



W.P(MD)No.3637 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P(MD)No.3637 of 2016

V.Ganthimathi

... Petitioner

Vs.

1.The Internal Audit Officer (Pension),
Audit Branch,
NPKRR Maaligai - 1st Floor,
No.144, Annasalai,
Chennai – 2.

2.The Superintendent Engineer
Tamil Nadu Power Generation & Distribution Corporation
(TANGEDCO),
Thoothukudi Electricity Distribution Circle,
Thoothukudi – 2.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order made in Lr.No.044779/946/F8/F83/PPO No.37486/2015 dated 02.11.2015 passed by the first respondent and to quash the same as illegal and arbitrary and consequently direct the respondents herein to provide the family pension to the petitioner herein with arrears from the date of death of her husband i.e., from 06.07.2014 and other monetary benefits.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : M/s.M.Parameswari

Standing Counsel

ORDER

This writ petitioner seeks for a Writ of Certiorarified Mandamus to quash the impugned order of the first respondent in Lr.No.044779/946/F8/F83/PPO No.37486/2015 dated 02.11.2015,



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as illegal and arbitrary and for a consequential direction to the respondents herein to provide the family pension to the petitioner herein with arrears from the date of death of her husband i.e., from 06.07.2014 and other monetary benefits.

2.The facts leading to the Writ Petition :

The writ petitioner's husband, namely, Vaalvangoo, was working as a Line Inspector in the Thoothukudi Division of the TANGEDCO. He retired from service on 31.03.2001. He was receiving pension till his death on 06.07.2014. The said Vaalvangoo had been previously married with one Muthammal who passed away on 12.12.1989. The said Vaalvangoo lived with the petitioner till his death on 06.07.2014. From the wedlock between the writ petitioner and the deceased employee Vaalvangoo, three children were born. They are Ulagammal, Ganesan and Vanuvamalai. The request for family pension was returned by the Tamil Nadu Electricity Board under the impugned order. As per the impugned order, the Writ Petitioner was directed to approach the Court and obtain the remedy



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for pension. The impugned order did not dispute the relationship between the petitioner and Vaalvangoo, but, on the contrary, had taken a view that since Vaalvangoo had married the writ petitioner, when Muthammal was alive, the marriage is invalid. Challenging the same, the present Writ Petition has been filed.

3. Heard Mr.M.Thirunavukkarasu, learned counsel appearing for the petitioner and Ms.Parameswari, learned Standing Counsel appearing for the respondents and perused the materials placed on record.

4. A perusal of the counter filed by the respondent shows that the date of death of Muthammal is not denied. It is also not denied that Muthammal was mentally insane as alleged by the petitioner.

5. Ms.Parameswari, learned Standing Counsel for the respondents relied upon paragraph No.28 and vehemently argued



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that the writ petitioner is not entitled to family pension. She pointed out that there is no difference between the case in **2018-1-Writ L.R. 725** and the case on hand.

6. It is true, as argued by Ms.Parameswari, learned Standing Counsel for the respondents based on the Division Bench judgment in ***K.Rajathi Vs. The Superintendent Engineer, TANGEDCO Ltd., Nagapattinam Circle, Nagapattinam District and another*** reported in **2018-1-Writ L.R. 725**, that the second marriage during the subsistence of the first marriage falls foul of Rule 49 of the Tamil Nadu Pension Rules, 1978 and therefore, the second wife will not be entitled to pension. However, the fact that Vaalvangoo and Muthammal were living as man and wife, post death of first wife Muthammal from 12.12.1989 till his death on 06.07.2014 has been admitted. This is a very unique situation where after the death of the first wife, the relationship between the writ petitioner and the deceased employee Vaalvangoo continued for a period of nearly 25 years.



