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W.P.No.15236 of 2013

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.15236 of 2013

Thimmarayan

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Petitioner

Vs

1. The Principal Judge,
Vellore – 9.

2. The Subordinate Judge,
Sub Court,
Gudiyatham.

3. The Senior Accounts Officer,
Office of the Accountant General,
(Accounts & Entitlements)
Tamil Nadu,
No.361, Anna Salai,
Chennai – 18.

...

Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the entire records in pursuant to the rejection order issued by the 3rd respondent vide No.P2/3/Ord.1067/09-10/219/4988 dated 4.11.2009 and quash the same.

For Petitioner : Mr.T.P.Prabakaran

For R3 : Mrs.Hema Muralikrishnan

ORDER



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This Writ Petition has been filed challenging the order dated 04.11.2009 passed by the third respondent, thereby rejected the request made by the petitioner to include his second wife's name in the family pension scheme.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the third respondent and perused the materials available on record.

3. The petitioner got married one Amsaveni and gave birth to a male child on 25.12.1984. Thereafter, she fell sick and she could not look after the family. Therefore, the petitioner got married one Ganga on 01.09.1985. The first wife died on 24.10.1999. In the meanwhile, the petitioner retired from his service on 30.06.2009. Thereafter, he submitted a request to the second respondent to include his second wife's name in the list of family members in the family form. The petitioner also claimed that as per the Pension Rules if the deceased member is having more than one wife, the pension amount will be divided equally.



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4. On perusal of the counter filed by the third respondent revealed that, admittedly, when the first marriage was very much in existence, the petitioner got married another wife on 01.09.1985. Though the petitioner produced divorce muchalika between the petitioner and the first wife, it cannot be taken into consideration, since the dissolution of marriage was not ordered from any Court of law. Further, as per Rule 49(7)(a)(1) of the Tamil Nadu Pension Rules, 1978, where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares. Subsequently, the Government, by an order dated 29.06.1990, have clarified the said Rule stating that the Government's intention is to allow family pension in equal shares only to legally wedded wife. In the case of a Government servant who solemnized second marriage when the first marriage subsisted, the second wife cannot claim the status of a wife in the eye of law. The settled law is that where there is a marriage subsisting, no person can legally solemnize another marriage and if a second marriage effected either by registration or otherwise that marriage is a nullity and as such the second wife is not entitled to claim family pension.

5. That apart, the petitioner is taking two stands that he got



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divorce as per the divorce muchalika and another hand, the first wife died and as such he wants to include the second wife's name in the family pension scheme. Therefore, the request made by the petitioner was rightly rejected by the third respondent and this Court finds no infirmity or illegality in the order passed by the third respondent.

6. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs.

20.07.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
Lpp

To
1. The Principal Judge,
Vellore – 9.

2. The Subordinate Judge,
Sub Court,
Gudiyatham.

3. The Senior Accounts Officer,
Office of the Accountant General,
(Accounts & Entitlements)
Tamil Nadu,
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G.K.ILANTHIRAIYAN, J.



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