



WP.No.22853 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

WP.No.22853 of 2023

K.Kavitha

.. Petitioner

Versus

1.The Home Secretary
Tamilnadu Secretariat
George Fort, Chennai – 600 009

2.The Superintendent of Police
Erode District

3.The Accountant General
Office of the Accountant General (A&E), Tamil Nadu
361, Anna Salai
Teynampet, Chennai – 600 018

4.The Inspector of Police
Kadaththur Police Station
Erode District

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to send clarification to 3rd respondent as per the proceedings dated 10.07.2023 in P.O4/2/10432393/ADK.

For Petitioner : Mr.K.J.Shiva Arudhra

For Respondents : Mr.P.Baladhandayutham for R1, 2 & 4
Special Government Pleader
Mr.V.Vijayashankar for R3



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ORDER

Though the relief is sought for a direction to the respondents 1 and 2 to give necessary clarifications with regard to the query raised by the Accountant General Office/third respondent. The primary grievance of the writ petitioner is with regard to the return of the Accountant General/third respondent not sanctioning the pensionary benefits vide a communication 10.07.2023 in P.O4/2/10432393/ADK. The third respondent Office has sent a communication to the Superintendent of Police/second respondent that as per the Letter No.80118/PEN/89-4 dated 05.01.1990 (Fin/Pen), the divorce by custom has to be proved in individual cases. Therefore, the third respondent has sought clarifications and sought the service book with further proposal after correcting discrepancies quoting the reference number of the above letter.

2. The petitioner is the second wife of the deceased husband. It is the case of the petitioner she married her husband after his first marriage was dissolved by a customary divorce. Subsequent to the death of her husband, she is entitled to pensionary benefits.

3. It is relevant to note that the petitioner's husband filed application for divorce of first marriage in H.M.O.P.No.91 of 2008, wherein, it is clearly pleaded the customary divorce practise existed in the community prior to the



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second marriage, which has been accepted by the Court and a decree of divorce is granted on 29.04.2009 by the Sub Court, Attur. Similarly, this Court in W.P.No.11801 of 2010, vide Order dated 09.02.2012 also recorded the customary divorce and in fact, quashed the dismissal of the petitioner from service on the ground of second marriage. Therefore, this Court is of the view that when the customary divorce pleaded and proved before the Court of Law cannot be questioned by the authorities. When the customary divorce is pleaded, proved and accepted by the Court in the divorce proceedings as well as in the writ petition. Now, citing the Government Letter, the respondent cannot insist for further proof for customary practice in the particular community.

4. Such view of the matter, the proceedings of the Accountant General in proceedings dated 10.07.2023 in P.O4/2/10432393/ADK, stands quashed and the second respondent is directed to send the necessary proposal within a period of two months to the Accountant General Office from the date of receipt of a copy of a Order. On such receipt of proposal, necessary Order has to be passed sanctioning the pensionary benefits as per Rules.

N.SATHISH KUMAR, J.



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costs.

5. With the above directions, this writ petition stands disposed of. No

30.08.2023

dhk

Index:Yes/No

Internet: Yes/No

Neutral Citation:Yes/No

To

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