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7. In similar circumstances, My Brother, Mr. Justice N.Anand Venkatesh, was pleased to hold that where man and wife had been living for a long time and from that relationship, children have been born, such female would be entitled to receive the benefit of family pension. This view was taken in ***W.P.34952 of 2019 dated 23.01.2020***. The learned Single Judge was pleased to hold as follows :

“11. The only issue that requires consideration is whether this long cohabitation will ennure to the benefit of the petitioner and make her eligible to receive the Family Pension. To decide this issue, the judgment that was cited by the learned counsel for the petitioner becomes very relevant. This Court, in **S.Suseela @ Mary Margaret Vs. The Superintendent of Police and another** made in W.P.No.15806 of 2015 dated 18.06.2015, had dealt with the similar issue. The relevant portions in the judgment is extracted hereunder:-

2.The husband of the petitioner one
K.M.Stanley was employed as a Head



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Constable in the Police Department. While he was in service, he married one Suganthi on 06.06.1973 and out of the said wedlock, they have a female child namely, Rooth Epsia. There were some difference of opinion between K.M.Stanley and Suganthi and they lived separately from 1975 onwards. While so, K.M.Stanley married the petitioner herein on 23.06.1976, when the first marriage with Suganthi was subsisting. Out of the wedlock, one male child namely, Nakeeran was born and he is now aged around 35 years.

3.The first wife namely Suganthi approached the learned Principal District Judge, Erode, by filing IDOP No.25 of 2001 seeking dissolution of marriage and the District Judge allowed the said petition on 05.11.2003 and the marriage between K.M.Stanley and Suganthi was dissolved. Furthermore, the said Suganthi died on 02.12.2005.



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4.While so, K.M.Stanley retired from service on 31.07.2001. After retirement, he has drawn pension and he died on 28.10.2011. During his life time, K.M.Stanley gave a representation dated 26.06.2007 to the first respondent to include the name of the petitioner herein as his nominee for the purpose of getting family pension.

5.The first respondent sent a proposal dated 04.09.2014 to the second respondent to sanction family pension to the petitioner recognizing that the petitioner is the wife of the deceased Government servant. But, the second respondent passed the impugned order dated 13.02.2015, rejecting the proposal stating that since, the marriage between the deceased Government servant and the petitioner herein took place on 23.06.1976, when the marriage between the deceased Government servant and his first wife namely Suganthi was in subsistence, the petitioner herein is not



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eligible for family pension.

6.The petitioner has now filed this writ petition seeking to quash the impugned proceedings of the second respondent in No.Pen.33/2/pt 11155/FP/14-15 dated 13.02.2015 and to direct the second respondent to accord sanction for grant of family pension to her.

10.At this juncture, the learned counsel for the petitioner placed reliance on a judgment of the Hon'ble Supreme Court in **Dhannulal and others v. Ganeshram and another (ILC-2015-SC-civil)**, wherein in paragraph Nos.14 and 15, it has been held as follows:-

14.In the case of **Gokal Chand vs. Parvin Kumari, AIR 1952 SC 231**, this Court observed that continuous cohabitation of woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from



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long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15.It is well settled that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a long time. However, the presumption can be rebutted by leading unimpeachable evidence. A heavy burden lies on a party, who seeks to deprive the relationship of legal origin. In the instant case, instead of adducing unimpeachable evidence by the plaintiff, a plea was taken that the defendant has failed to prove the fact that phoolbasa Bai was the legally married wife of Chahatrapati. The High Court, therefore, came to a correct conclusive by recording a finding that Phoolbasa Bai was the legally married wife of Chhatrapati.

11.In these circumstances, the first respondent thought it fit to send proposal



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for family pension to the petitioner. However, the second respondent by way of the impugned order rejected the same.

12.In view of the aforesaid facts, the second respondent was not correct in rejecting the proposal for family pension to the petitioner on the sole ground that when the petitioner married the deceased Government servant, the marriage between the Government servant and his first wife was subsisting.

