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W.P.No.30009 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.30009 of 2023

M.Ajitha Kumari

... Petitioner

Vs.

1.Director of Pension,
Perasiriyar K.Anbzhagan Maaligai,
3rd Floor, 571, Anna Salai,
Nandanam, Chennai 600 035.

2.The State
Rep by its The Secretary,
Educational Department,
Namakkal Kavingnar Mallaigai,
Fort St. George,
Chennai – 600 009.

3.Accountant General (A & E),
361, Anna Salai,
Teynampet,
Chennai – 600 018.

4.Pension Pay Officer,
Amma Complex,
Ground Floor,
Veterinary Hospital Campus,
No.571, Anna Salai,
Nandanam, Chennai – 600 035.



5. The Head Master,
Government Boys Higher Secondary School,
Pennadam,
Cuddalore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents 1, 4 and 5 to disburse the family pension amount and which was legally entitled to petitioner through my husband by considering the representation dated 01.02.2023 and 02.09.2023 and grant such other relief deem fit and proper under the circumstances of the case.

For Petitioner : Mr.D.Nandhagopal

For R1, R2, R4 & R5 : Mr.P.Ganesan
Government Advocate

ORDER

The relief sought for in the present writ petition is to direct the respondents 1, 4 and 5 to disburse the family pension amount, which was legally entitled to petitioner through her husband by considering the representation dated 01.02.2023 and 02.09.2023.

2. The case of the petitioner is that she is the wife of Mr.Thirumaran and aged about 54 years and residing at Madathannai, Keezhe Puten Veedu,



Chempanankode, Kerala. She got married to Mr.Thirumaran on 10.02.1992 at Kulathummai Village, Neyyattinakara Taluk, Kerala. From and out of wedlock between the petitioner and her husband a male child was born. The petitioner states that her husband was working as Physical Director of Grade I and he discharged his duty for about 37 years and 9 months and retired from service on 31.07.2000 and further he extended his service period till 31.05.2001. After the retirement of the petitioner's husband, he has been provided with a pension through the Pension Payment Order and a pension amount of Rs.44,102/- per month vide P.P.No.C112167/EDG. Thereafter, husband of the petitioner died on 24.10.2022.

3. The petitioner further states that after her marriage, she has been residing at Kerala and therefore, her husband transferred the payment of his pension from the Accountant General of Tamil Nadu, Chennai to the Accountant General of Kerala. After the death of the petitioner's husband, no pension amount was provided to her though the petitioner was nominated for pension amount. At the time of retirement part of General Provident Fund was discharged to a sum of Rs.1,11,992/-, which was also not discharged till now. Aggrieved by the same, the petitioner submitted a representation dated



03.02.2023. Thereafter, the petitioner received with a intimation letter dated 17.03.2023 from the Directorate of Pension and the letter reveals that the petitioner has to submit an application along with the required documents to the office in which her husband served and retired from service i.e., 5th respondent / Government Boys Higher Secondary School. The 5th respondent who in turn addressed the petitioner through phone and directed her to appear before them with relevant documents. In comply with the same the petitioner had appeared before the 5th respondent and submitted all the relevant documents. Thereafter, the 5th respondent issued with the proceedings dated 15.07.2023 and asked the petitioner to answer the questions, which were raised by them, within a period of one week. The petitioner in reply had also answered the questions and submitted all the required documents. No order has been passed on the petition submitted by the petitioner. Thereafter, the petitioner had sent the remainder for the representation on 02.09.2023. Even though the representations were sent, the respondents failed to consider the same and have not passed any order yet. Hence, the petitioner is constrained to move the present writ petition.



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4. The learned Government Advocate appearing on behalf of the respondents 1, 2, 4 and 5 submitted that he got instructions from the Head Master, wherein, it is pointed out that the Mr.Thirumaran was working as Physical Director in Government Boys Higher Secondary School, Pennadam and subsequently, on attaining the age of superannuation, he further continued his service for a period of 01.08.2000 to 31.05.2001.

5. It is further contended by the learned Government Advocate that the said Mr.Thirumaran was originally married to one Mrs.T.Chandra and subsequently, he married the petitioner, while his first wife is alive. Therefore, the petitioner is the second wife of the said Mr.Thirumaran and the second marriage is not legitimate as per Hindu Marriage Act, 1955. The Service Register, which is attached to the instructions submitted by the Head Master would reveal that the said Mrs.Chandra is the legally wedded wife of Mr.Thirumaran and her name was entered in the Service Register as nominee and also in the provident fund nomination for use by subscribers having family dated 25.08.1977. Therefore, the marriage between the petitioner and Mr.Thirumaran is null and void and the writ petition is liable to be dismissed.

6. In view of the facts and circumstances, it is seen that



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Mr.Thirumaran, who worked as a Teacher in the Government Boys Higher Secondary School was retired from service. While retiring from service, he mentioned Mrs.Chandra, who is the first wife of Mr.Thirumaran as a nominee and thereafter, the Mr.Thirumaran died on 24.10.2022. Since Mr.Thirumaran died, the retirement benefits were provided to Mrs.Chandra and later she also died. However, the petitioner name was not mentioned as nominee in the Service Register to receive the retirement benefits. The said Mr.Thirumaran has not mentioned about his second marriage with the petitioner in any of the Service Register.

7. Therefore, this Court is of the considered opinion that whether the petitioner is said to be legally wedded wife to Mr.Thirumaran or not. However, the said fact cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. However, the Competent Court has to decide whether the petitioner is legally wedded wife to Mr.Thirumaran by verification of documents and evidences.

8. The Hon'ble Division Bench of Madurai Bench of Madras High



Court has dealt with the eligibility of a second wife for family pension benefits in the case of ***Vijayalakshmi vs. The Principal Accountant General***

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(A&E) and Another in ***W.A.(MD).No.152 of 2022*** dated 25.04.2022, wherein, the Hon'ble Division Bench had decided that *“to confer the status of second wife, the appellant therein is under an obligation to prove the marriage and it should be a valid marriage and not during the life time of the first wife. The material to that effect has not been produced, rather a perusal of the charge memo shows allegation of second marriage against the erstwhile government servant during the life time of the first wife and that makes the marriage illegal and, therefore, the claim of the appellant therein seeking family pension as second wife cannot be accepted”*.

9. In view of the above judgment, the petitioner has to prove that she has not married during the life time of the first wife and she is eligible for the retirement benefits of Mr.Thirumaran. Hence, the petitioner is at liberty to approach the Competent Civil Court of Law to declare the same and then approach the authorities for considering the case of the petitioner. Unless the petitioner proves her status as legally wedded wife, she is not entitled for the retirement benefits.



10. With this liberty, this Writ Petition stands disposed of. No costs.

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Index : Yes / No

Speaking order : Non-speaking order

Neutral Citation : Yes / No

To

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Perasiriyar K.Anbazhagan Maaligai,
3rd Floor, 571, Anna Salai,
Nandanam, Chennai 600 035.

2.The Secretary,
The State
Educational Department,
Namakkal Kavingnar Mallaigai,
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