



W.A.No.1890 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.1890 of 2019 and

WMP No.7014 of 2019

The Principal Accountant General
(Accounts and Entitlement),
Teynampet, Chennai

... Appellant

Vs.

1. Saya Marthal
2. The Headmaster,
Government Boys Higher Secondary School,
Peravurani, Tanjore District.
3. The State of Tamil Nadu,
Rep. by its Secretary to the Government,
Finance (Pension Department,
Fort St. George, Chennai 600 009.

(R3 was suo motu impleded, vide order of the Court
dated 22.08.2023 in W.A.No.1890/2019)

...

Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed by this Court in W.P.No.27659/2013 dated 18.08.2017.

For Appellant : Mr. Vijay Shankar
for Mr.T.S.Selvarani
For Respondents : No appearance for R1
Mr.V.M.Ravichandran, Spl.Govt.Pleader
for R2 and R3.

JUDGMENT

(Order of the Court was delivered by K.KUMARESH BABU, J.)

This Writ Appeal has been filed by the Government, challenging the order passed by this Court in W.P.No.27659/2013, dated 18.08.2017, in and by which, the appellant was directed to *sanction family pension to the first respondent from the date of the death of the deceased Government Servant, within a period of 12 weeks and to pay monthly family pension to the first respondent herein.*



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2. In the instant intra-court appeal, the claim of the first respondent/writ petitioner is that, she is the wife of the deceased employee viz., A.Duraisamy. Since her claim for family pension has been rejected, she approached Writ Court. The learned Single Judge by the order impugned, had directed the family pension to be paid to her.

3. In spite of notice being served upon the first respondent/writ petitioner, she neither being appeared in person nor through counsel.

4. The deceased employee had filed nomination for Family Pension in Form-E, as required, in which, he had nominated i) D.Mercy (wife), ii) D.Elavazhagan (son), and iii) D. Elanselvi his (daughter), as nominees to receive various benefits, that was approved to him. He had made nomination in respect of his family pension also. It is to be seen that the nominees had not been made as parties/respondents in the writ petition. However, the learned Single Judge, had proceeded to conclude, based on the reliance upon Rule 49 (7)(a)(i) of the Tamil Nadu Pension Rules to hold



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that the first respondent would be entitled to receive family pension.

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5. The learned Single Judge, had failed to note that the explanation appended to Rule 49(7)(1) of Pension Rules, where, it categorically states that the second marriage should be a valid marriage, as per the Personal Laws or the Hindu Marriage Act. It is to be noted that even though the said explanation would not be available in the present case, as the employee is a person traversing Christianity, but, however considering the fact that the nomination form submitted by the deceased employee does not nominate the first respondent/writ petitioner to receive family pension, we are of the view that the impugned order passed by the learned Single Judge, would have to be interfered with. However, it is always open to the first respondent to substantiate her right that she had been validly married with the deceased Government employee by initiating civil proceedings and thereafter make a claim, that she would be entitled to receive the benefits as claimed by her in future. For the forgoing reasons, the order passed by the learned Single Judge, impugned in the Intra-Court Appeal is liable to set aside.

6. Accordingly, this writ appeal is allowed and the order passed by the



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learned Single Judge, directing the appellant to sanction pension and also to pay monthly pension to the first respondent herein, is set aside. No costs.

Consequently, connected miscellaneous petition is closed.

(D.K.K.J.)

(K.B.J.)

04.04.2024

Internet: Yes/No

Index : Yes/No

mst

To

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