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W.P.(MD)No.26815 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.26815 of 2019

Sumathi

... Petitioner

vs.

- 1.The Superintending Engineer,
Water Resources Department,
Thamirabarani Water Basin Division,
Anna Nagar, Tirunelveli-627 002.
- 2.The Executive Engineer,
Public Works Department,
Water Resources Department,
Anti Sea Erosion Division,
Nagercoil-629 001,
Kanyakumari District.
- 3.The Assistant Executive Engineer,
Public Works Department,
Water Resources,
Kothaiyaaru Divison,
Kulithurai, Kanyakumaari District.

4.A.Rajendran

... Respondents



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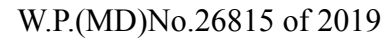
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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent, vide office proceedings in Kaditha No:871/2018/Ni.U, dated 15.07.2019 and to quash the same as illegal and consequently, to direct respondent Nos.1 to 3 to enter the petitioner's name and the petitioner's daughter's name as “Spouse (Wife)” and “Daughter” respectively in the service register of the 4th respondent within a stipulated time that may be fixed by this Court.

For Petitioners : Mr.R.Karunanidhi
For R1 to 3 : Mr.M.Lingadurai
Special Government Pleader
For R4 : M/s.J.Balameenakshi

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order passed by the 2nd respondent, vide office proceedings, dated 15.07.2019 and consequently, to direct respondent Nos.1 to 3 to enter the petitioner's name as “Spouse (Wife)” and the petitioner's daughter's name as “Daughter” respectively in the



2. The 4th respondent is the husband of the petitioner and they were married as per Hindu religious rites on 20.08.1989. He joined service in the respondents 1 to 3 department as NMR. Thereafter, he was promoted was Junior Engineer. In the meanwhile, the 4th respondent has completed Graduation in Engineering. Hence the 4th respondent requested to consider him for the post of Assistant Executive Engineer, since the same was not considered the 4th respondent is having grievance against the respondents 1 to 3.

3. The petitioner and the 4th respondent were married and they were blessed with a child, namely R.Nithya on 07.08.1990. But there are several allegations and counter allegations between the petitioner and the 4th respondent and this Court is not inclined to go into the said



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allegations. But the relevant particulars alone are recorded. The petitioner had filed Cr.M.P.No.90 of 1991, on the file of Chief Judicial Magistrate, Periyakulam, claiming maintenance and the same was allowed. The 4th respondent was directed to pay Rs.150/- to the daughter and Rs.450/- to the petitioner. Pending these litigations, the respondents 1 to 3 have deducted Rs.1,05,000/- and paid the sum to the petitioner. However, subsequently, the 4th respondent has not paid any maintenance to the petitioner and the petitioner has submitted a calculation memo before this Court and the same is extracted hereunder:

S.No.	Maintenance claim & Period	Months	Amount
1.	Cr.M.P.No.101 of 2006 (24.11.1996 to 24.11.1997)	12	Rs.3,600/-
2.	Cr.M.P.No.102 of 2006 (24.11.1998 to 24.11.1999)	12	Rs.3,600/-
3.	Cr.M.P.No.100 of 2006 (24.05.2000 to 24.04.2001)	11	Rs.3,300/-
4.	Cr.M.P.No.100 of 2006 (24.11.1998 to 23.05.2000)	18	Rs.5,400/-
5.	Cr.M.P.No.100 of 2006 (24.04.2001 to 30.09.2013)	161	Rs.48,300/-



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6.	Cr.M.P.No.910 of 2013 (31.01.2021 to 01.10.2013) Increased maintenance amount a sum of Rs.15,000/-	88	Rs.13,20,000/-
7.	From 31.01.2022 to 31.02.2023	23	Rs.3,45,000/-
	Total amount	-	Rs.17,29,200/-
	Paid on 06.11.2020		Rs.1,05,000/-
	Balance total amount		\$s.16,24,200/-

The total balance amount payable to the petitioner is Rs.16,24,200/-

4. Now the claim of the petitioner is to include her name and her daughter's name in the service records of the 4th respondent. It is stated that the 4th respondent has married another lady namely, Kavitha and having two children (a daughter and a son) and the said Kavitha's name is entered in the service register.

5. The 4th respondent is having grievance since he was not granted the Assistant Executive Engineer post, in spite of his Engineering qualification. Moreover the 4th respondent is depressed since the official



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respondents had deducted an amount of Rs.1,05,000/- from his salary and paid the same to the petitioner for maintenance. It is reported that the 4th respondent is on a long leave and hence, the 4th respondent is not getting any salary as on date. It is also submitted that if the 4th respondent report to duty, then he would be considered for promotion to the post of Assistant Executive Engineer. The submissions narrated in this paragraph are simply recorded.

6. However, the prayer in the writ petition is to include the name of the petitioner and her daughter (Nithya) as legal heirs of the 4th respondent. It is submitted that the petitioner and the 4th respondent are not divorced as per law, but it is claimed that they had customary divorce. But such customary divorce between the petitioner and the 4th respondent cannot be entertained since such divorce is not recognized by any Court of law. In such circumstances the petitioner is entitled to get her name entered in the service records of the 4th respondent. As far as



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the petitioner's daughter's name is concerned, the 4th respondent is objecting to the same stating various reasons, but has not filed any case regarding this issue and obtained any order. Since no order is passed forbearing the official respondents from entering the petitioner's daughter's name, then the said name ought to be entered in the service register as daughter. As far as the second wife namely Kavitha is concerned, admittedly she is second wife and she is not entitled to enter her name in the service records of the 4th respondent, since the service rules for the government employee prohibits bigamy.

7. In the impugned order, it has been stated that the petitioner has not produced the relevant documents. The learned Counsel for the petitioner submitted that pending writ petition, they have submitted all the documents before the authorities and the petitioner was also directed to appear for the enquiry. The petitioner had also appeared before the authorities for enquiry. Since this Court has held supra that the 4th



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respondent has not divorced the petitioner as per law but only divorced through customary divorce, the same cannot be recognized under law. Therefore, the petitioner is entitled to be considered and the claim of the petitioner to enter her name in the service register of the 4th respondent is legally valid.

8. Hence, the impugned order is quashed. The respondents 1 to 3 shall enter the name of the petitioner as wife of the 4th respondent and petitioner's daughter's name as daughter of the 4th respondent and the said exercises shall be completed with a period of eight weeks from the date of receipt of a copy of this order.

9. With the above said observation, the writ petition is allowed. No costs.

Index : Yes / No
Internet : Yes
NCC : Yes / No
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21.03.2023



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To

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Public Works Department,
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S.SRIMATHY, J

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