited supra, the Apex Court was faced with the situation of conflicting judgments of the Supreme Court despite the judgment on the issue by the Larger Bench and therefore, addressed the cardinal importance of judicial discipline.

15. In view of the above and in the light of the judgment of the Apex Court in **Official Liquidator's case** (supra), we are unable to subscribe to the view taken by the learned Single Judge in **Malarkodi's case** (supra) so as to await the judgment of the Larger Bench in the said case and otherwise it is not applicable on facts.

16. In the case on hand, in the absence of any material to substantiate the claim of the appellant, we do not find any reason to cause interference with the judgment of the learned Single Judge. To confer the status of second wife, the appellant is under an obligation to prove the marriage and it should be a valid marriage and not during the life time of the first wife. The material to that effect has not been produced, rather a perusal of the charge memo shows allegation of second marriage against the erstwhile government servant during the life time of the first wife and that makes the marriage illegal and, therefore, the claim of the appellant seeking family pension as second wife cannot be accepted.



17. With the aforesaid discussion, we do not find any ground to interfere in the order passed by the learned Single Judge. Accordingly, the Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Principal Accountant General (A&E),
Tamil Nadu, 361, Anna Salai,
Teynampet,
Chennai-600 018.

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

+1 CC to M/s.K.P. NARAYANA KUMAR, Advocate (SR-21664[F] dated 27/04/2022)

+1 CC to M/s.SPL.GP. (SR-21835[F] dated 27/04/2022)

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25.04.2022

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