13.In view of all the above, I am of the view that the second respondent while passing the impugned order failed to take into account the entire facts of the case, particularly, the dissolution of marriage between the deceased Government servant and his first wife in the year 2003; the death of the first wife of the deceased Government servant in the year 2005 and the continuous living together of the deceased Government servant with the petitioner from 1976 till the death of the deceased Government servant in the year



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2011. Hence, the first respondent has rightly thought it fit to send proposal for family pension to the petitioner. If it is so, I am of the view that the second respondent is not correct in rejecting the proposal for family pension. It is now accepted that without the formal marriage, living together relationship has conferred every right for the parties aggrieved to claim for their legal rights. In the aforesaid facts and circumstances of the case, the order passed by the second respondent is liable to be interfered with.?

12. Even in the above judgment, the petitioner therein had married the Government Employee during the subsistence of the first marriage. The only difference is that in that case, the first marriage got dissolved in the year 2003 and the first wife died in the year 2005. This Court took into consideration the judgment of the Hon'ble Supreme Court in Dhannulal's case. The Hon'ble Supreme Court, in the said case has held that Law presumes in favour of marriage and against



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concubinage, when a man and woman have cohabitated continuously for a long time. By relying upon this judgment, this Court held that after the dissolution of marriage with the first wife and after her death, the petitioner therein was living with the deceased Government servant till his death. This was taken into consideration by this Court and this Court held that the petitioner therein must be considered to be the wife of the deceased Government servant atleast after the dissolution of the first marriage and the subsequent death of the first wife.

13. This Court is in complete agreement with the proposition of law that has been enunciated in the above judgment. It is very easy to brand the petitioner as a concubine and deprive her of her livelihood. However, the fact remains that the petitioner lived with the deceased Dr.A.Chinnasamy from the year 1975 up to his death in the year 2009. This means that she lived with him for nearly 34 years. The petitioner also gave birth to three children. If the petitioner had made this claim when the first wife is alive, then obviously the petitioner will not be entitled for



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Family Pension, since her relationship is not recognized by law.”

To reiterate the fact that the writ petitioner was living with Vaalvangoo from 1989 till his death in 2014, has not been controverted by the Electricity Board.

8. The fact that the employee left behind three issues from the marriage has also not been denied by the Electricity Board. On the contrary, the Electricity Board admitted that the children have been born from the relationship and they are entitled to pension as per the Tamil Nadu Pension Rules. This implies that Ganthimathi who was living with Vaalvangoo for more than 25 years and gave birth to three children is deemed to have been living with Vaalvangoo as man and wife post the death of the first wife. As pointed out by my brother in the aforesaid judgment, if Ganthimathi had made a claim of family pension when Muthammal was alive, certainly, she will not be entitled to the benefit of family pension.



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However, the relationship having been continued for a long time after the death of Muthammal and the fact of the relationship not having been denied by the Electricity Board, the impugned order is liable to be interfered with the same.

9. In the case before the Division Bench, it was not a situation where the second wife continues to live with the deceased employee post death of the first wife for over a period of 25 years. The facts of the present case is *akin* to the case which had been decided by My Brother, Mr.Justice N.Anand Venkatesh and therefore, I am following the said judgment.

10. I would respectfully follow the judgment in ***W.P.No.34952 of 2019*** and I have to consider the cohabitation between the deceased employee Vaalvangoo and the writ petitioner post death of the first wife. That is the crucial factor, which constrains me to quash the impugned order and grant the family pension for the wife.



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11. In the light of the long cohabitation post death of Muthammal, I presume the birth of the three children and following the judgment of the case in *C.Sarojini Devi Vs. The Director of Local Fund Audits, Chennai and two others* in *W.P.No.34952 of 2019*, the impugned order is quashed. The second respondent is directed to disburse the family pension to the writ petitioner from the date of death of the deceased Vaalvangoo within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12. With the above directions, this Writ Petition is allowed. No costs.

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NCC :Yes/No
Index :Yes/No
Internet : Yes/ No

RM



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To

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Audit Branch,

NPKRR Maaligai - 1st Floor,

No.144, Annasalai,

Chennai – 2.

2.The Superintendent Engineer

Tamil Nadu Power Generation & Distribution Corporation

(TANGEDCO),

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V.LAKSHMINARAYANAN, J

RM

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