



WEB COPY



W.P.No.13372 of 2015

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 06.02.2023**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**W.P.No.13372 of 2015**

R.Rajathi

... Petitioner

Vs.

1. The Internal Audit Officer (Pension),  
TANGEDCO,144, Anna Salai,  
Chennai 600 002

2. The Superintending Engineer,  
Distribution Circle,  
TANGEDCO,  
Nagapattinam

... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to dispose of the petitioner's representation dated 09.09.2014, given to the first respondent in accordance with law.

For Petitioner : Mr.O.S.Thilak Pasumbadiyar

For RR 1& 2 : Mr.K.Purushothaman



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## **ORDER**

This Writ Petition has been filed seeking for a Writ of Mandamus, to direct the respondents to dispose of the petitioner's representation dated 09.09.2014, which has been filed for grant of family pension.

2. Today, when the case is taken up for hearing, the learned counsel for the respondents-TANGEDCO brought to the notice of this Court that petitioner has already filed a writ petition in W.P.No.17648 of 2017, seeking to quash the order dated 02.07.2016 of the first respondent-the Superintendent Engineer, TANGEDCO Ltd, Nagapattinam Circle, Nagapattinam District and consequently to direct the respondents to consider the grant of family pension to the petitioner with all retrospective arrears. The said writ petition was dismissed by this Court on 12.07.2017. The operative portion of the order is as under:-

“ 3. However, the said deceased C.Rethinasamy married the writ petitioner as his second wife. It is stated in the impugned order that the deceased employee got a decree of divorce from the first wife on 07.10.2003. But, the second



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marriage with the writ petitioner was solemnized on 19.08.1990. This fact is not disputed by the writ petitioner even in the affidavit filed by the him in Paragraph 2 which reads as follows:

“ I respectfully submit that I am the wife of Late C.Rethinasamy, who was a retired Government Servant, employed in Tamilnadu Electricity Board, Nagapattinam, who got married me on 19.08.1990 as a second wife, out of wedlock, we gave birth to two female child namely, R.Karthika and R.Gayathri. My husband was retired from service on 31.10.2002, subsequently he died on 01.10.2013”.

3. In view of the submissions made by the writ petitioner in his proof affidavit, admitting that the second marriage with the deceased employee was solemnized during the subsistence of the first wife. Therefore, the question of granting family pension as per Tamil Nadu Pension Rule, 1978 does not arise and there is no infirmity in the reasons stated in the impugned order and the reasons stated is very much in accord with the legal principles in this regard. Hence, no consideration is required.

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



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“ 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.

43. 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.”



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4. In the light of the above proposition of law, the prayer of the petitioner is not maintainable. Accordingly, this writ petition is dismissed.

No costs.

**06.02.2023**

sts/nvsri

To:

1. The Internal Audit Officer (Pension),  
TANGEDCO,144, Anna Salai,  
Chennai 600 002
2. The Superintending Engineer,  
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Nagapattinam



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**J.NISHA BANU, J.,**

sts

Order made in  
**W.P.No.13372 of 2015**

Dated:  
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