



WEB COPY



W.P.No.5436 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.11.2023

CORAM :

THE HON'BLE Ms. JUSTICE R.N. MANJULA

W.P.No.5436 of 2021

Mrs. Dhanalakshmi

... Petitioner

Versus

1.Principal Accountant General(A and E)
AGS Office Complex,
361 Anna salai,
Rostrevor Garden, Teynampet, Chennai.

2.The District Collector,
Perambalur.

3.The Block Development Officer,
Veppur Panchayat Union Office,
Veppur, Kunnum Taluk,
Perambalur District.

4.Mrs. Jothi

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the first respondent to furnish a certified copy of all the Nomination Forms and Nomination Proposal Form dated 23.01.2004 submitted by the petitioner's husband Mr. Dhanarasu, on considering the petitioner's representation dated 17.02.2020.

For Petitioner : M/s. Usharamman

<https://www.mhc.tn.gov.in/judis>



W.P.No.5436 of 2021

For Respondents : M/s. T. S. Selvarani, Senior Counsel. (for R1)
: Mr. T. Chezhiyan, AGP, (for R2 & R3)
: Mr. C. Kalaichelvan (for R4)

ORDER

This Writ Petition has been filed to direct the first respondent to furnish a certified copy of all the Nomination Forms and Nomination Proposal Form dated 23.01.2004 submitted by the petitioner's husband Mr. Dhanarasu, by considering the petitioner's representation dated 17.02.2020.

2.The petitioner claims to be the first wife of the deceased Dhanarasu, who died on 11.10.2017. As the deceased Dhanarasu, has given the name of the fourth respondent as nominee, which was entered into the Service Register book, the retiral benefits of the said deceased Dhanarasu was recommended to be disbursed in favour of the fourth respondent and accordingly, the first respondent disbursed the same. Consequent upon the said order, the petitioner filed a Writ Petition No.17199 of 2018 claiming the retirement benefits along with family pension and this Court, dismissed the said writ petition by order dated 23.09.2019 observing as under :-

“6. The petitioner all along has been claiming that she is the legally wedded wife of the deceased employee, but though she was aware of the fact of the



W.P.No.5436 of 2021

second marriage by her husband with one D.Jothi in the year 1988 itself, she has not taken any earnest efforts regarding her husband's declaration towards nominee being his wife, whether he had furnished her name in his service register. In fact, based on the details furnished by the government servant regarding nominee as D.Jothi as his wife, the 3rd respondent sent the proposals vide proceedings dated 23.01.2004 incorporating the name D.Jothi as beneficiary for grant of retirement benefits and for family pension. The 1st respondent office also admitted the joint pension payment order in favour of the government servant late P.deceased Dhanarasu incorporating his wife name as D.Jothi as identified and certified by the 3rd respondent who is the competent authority to certify the beneficiary for the family pension as furnished by the government servant. Therefore, after lapse of considerable time the petitioner has come forward with the present writ petition which in the opinion of this Court cannot be entertained.

7. For the above said reasons the writ petition is dismissed. No costs."

3. However, the above order has been construed by the petitioner in an erroneous manner as if the the petitioner can maintain a writ petition provided she challenges the nomination form and the nomination proposal form dated 23.01.2004, submitted by her husband, the said deceased Dhanarasu.

4. Counter has been filed by the fourth respondent in which it is stated



W.P.No.5436 of 2021

that the marriage between the petitioner and deceased Dhanarasu has been admitted, but in the counter it is further averred that the marriage of deceased Dhanarasu with the fourth respondent was solemnised with the consent of the petitioner. It is further averred that after marriage, the petitioner filed maintenance case in which a compromise memo had come to be filed between deceased Dhanarasu and the petitioner and, thereby, the petitioner was receiving maintenance. In the compromise memo, the said deceased Dhanarasu had also undertaken to settle the Family Benefit Fund and Special Benefit Fund in favour of the petitioner and upon his death the said benefits were paid to the petitioner.

5.It is the further averment of the fourth respondent that based on the compromise recorded before the Court, her husband deceased Dhanarasu had given her name as nominee in the service register and, accordingly, the service benefits were paid to the fourth respondent. It is the further case of the fourth respondent that since 1988, the petitioner had deserted deceased Dhanarasu and has been living in her parental abode and had been receiving maintenance and based on the nomination, the benefits were paid to the fourth respondent, which cannot be said to be erroneous, as there is no question of bigamy, as the said issue of bigamy has not been raised by the



W.P.No.5436 of 2021

petitioner by claiming divorce marriage since the year 1988. Therefore, the petitioner cannot claim family pension upon the death of deceased Dhanarasu.

6.Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the material available on records.

7.The factum of marriage between the petitioner and deceased Dhanarasu is not disputed. It is also not in dispute that the said deceased Dhanarasu had subsequently married the fourth respondent and through an order of this Court, the maintenance is being received by the petitioner. However, she has not taken any steps either to get her marriage with the deceased Dhanarasu dissolved or to object the marriage between the fourth respondent and deceased Dhanarasu as bigamous.

8.On the basis of the nomination in the service register, the family pension has been paid to the fourth respondent. Therefore, the whole issue revolves around the status of relationship between the petitioner the fourth respondent and deceased Dhanarasu. It is for the petitioner to initiate appropriate proceedings to establish that her marriage with the deceased



W.P.No.5436 of 2021

Dhanarasu was in subsistence at the time when he married the fourth respondent and hence he was guilty of bigamy. Without resolving to any such action and keeping silent till death of Dhanarasu, the petitioner cannot enlist the sympathy of this Court for the purpose of receiving the retiral benefits.

9.Factual aspects relating to the subsistence of marriage and the validity of marriage between the contesting parties cannot be decided by this Court sitting under the writ jurisdiction, as those facts can be proved only after an exhaustive trial.

10.In such view of the matter, it is for the petitioner to take appropriate proceedings before the court of competent jurisdiction with regard to the validity of the marriage for adducing proper evidence.

11.In the aforestated circumstances, this Court directs the first respondent to consider the representation of the petitioner dated 17.02.2020 and pass orders in accordance with law as expeditiously as possible.

12.With the above observations and directions, the Writ Petition is



W.P.No.5436 of 2021

disposed of. No costs.

WEB COPY

09.11.2023

Index : Yes/No
Speaking / Non-Speaking order
Neutral Citation : Yes/No

klt

To:

- 1.The Secretary to Government,
Union of India, Ministry of Home Affairs, New Delhi 110 001.
- 2.The Chief Secretary, Government of Union Territory of Puducherry,
Puducherry 605 004.
- 3.The Secretary to Government cum Chairman,
Pondicherry Veterinary College Society,
Animal Husbandry and Animal Welfare Dept,
Government of Union Territory of Puducherry, Puducherry 605 005.
- 4.The Dean,
Rajiv Gandhi Institute of Veterinary Education
and Research and Member Secretary,
Pondicherry Veterinary College, Society, Kurumbapet,
Puducherry 605 009.



WEB COPY



W.P.No.5436 of 2021

R.N. MANJULA, J.

klt

W.P.No.5436 of 2021

09.11.2023