



W.A.(MD).No.394 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.12.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM  
AND  
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).No.394 of 2023  
and  
C.M.P.(MD).No.4270 of 2023

1.Helen Nesakumari

2.Don Charles .. Appellants/Respondents 2 & 3

Vs.

1.Tamil Nadu Electricity Board (now),  
TANGEDCO,  
Kadamparai Electric Generation Circle,  
Minparai Post – 624 101,  
Represented by  
The Superintending Engineer. .. 1<sup>st</sup> Respondent/ 1<sup>st</sup> Respondent

2.Kamalabai

3.Jinesh

4.Jinisha Balan .. Respondents 2 to 4/Writ Petitioners

**PRAYER:** Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 31.10.2022 made in W.P.(MD).No.5959 of 2019 and allow the Writ Appeal.



W.A.(MD).No.394 of 2023

For Appellants : Mr.T.Cibi Chakraborty

For R-1 : No appearance

For R-2 to R-4 : Mr.N.Dilip Kumar

### **JUDGMENT**

**(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)**

The Writ Appeal has been instituted against the order dated 31.10.2022 made in W.P.(MD).No.5959 of 2019.

2. The first appellant claims to be the legally wedded wife of late Mr.Jeyabalan, who was an employee in the Tamil Nadu Electricity Board and died while in service. The first appellant states that the marriage between herself and her deceased husband Jeyabalan was solemnized on 21.08.1996 at CSI Church as per Christian rites and customs. The second respondent Kamalabai also claims to be the legally wedded wife of the deceased employee, Mr.Jeyabalan.

3. Admittedly, dispute exists between the first appellant and the second respondent regarding their marital status with the deceased



*W.A.(MD).No.394 of 2023*

employee Mr.Jeyabalan. The suit instituted by the appellants was dismissed and an appeal suit is filed in A.S.No.143 of 2018, which is pending on the file of the learned Principal District Judge, Kanyakumari at Nagercoil.

4. During the pendency of the civil litigation, the respondents 2 to 4 filed a Writ Petition before this Court in W.P.(MD).No.5959 of 2019, seeking a direction to forthwith pay the terminal benefits and family pension to the respondents 2 to 4.

5. The learned Single Judge considered the findings rendered by the learned Trial Judge in the Original Suit and formed an opinion that the second respondent is the legally wedded wife of the deceased Jeyabalan. There was no dispute that the second appellant was born to the deceased employee through the first appellant. By applying the succession law, the learned Single Judge made a finding that the law does not discriminate between legitimate children and illegitimate children. However, the fact remains that the respondents 2 to 4 belong to Christianity and the succession law as applicable to Hindus cannot be applied in the present case and there, the learned Single Judge committed an error.



*W.A.(MD).No.394 of 2023*

WEB COPY

6. A direction was issued to the Tamil Nadu Electricity Board to disburse the pensionary and terminal benefits forthwith in favour of the second respondent. We are informed that a portion of the benefits, as apportioned by the learned Single Judge in the impugned order, was already settled to the respondents 2 to 4 and the second appellant.

7. We are afraid that if such a proposition has been followed in service law, more specifically in the matter of settlement of pensionary and terminal benefits, then the scope of the Pension Rules and the scheme are diluted. Contracting a second marriage by a Government employee during the lifetime of the first wife is a grave misconduct warranting major penalty. In the present case, the deceased employee escaped from the clutches of disciplinary proceedings despite the fact that he married two wives. The claim set out by the first appellant and the second respondent regarding the legal validity of their marital status is to be determined by the competent Civil Court of law. The parties have already approached the Civil Court and an appeal suit in A.S.No.143 of 2018 is pending.



8. Pensionary and terminal benefits cannot be settled in violation of the Pension Rules and the scheme in force. The Tamil Nadu Electricity Board has adopted Tamil Nadu Pension Rules, 1978, for the purpose of settling the pensionary benefits to its employees. Under the Tamil Nadu Pension Rules, the legally wedded spouse alone is entitled for pensionary benefits. An employee is entitled to nominate any person to receive gratuity, but, certainly not the family pension. Family pension is to be paid only to the spouse as per the Pension Rules. Therefore, during the pendency of a dispute regarding the marital status, the authorities may not be in a position to settle the family pension.

9. The Courts are not expected to apportion the pensionary and terminal benefits contrary to the Pension Rules, which is in force and applicable to the employees of the Tamil Nadu Electricity Board. In the event of apportioning the pensionary and terminal benefits, the same would run counter to the conduct rules as applicable to the public servants and would result in violation of the Pension Rules in force. When contracting a second marriage during the lifetime of the first wife is a misconduct and an employee contracting such second marriage is liable for major penalty, after



*W.A.(MD).No.394 of 2023*

his death, apportioning the pensionary benefits between two wives is beyond the scope of the pension scheme and therefore, the Writ Courts are not expected to apportion the pensionary and terminal benefits due to the deceased employee in favour of two wives.

10. In view of the fact that the civil litigation is pending and such complex nature of facts cannot be adjudicated by the High Court in a writ proceedings or in the intra-court appeal, the parties have to claim service benefits only after disposal of the civil litigation between them. After reaching finality, either of the parties may approach the competent authority for disbursing the pensionary and terminal benefits, which are all due to the deceased employee.

11. In the present case, the parties have to establish their rights before the Civil Court by producing documents and evidences and after disposal of the civil litigation, they are at liberty to approach the authorities for settlement of pensionary and terminal benefits due to the deceased employee.



W.A.(MD).No.394 of 2023

12. With these observations, the order impugned dated 31.10.2022 in

W.P.(MD).No.5959 of 2019 is set aside and the Writ Appeal stands allowed.

There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

**(S.M.S.,J.) (V.L.N.,J.)**  
**05.12.2023**

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

To

The Superintending Engineer,  
Tamil Nadu Electricity Board (now),  
TANGEDCO,  
Kadamparai Electric Generation Circle,  
Minparai Post – 624 101.



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*W.A.(MD).No.394 of 2023*

**S.M.SUBRAMANIAM,J.**  
**and**  
**V.LAKSHMINARAYANAN,J.**

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W.A.(MD).No.394 of 2023

05.12.2023