



W.P.(MD)No.18645 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.18645 of 2020
and
W.M.P.(MD).No.15607 of 2020

S.Mini

Vs.

... Petitioner

- 1.The Government of India,
Rep by its Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110 001.
- 2.The Director General,
Border Security Force,
10th CGO Complex,
Lodhi Road, New Delhi-3.
- 3.The Commanding Officer,
HQ 131 BN BSF,
Dholchera P.O., Jaraikthola Bazar,
Cachar District, Assam 788 127.
- 4.The Pay and Accounts Officer,
Central Pension Accounting Office,
Ministry of Finance,
Government of India, Trikoot-II Complex,
Bhikaji coma Place, New Delhi-110 062.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to record the petitioner's name as the wife of Late Const.D.Vijaya Kumar BSF No.920090369 in the records maintained by the third respondent and consequently sanction and disburse the family pension in favour of the petitioner, based in the petitioner's representation dated 17.11.2020 within the time stipulated by this Court.

For Petitioners :Mr.Ananth C.Rajesh

For Respondent :Mr.P.Paul Pandi
Standing Counsel

ORDER

Heard the learned counsel appearing on either side.

2. The writ petitioner's husband was employed as constable in BSF and their Marriage took place on 29.10.2001 and a female child was born on 26.04.2003. It appears that the relationship between the petitioner and her husband had come under strain. Be that as it may, the petitioner's husband Vijaya Kumar died while in service on 13.06.2012. The authorities



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had been paying the family pension to the daughter V.M.Nandhini. V.M.Nandhini has recently attained majority and she had been all along with the writ petitioner only. The petitioner now wants the pension to be paid to her directly. The request of the petitioner was not accepted by the respondents. Hence, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated the contention set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The respondents have filed a counter affidavit along with the typed set of papers. The learned Standing counsel drew my attention to the deed of dissolution dated 30.04.2008. It is also a registered document. A consent deed appears to have been executed by the petitioner. He submitted that the petitioner having kept quiet all these years, ought not to be allowed to raise this issue at this point of time. Hence, he prays for dismissal of this writ petition.



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5. I carefully considered the rival contention and went through the materials on record.

6. The relationship between the petitioner and the Vijaya Kumar is beyond dispute. once they were lawfully wedded, their marriage could have been dissolved only in the manner known to law. It cannot be dissolved through a deed of dissolution. Even though the petitioner, had given her consent, still it cannot operate against her. Legal procedure is very clear. So long as, the marriage is not snapped in the manner known to law and it is deemed to continue. Thus, when Vijayakumar was passed away, the petitioner was very much his legally wedded wife. Therefore, the petitioner is entitled to the family pension. The petitioner probably kept quiet all these years, because, the daughter was getting family pension. Now, the daughter has attained majority and may be married of in a few years. The prospect of stoppage of family pension has led to the filing of this petition. Motivation of the petitioner need not concern this Court. The only question this Court is called upon to answer is whether the petitioner has legal right to receive family pension.



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7. I have come to the conclusion that since there is no formal decree dissolving the marital relationship between the petitioner and Vijaya Kumar, the petitioner has to be necessarily recognized as his widow.

8. I direct the respondents to disburse the family pension payable on account of the demise of the Vijaya Kumar to the petitioner. This arrangement, shall come into with effect from 01.09.2023.

9. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.04.2023

NCC :Yes/No

Internet :Yes/No

Index :Yes/No

sbm

Issue order copy on 25.07.2023.



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G.R.SWAMINATHAN, J.

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