



W.P.(MD) No.2992 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.2992 of 2020

P.Rajeswari

... Petitioner

Vs.

1.The Senior Accounts Officer,
Office of the Accountant General,
(Accounts & Entitlements), Tamil Nadu,
No.361, Annasalai, Teynampet,
Chennai – 600 018.

2.The Assistant Commissioner of
Commercial Tax Enforcement,
Commercial Tax Office Building,
Ground Floor, Thangaraj Salai,
Madurai.

3.The Treasury Officer,
Madurai – 625 020.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to Call for the records pertaining to the impugned proceeding passed by the 1st respondent in Lr.No.AG(A and E) /Legal Cell/AN 94/19-20/540/24178 dated 06.07.2019 and quash the same



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as illegal and consequently direct the 1st respondent to sanction Family Pension to the Petitioner with effect from 12.03.2018 that is the date of death of her husband N.Pandian and disburse the arrears with 18 percent interest forthwith and continue to pay the same to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.T.R.Subramanian

For Respondents : Mr.P.Gunasekaran for R1

Mr.M.Siddharthan for R2 and R3
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner, learned counsel for the first respondent and the learned Additional Government Pleader appearing for the respondents 2 and 3.

2.The petitioner herein had admittedly married the Government Employee namely late M.Pandian during the subsistence of his first marriage. Even as per the affidavit filed by the petitioner herein, the petitioner got married on 22.01.1978, when the first wife namely one Kamatchiammal was alive. The second wife now claims family pension. Rule 49(7) of the Tamil



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3.Insofar as the applicability of the personal law is concerned, the Honourable Supreme Court in the case of ***Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and another*** reported in ***1988 SCC (Cri) 182*** stresses upon a lawful marriage, permissible under the personal law in the following manner.

“6. The attempt to exclude altogether the personal law applicable to the parties from consideration also has to be repelled. The section has been enacted in the interest of a wife, and one who intends to take benefit under sub-section (1)(a) has to establish the necessary condition, namely, that she is the wife of the person concerned. This issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes her status on relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the section is established by proof of



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necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the section is attracted or not cannot be answered except by the reference to the appropriate law governing the parties. In our view the judgment in Shah Bano's case does not help the appellant. It may be observed that for the purpose of extending the benefit of the section to a divorced woman and an illegitimate child the Parliament considered it necessary to include in the section specific provisions to that effect, but has not done so with respect to women not lawfully married.”

4.The learned counsel for the petitioner places reliance on a decision of the learned single Judge of this Court in the case of ***C.Sarojini Devi Vs. The Director of Local Fund Audits, Chennai – 600 108 and two others*** made in ***W.P.No.34952 of 2019***, dated 23.01.2020, in which, the second wife was granted the payment of family pension.

5.However, the learned counsel for the first respondent produced a copy



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of an order of the Division Bench passed in the case of ***R.Rajathi Vs. The Superintendent Engineer, TANGEDCO Ltd., Nagapattinam Circle, Nagapattinam District and another*** reported in ***2018-1-Writ L.R.725***, wherein, Rule 49(7) r/w explanation was extensively discussed and ultimately, upheld that the second wife is not entitled for family pension, if the personal law applicable to the prohibits so. The relevant portion of the order reads as follows:

“40. In A.Palaniammal v. The Accountant General, Office of the Account-General, 261 Anna Salai, Chennai 600 018 and others, in WP No.44823 of 2006, the learned Judge had, after taking note of the provisions of Sub Rule 7 of Rule 49, the explanation added thereto in 1992 as well as the provisions of Section 5(1) Hindu Marriage Act had concluded as follows:

?”24. With reference to the contention that the Government cannot clarify the Tamil Nadu Pension Rules, 1978 which is statutory in character, it must be noted that the present Pension Rules were inherited from the Rules which were in force before the Hindu Marriage Act came into existence. Even after the Hindu Marriage Act came into existence,



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the personal law of government servants belonging to different religions are also different. Therefore, the Government Servants' Conduct Rules contemplated a situation, where a government servant having a personal law providing for more than one marriage can get married after getting prior permission from the Government. Therefore, the Rule contemplated different situations. But it was never the intention of the Rule makers that by making the Pension Rules, they have granted a defacto recognition to an illegitimate wife of a Government servant who belonged to Hindu religion. Whatever may be the earlier position, the clarification dated 02.06.1992 clearly brought the Pension Rules in accordance with the correct legal position. As the clarification brought the law in conformity with the correct legal position, it cannot be said to be either illegal or void or contrary to the statutory rules. Infact by subsequent clarification, the State Government had correctly laid the Rules in accordance with the law of the land and no exception can be taken.”

“2?8. Even if the Larger Bench answers the question in favour of a woman, who claims to be the wife on



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account of long living as husband and wife is only in relation to Section 125 of Cr.P.C. and not in connection with the State's obligation to pay family pension. It is always open to the Government to define the term 'Family' and exclude persons who do not qualify to be termed as 'wife'. No exception can be taken if any such clarification is issued by the State Government. It is one thing to talk about the obligation of a man being husband to his wife. The other thing is the State's obligation towards a Government servant in affording protection to him as well as to his family during his tenure as well as after retirement. But that cannot be over stretched to include even for provision of pension for a second wife, which if granted not only will fritter away the limited resources vest with the State but also will encourage bigamous marriages which had been prohibited not only by family law and the criminal law of the land but even as per the Government Servants' Conduct Rules."

41. A substantially similar view has been expressed by another learned Judge of this Court in P.Velammal v. The Additional Assistant Elementary Educational Office, Sivagangai District in WP (MD) No.3096 of



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2016, wherein, after taking note of the provisions of Section 5 (1) of the Hindu Marriage Act, 1955, as well as the explanation added to Sub Rule 7 of Rule 49, the learned Single Judge has held as follows:

?"12. Law is settled that two Hindus cannot contract marriage after the enforcement of the Hindu Marriage Act and if any of them is having a living spouse, the marriage would be a nullity and would also not be protected under the Conduct Rules, as well as, the pension rules. Therefore, the "second wife" as referred to under the pension rules would only include second wife whose marriage is permissible under the Personal Law, but in the case of Hindus, the second wife will have no right, whatsoever, as the law prohibits second marriage, as long as, the Government servant has a spouse who is alive. Thus for harmonious construction of the Rules governing pension, wherever, the rule provides for wives, it has to be interpreted as per the law governing marriage as applicable to the Government servant and in cases where the second marriage is void under the law, second wife will have no status of a widow of the Government servant and relying on protection of Women from



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Domestic Violence Act, 2005, in the opinion of this Court, is only taking a shelter.”

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.”

6.Apparently, the decision of the Honourable Division Bench in *R.Rajathi* case (supra), was not brought to the notice of the learned Single Judge while the case *C.Sarojini Devi* (supra) was dealt with. As such the



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decision of the Honourable Division Bench in *Rajathi's case* (Supra) requires to be followed by this Court. Even other wise, Rule 49(7) r/w explanation clearly prohibits payment of family pension to a second wife, to whom the personal law does not recommend such marriage.

7.In view of the forgoing findings, I do not find any merits in the present writ petition.

8.Accordingly, this writ petition stands dismissed. There shall be no order as to costs.

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Index : Yes / No
Speaking Order/ Non Speaking Order
TM

To

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- 2.The Assistant Commissioner of Commercial Tax Enforcement, Commercial Tax Office Building, Ground Floor, Thangaraj Salai, Madurai.
- 3.The Treasury Officer, Madurai – 625 020.

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M.S.RAMESH,J.

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