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W.P.No.7911 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.7911 of 2022

S.Thamizharasi

... Petitioner

Vs.

1.The Accountant General (A & E),
Chennai – 600 018.

2.The Branch Office of Account General (A & E),
Natrampalli, Thirupathur District.

3.The State of Tamil Nadu,
Rep by the Block Educational Officer,
Natrampalli, Tirupathur,
Tirupathur District.

... 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 of the 2nd respondent bearing proceeding No.P16/1/11626370/ADK dated 03.10.2019 and proceeding No.P16/2/11628113/ADK dated 06.09.2021 and quashes the same and further direct the 1st respondent and 2nd respondent to accept the proposal of the 3rd respondent bearing Na.Ka.No.1040/A1/2019 dated 29.07.2019 & 09.02.2021 and grant family pension to the petitioner from 01.05.2020.

For Petitioner : Mr.K.Elangoo

For Respondents : Mr.V.Vijay Shankar,
Standing Counsel-R1 & R2
Mr.P.Baladhandayutham,
Special Government Pleader-R3



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ORDER

This Writ Petition has been filed to call for the records of the 2nd respondent bearing proceedings No.P16/1/11626370/ADK, dated 03.10.2019 and proceedings No.P16/2/11628113/ADK, dated 06.09.2021 and quash the same and further, direct the respondents 1 and 2 to accept the proposal of the 3rd respondent bearing Na.Ka.No.1040/A1/2019, dated 29.07.2019 & 09.02.2021 and grant family pension to the petitioner from 01.05.2020.

2.The impugned orders, dated 03.10.2019 and 06.09.2021 are the rejection of the family pension to the petitioner. The impugned rejection orders have been passed by the 2nd respondent mainly on the ground that the petitioner's marriage with her husband late Saman is not valid as per Hindu Marriage Act, 1955 and the same has been held during the subsistence of the first marriage. The deceased Saman was working as Headmaster of Panchayat Union Primary School, Natrampalli and retired from service on 31.10.2005. Originally, the deceased Saman married one Nalini on 29.01.1978, due to some difference of opinion, they dissolved their marriage by way of mutual agreement and registered in Sub Registrar, Natrampalli in



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document No.4 of 1986.

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3.It is to be noted that any dissolution of marriage has to be done in accordance with law and not by way of agreement. Here, the first marriage between the deceased Saman and Nalini was dissolved by way of mutual agreement. It appears that the deceased Saman married the petitioner on 16.05.1991. The deceased Saman after realizing that the mutual agreement entered between the first wife and himself cannot be enforced in the eye of law, he woke up and filed an application for dissolution of marriage by mutual consent in the year 2006 in O.P.No.95 of 2000 and the decree of dissolution on the ground of mutual consent has been granted by the competent civil Court on 12.06.2006.

4.Though the second marriage between the petitioner and the deceased Saman is not in tune of the Hindu Marriage Act, 1955, the petitioner all along lived with the deceased Saman. Even assuming that the second marriage is not valid till the first marriage of the deceased Saman was legally dissolved, after dissolution of such marriage, the petitioner is in long cohabitation and relation with the deceased Saman, which gives rise to



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presumption of marriage. Therefore, the petitioner would be construed only as legally wedded wife of the deceased Saman.

5.In such view of the matter, when the petitioner is all along treated as wife, merely on the basis of some technicalities, she cannot be non-suited. Therefore, the 2nd respondent ought not to have refused to pay the pension to the petitioner.

6.Accordingly, the impugned orders, dated 03.10.2019 and 06.09.2021 are quashed and the Writ Petition is allowed. The 2nd respondent is directed to pay the pension of the deceased Saman to the petitioner immediately.

22.09.2023
(1/2)

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking Order/Non-Speaking Order

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To

1.The Accountant General (A & E),
Chennai – 600 018.



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2.The Branch Office of Account General (A & E),
Natrampalli, Thirupathur District.

3.The Block Educational Officer,
Natrampalli, Tirupathur,
Tirupathur District.



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N.SATHISH KUMAR, J.

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