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WP.No.35350 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. No.35350 of 2012

and

M.P.No.1 of 2012

G.Dhanasekaran

....

Petitioner

Vs

1. The Principal Accountant General (A & E),
Tamil Nadu,
DMS Campus,
Teynampet,
Chennai – 600 006.

2. The District Collector,
Kancheepuram District,
Kancheepuram.

3. The Treasury Officer,
Collectorate Campus,
Kancheepuram District.

4. The Sub Treasury Officer,
Madurantakam Taluk,
Madurantakam,
Kancheepuram District.

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Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India
praying to issue Writ of Mandamus forbearing the respondents from
effecting any recovery in the regular pension payable to the petitioner as



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per the pension payment order issued by the 1st respondent in P.P.O.No.C83199/PW dated 04.09.2001 and consequently direct the respondents to continue to make the payment of family pension to the petitioner as per pension payment order issued by the 1st respondent in P.P.O.No.C19133/MED dated 06.01.1999 including the arrears of pension and family pension from May 2012 and March 2012 respectively within the time frame to be fixed by this Court.

For Petitioner : Mr.S.Nidunchizhiyan

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 04.09.2001 passed by the first respondent, thereby ordered to recover family pension received by the petitioner on the demise of his second wife.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3. The petitioner was appointed as Work Inspector in Public Works Department in the year 1965. Thereafter, he was promoted to



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Grade-I Works Inspector. Subsequently, he has retired from service at age of superannuation on 30.09.2001. He is receiving pension. Initially, he got married to one Suseela in the year 1968. Thereafter, when the first wife was very much alive, the petitioner got married with one S.Dhanasekari in the year 1972. The said S.Dhanasekari was employed as Staff Nurse in the Medical Department. Subsequently, she was promoted as Nursing Superintendent. She has also retired from service at the age of superannuation on 30.12.1998. While she was in service, she had nominated the petitioner as her nominee. The said S.Dhanasekari was sanctioned pension and other retirement benefits as per Pension Payment Order dated 06.01.1999. While being so, the said S.Dhanasekari died on 15.02.2004. After her demise, the petitioner was receiving family pension from the month of February 2004.

4. A perusal of the counter filed by the fourth respondent reveals that the petitioner has suppressed his second marriage with the said S.Dhanasekari, who was serving as Superintendent in the Medical Department. Therefore, her nomination is against law and the petitioner is not eligible to get any family pension, since his marriage itself is null and void. As per Pension Rules, the petitioner is not a eligible person to



get family pension, since the said S.Dhanasekari cannot nominate the petitioner as nominee that too in the relationship of husband. The said S.Dhanasekari died on 15.02.2004. After her demise, he had received family pension totalling a sum of Rs.6,37,019/- from 16.02.2004. Therefore, there is absolutely no impediment for the respondents to recover the family pension which was received by the petitioner, as he is not entitled for family pension on the demise of his second wife.

5. In this regard, it is relevant to extract the provision under Rule 48 of the Family Pension Rules, which reads as follows :

“48. Nomination : (1) A Government servant shall make a nomination in Form 1 or Form 2, as may be as appropriate in the circumstances of the case conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under Rule 45 ;

Provided that, if at the time of making the nomination -

(i) the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

(ii) the Government servant has no family the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated



of that sub-rule, the Government servant shall send to the authority mentioned in sub-rule (7) a notice in writing cancelling the nomination together with a fresh nomination made in accordance with this rule.

(7) (a) Every nomination made (including every notice of cancellation, if any, given) by a self-drawing Government servant under this rule shall be sent -

(i) in case the Government servant is a permanent self-drawing Government servant other than a self drawing Government servant referred to in sub-rule(1) of Rule 54 to the Audit Officer concerned ; and

(ii) in any other case, including that of a self-drawing Government servant referred to in sub-rule (1) to Rule 54 to the Head of Office.

(b) The Audit Officer or the Head of Office, as the case may be shall, immediately on receipt of the nomination referred to in clause (a) countersign it indicating the date of receipt and keep it under his custody.

(c) (i) The Head of Office may authorise his subordinate

[self drawing Government servant] to countersign the nomination forms of [non-self drawing Government servants],



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(ii) suitable entry regarding receipt of nomination shall be made in the service book of the non-gazetted Government servant.

(8) Every nomination made, any every notice of cancellation given, by a Government servant shall, to the extent that it is valid, take effect from the date on which it is received by the authority mentioned in sub-rule (7)."

6. Therefore, the petitioner is not coming under any head to be nominated as nominee, since he married the said S.Dhanasekari as his second wife when his first wife was very much alive. Since, the second marriage itself is null and void, the petitioner's name cannot be nominated as nominee.

7. In view of the above, this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. The respondents are directed to recover the family pension, which was already received by the petitioner, forthwith. If the petitioner died, the recovery shall be made from the legal heirs of the petitioner. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.



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Index: Yes/No

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