



W.P.(MD)No.13822 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.13822 of 2020

M.Pitchammal

... Petitioner

Vs.

1.The Accountant General,
(A&E Tamilnadu),
361, Anna Salai,
Teynampet,
Chennai- 600 018

2.The Superintendent of Police,
Tirunelveli District,
Palayamkottai,
Tirunelveli – 627 002.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings in R.C.No.F1/Pen/12/1987 dated 07.07.2020, quash the same and direct the second respondent to forward the family pension proposal to the 1st respondent and direct the 2nd respondent that on receiving the family



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pension proposal to sanction the family pension to the petitioner all within the time to be fixed by this Court.

For Petitioner : M/s.P.Senthur Pandian
For Respondents : Mr.P.Gunasekaran – for R1
Mr.S.P.Maharajan
Special Government Pleader - for R2

ORDER

This Writ Petition has been filed challenging the impugned order passed by the second respondent dated 07.07.2020 and to quash the same and consequently direct the second respondent to forward the family pension proposal to the first respondent and direct the 2nd respondent that on receiving the family pension proposal to sanction the family pension to the petitioner.

2. The learned counsel appearing for the petitioner would submit that the petitioner's husband was worked as Police Constable under the control of the second respondent and retired from service on 28.02.1987, on attaining the age of superannuation. After his retirement, he received



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pension and he expired on 20.03.1999. After his death, his first wife Eswarathammal received family pension and she died on 03.12.2018. He married the petitioner's elder sister as his first wife and they have no issues. Hence, he married the petitioner as his second wife and his elder sister did not raise any objection. Though there was no material available to establish that the marriage was performed in the year 1955, as per Rule 49(7) of the Tamil Nadu Pension Rules, 1978, the petitioner is entitled to receive pension. However, the second respondent has rejected the same by the impugned order, dated 07.07.2020, which is not sustainable one. Hence, he prayed for appropriate orders.

3. The learned Special Government Pleader appearing for the second respondent would submit that the deceased employee Thiru Muthiah joined in service as Police Constable in the year 1948 and retired from service as Police Constable Grade II. After his retirement, he received pension and he passed away in the year 1999. Thereafter, his first wife Tmt. Eswarathammal received family pension and she expired on 03.12.2018. Though the petitioner claims that her marriage was solemnised with the



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deceased Government employee, there is no valid proof produced to substantiate her claim. The petitioner is not eligible to get family pension as per Rule 49 (6) (i) of the Tamil Nadu Pension Rules, 1978. The family pension is payable only to the first wife is being widow and the family pension is payable to her up to the date of her death or remarriage, whichever is earlier and the second wife is not entitled to get any share in the family pension. Hence, he prayed for dismissal of this writ petition.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

5. The facts in the present case are not in dispute. Admittedly, the petitioner is the second wife of Mr.Muthiah and he worked as Police Constable and retired from service in the year 1987. Thereafter, he received pension and after his death, his first wife received family pension and she also expired in the year 2018. Hence, the petitioner has made an application for issuance of family pension, on the ground that the petitioner's marriage was performed prior to Hindu Marriage Act, 1955 came into force.



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However, the fact remains that she has not produced any document to show that her marriage was performed prior to 1955 even the marriage certificate also not produced before the authority. Further, the very same issue came up for consideration before the Division Bench of this Court in the case of ***R.Rajathi vs. the Superintending Engineer, TANGEDCO Limited, Nagapattinam Circle, Nagapattinam District*** reported in ***2018 -1 Writ L.R.725***, the Division Bench has held as follows:

"42. We have discussed the basis on which the various judgments, of course conflicting views, have been rendered. Insofar as the view that the second wife of the Government Servant, who died prior to 02.06.1992 as held in Tamilselvi's case, referred to supra, and the view that a widow of an invalid second marriage that had taken place prior to 14.10.1991, as held in Pushpavalli's case, have given our reasons, as to why, we are unable to subscribe to the said conclusions of the learned Single Judge. We are, therefore, of the opinion that in order to enable a second wife to claim family pension the marriage should have been valid under the Personal Law applicable to the parties, to hold otherwise would be in violation of the law of the W.A(MD)No.152 of 2022 land, viz. the Personal Law of the parties as well as the Criminal Law, which prohibits bigamous marriage."



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6. The above said decision makes it clear that the second wife is not entitled for family pension. Hence, this Writ Petition is dismissed. No costs.

19.01.2023

akv

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