



W.P.No.38924 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.38924 of 2016

B.Vasanth

... Petitioner

Vs.

- 1.The Commissioner,
Employees Provident Fund Organization,
Regional Office,
Royapettah, Chennai - 600 014.
- 2.The Assistant Commissioner,
Employees Provident Fund Organization (Pension),
Sub Regional Office, Sai Complex,
Madurai Road, Trichy - 620 008.
- 3.The General Manager,
Tamil Nadu Civil Supplies Corporation Limited,
No.42, Thambu Samy Road,
Kilpauk, Chennai - 600 010.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to release the petitioner's widow pension and pay pension arrears of the petitioner's husband late N.Balan in PPO-14496/P-II under Employee Pension Scheme 95 to the petitioner within the time frame fixed by this Court.



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For Petitioner : Mr. K.Seetha Ram
For Respondents :
For R1 : Mr.V.Sundareswaran
Senior Panel Counsel
For R2 : Mrs.R.Meenakshi
Standing Counsel
For R3 : Mr.C.Munusamy

ORDER

The petitioner seeks issuance of a Writ of Mandamus, to direct the respondents to release the petitioner's widow pension and pension arrears of her husband Late N.Balan under the Employees Pension Scheme, 1995.

2. The case of the petitioner is that her husband N.Balan was originally married to one Chandralekha. However, subsequently her husband and the said Chandralekha were lawfully divorced. Therefore, the petitioner was clearly entitled to widow pension. In this connection, the petitioner has already filed W.P.No.25794 of 2010. The said writ petition came to be dismissed by a considered order passed on 21.04.2011.



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3. The petitioner has now approached this Court for issuance of a Writ of Mandamus citing the death of the first wife Chandralekha in 2014 and that the petitioner cannot be denied the widow pension as she is entitled to be considered as the Widow of the employee namely N.Balan.

4. The second respondent has filed a counter affidavit stating the second wife is not entitled to widow pension. Moreover, there is no proof of the fact that the said N.Balan and the first wife Chandralekha were actually divorced.

5. Besides the above contention, it is also stated that the petitioner has already approached this Court and lost her right to claim widow pension and she cannot re-agitate the matter.

6. Heard the learned counsel for the petitioner, the learned Senior Panel Counsel for the first respondent, the learned Standing Counsel for the second respondent and the learned counsel for the third respondent.



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7. The learned counsel for the petitioner, advancing his arguments, would also rely on the Judgment of this Court in W.P.No.34952 of 2019 dated 23.01.2020, wherein, this Court has held that law presumes in favour of marriage against concubinage, when a man and woman have co-habitated continuously for a long time.

8. This Court, therein, held that it has to lean towards the presumption of marriage rather than branding the petitioner as concubine. However, insofar as the writ petitioner is concerned, she has already approached this Court for the very same grievance and this Court in and by an order dated 21.04.2011 in W.P.No.25794 of 2010, rejected her request for widow pension and also held as follows:-

"5. The learned Counsel for the respondents also referred to the judgment of the Supreme Court in Rameshwari Devi V. State of Bihar and others reported in (2000) 2 SCC 431 for contending that if a marriage is void marriage, then the alleged second wife cannot be treated as a widow and the person cannot be eligible for any family pension on account of she being a widow of the deceased government servant. The fact that the law recognizes illegitimate children born out of such marriage, but that cannot be a ground for treating the second wife as eligible to claim pension. In paragraph 14, the Supreme Court observed as follows:-



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"14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heirs in clause (1) which include the widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned Single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment."

(Emphasis added)

6. It is always open to the Government to define the term 'Family' and exclude persons who do not qualify to be termed as 'wife'. No exception can be taken if any such clarification is issued by the State Government. It is one thing to talk about the obligation of a man being husband to his wife. The other thing is the State's obligation towards a Government servant in affording protection to him as well as



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to his family during his tenure as well as after retirement. But that cannot be over stretched to include even for provision of pension for a second wife, which if granted not only will fritter away the limited resources vest with the State but also will encourage bigamous marriages which had been prohibited not only by family law and the criminal law of the land but even as per the Government Servants' Conduct Rules.

9. It is thus seen that the case canvassed by the petitioner has been rejected by this Court.

10. The case of the petitioner would not improve merely because the first wife passed away subsequently. The petitioner is bound by the order passed in W.P.No.25794 of 2010 way back on 21.04.2011 and she cannot re-agitate the matter over and again.

11. For all these grounds, there is no merits in the writ petition and accordingly, this Writ Petition is dismissed. No costs.

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes / No

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