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W.P.No.29707 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.29707 of 2023

and

W.M.P.Nos.29315, 29316 & 29318 of 2023

Pushpameri

W/o.Pauldas (Late)

... Petitioner

Vs

1. The Director
Local Fund Audit Department
Panchayat Audit
Vetinary Hospital Campus
No.571, 4th Floor, Anna Salai,
Nandanam, Chennai-600 035.
2. The Assistant Director (Town Panchayats)
Salem Region
Salem.
3. The Executive Officer
Selection Grade Town Panchayat
Valapadi
Salem District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the 1st respondent in his proceedings in



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Mu.Mu.No.18784/Pe.O.Va(5)/2018 dated 26.10.2018 and to quash the same and consequently, direct the respondents to pay the family pension along with arrears in accordance with law without insisting the succession certificate.

For Petitioner : Mr.J.Pradeep
For Respondents : Mr.V.P.R.Elamparithi
Additional Government Pleader
For R1 and R2
Mrs.E.Indumathi
Government Advocate, for R3

ORDER

The petitioner is the widow of one Pauldas, who died on 08.07.2014 while working as a Scavenger. When the petitioner has sought for disbursement of the Family Pension, the first respondent herein had sought for Succession Certificate from the petitioner, on the ground that as per G.O.Ms.No.1534 Revenue Department dated 28.11.1991, when an employee, who has been married under the Provision of Hindu Marriage Act, 1955, having more than one wife or husband, a Succession Certificate requires to be produced. Challenging this order dated 26.10.2018, the present writ petition has been filed.

2. According to the petitioner, her husband was originally married to one Samadhanam, who died on 01.11.1967, through whom, they had one



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son. Thereafter, the petitioner got married to her husband on 04.07.1973 and three children were born to them. In view of the marriage being a legal one, the claim for Succession Certificate by the first respondent cannot be sustained.

3. Per contra, the learned Additional Government Pleader submitted that as per G.O.Ms.No.1534 dated 28.11.1991, the production of the Succession Certificate is mandatory in cases of marriages made under the provisions of Hindu Marriage Act, 1955, for a Government servant, who had died and was survived by more than one wife or husband at the relevant point of time.

4. The learned Government Advocate for the third respondent submitted that after the death of the employee, they had sent a proposal recommending for payment of Family Pension to the petitioner herein, since she is the legally wedded wife of the late employee.

5. When there are more than one spouse to a Government servant, who had died and children born to them are also alive, insisting for



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production of Succession Certificate would be justifiable. However, when it is established that the second marriage of the Government employee had taken place, after the death of the first spouse or after a judicial order of separation by a competent Court, the Department may not be justified in seeking for production of Succession Certificate in cases of those nature.

6. In the instant case, the petitioner has produced a copy of the Death Certificate of her husband's first wife Samadhanam dated 13.01.2016 issued by the Sub-Registrar of Thambampatti, which evidences that she had died on 01.11.1967. Likewise, the petitioner has also produced a Certified Copy of the entry in the Register of Marriages maintained by the Chancellor of Salem Diocese Society dated 19.12.2014, which also evidences that the petitioner got married to the late employee on 04.07.1973, which apparently is after the death of the first wife. The Legalheirship Certificate dated 28.02.2015 issued by the Tahsildar, Gangavalli Taluk, Senthoorapatti Village produced by the petitioner, evidences that the late employee was survived by a son born to him through his first wife Samadhanam, apart from the petitioner herein, her two daughters, one son and her grandchildren born to her deceased second son.



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When all these revenue documents establish that the marriage of the petitioner herein is legally sustainable, there is absolutely no justification on the part of the first respondent to insist for production of Succession Certificate.

7. The learned Government Advocate pointed out to a clause in the impugned order which places reliance on G.O.Ms.No.1534 dated 28.11.1991, which mandates for production of Succession Certificate in cases, where the Government employee has more than one wife or husband. This is not a case where the petitioner's husband had two wives living at the same time. On the other hand, his marriage with the petitioner herein was only after the death of his first wife, which is legally permissible. The Government order in G.O.Ms.No.1534 dated 28.11.1991 will not apply to a case, where an employee marries after the death of the first wife, but on the other hand, may apply to a case, where a rival claim is made by two spouses, seeking for Death-cum-Retirement benefits. In this backdrop, there is no justification on the part of the respondents to insist for production of Succession Certificate from the petitioner.



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8. The learned counsel for the petitioner drew attention of this Court to the recommendation made by the third respondent to the first respondent herein, declaring that the petitioner is the legally wedded wife of late Pauldas and therefore, she is entitled for family pension. A copy of recommendation dated 18.04.2018 bearing reference Na.Ka.No.320/2015, has also been produced before this Court.

9. In the light of the above findings and observations, the impugned order dated 26.10.2018 bearing reference Mu.Mu.No.18784/Pe.O.Va (5)/2018, insofar as insisting for production of Succession Certificate from the petitioner herein is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, extending Family Pension to the petitioner herein, from the date of the death of the employee late Pauldas i.e., from 08.07.2014, together with arrears of Family Pension also. Such exercise shall be passed at least within a period of four weeks from the date of receipt of a copy of this order.



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The Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index:Yes

Speaking order

Neutral Citation : Yes

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M.S.RAMESH, J.

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