



W.P.No.21972 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

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S.Vijayalakshmi ... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Coimbatore Limited,
No.37, Mettupalayam Road,
Coimbatore-641 043.

2. The Tamil Nadu State Transport
Employees Pension Fund Trust,
Represented by its Administrator,
No.2, Pallavan Salai,
Chennai-600 002.

(R2 impleaded as per Order
dated 04.06.2024 in
W.M.P.No.11464 of 2024
in W.P.No.21972 of 2011)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent herein in proceedings No.பா.எண்.6863/ககா/வைநி/ததுபோக/கோவை-10 dated 18.10.2010, Quash the same and to direct the respondent herein to pay the pensionary benefits to the petitioner herein from the date of death of her husband



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w.e.f. November 2006 onwards.

For Petitioner : Mr.G.Purushothaman
For Respondents : Mr.U.Saurabh
for Mr.A.Sundaravadanam[R1]
Mr.M.Vinoth
for Mr.C.S.K.Sathish[R2]

ORDER

The petitioner Vijayalakshmi, W/o.late S.Shanmugam submits that her husband was working in Respondent/Transport Corporation for about 27 years as Conductor. He married one Shenbagavalli, D/o. Kitten of Kottur, Malayandi Village, Coimbatore on 19.03.1979 and begotten a daughter on 02.05.1980. Due to misunderstanding between them from 01.05.1985 onwards, they were living separately, leaving the child under the custody of her husband. The said Shenbagavalli filed a petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act, before the Sub-Court, Udumalpet in H.M.O.P.No.51 of 1989 and exparte order of divorce was granted on 23.08.1989.

2. The petitioner would further submit that their marriage was registered on 06.01.1990 and she was leading a peaceful life with her husband, mother-in-law and children. While so, her husband when he was on duty on 04.11.2006, met with an accident and he succumbed to



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the injuries as the bus hit on a tree. Gratuity was paid on 25.07.2008 and pensionary benefits were not extended to her despite her representations.

3. It is her further submission that she was paid Rs.15,807/- towards family welfare fund and Rs.68,096/- towards Gratuity by way of two cheques on 25.07.2008 and an amount of Rs.25,490/- was paid towards SSS Fund on 25.07.2008. An amount of Rs.41,326/- was paid to her by way of cheque on 05.08.2008 towards workers share of Provident Fund. More so, an amount of Rs.1000.50 was paid towards three days salary for November 2006 by way of cheque. When all the terminal benefits in connection with the deceased husband was paid to her by the respondent, as pensionary benefits is not extended to her. Hence, this writ petition.

4. Heard Mr.E.Purushothaman, learned counsel appearing for the petitioner and Mr.U.Saurabh, representing counsel appearing on behalf of Mr.A.Sundaravadanam for the 1st respondent and Mr.M.Vinoth, representing counsel appearing on behalf of Mr.C.S.K.Sathish, for the 2nd respondent.



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5. Mr.G.Purushothaman, learned counsel for the petitioner contended that the deceased Shanmugam admittedly got married one Shenbagavalli on 19.03.1979 and from 1985 onwards, the 1st wife of the deceased Shanmugam went out of the matrimonial home and based on the Panchayat arrangement made on 17.06.1988, they were permanently separated. Therefore, the 2nd marriage of the petitioner held on 25.11.1987 is valid and to buttress his arguments, he has placed reliance on the judgment of this Court passed in ***W.A.No.535 of 2024 (The Managing Director, Metropolitan Transport Corporation (Chennai) Ltd., v. M.Eswari)***. In that case, the husband of the respondent who was working as a conductor while he was in service died on 04.03.2018. During his life time, he married one Eswari and that the marriage was dissolved by a decree of divorce on 01.04.2004 passed in F.C.O.P.No.18 of 2023 by the Additional Principal Family Judge, Chennai. Thereafter, the said Eswari married the deceased Mohan. As per the marriage certificate produced by the respondent, the marriage took place on 20.02.2004 before the 1st marriage was annulled by a decree of divorce and it has been held by this Court that once the first marriage is annulled by a Court of law, on technical ground, the 2nd wife of the deceased Mohan cannot be questioned and the marriage was held to be valid. In the writ appeal,



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the Hon'ble Division Bench of this Court by referring to the judgment of Hon'ble Supreme Court in ***Dhannulal and Others vs. Ganeshram and another*** reported in (2015) 12 SCC 301, it has been observed that the law presumes in favour of the marriage and against concubinage, when a man and woman have cohabited continuously for a long time. The Order of the learned Single Judge was confirmed by the Hon'ble Division Bench of this Court.

6. Mr.M.Vinoth, learned counsel for the 2nd respondent strenuously contended that the 1st marriage of the deceased Shanmugam was annulled on 23.08.1989. When his first marriage was in subsistence, the deceased married for the 2nd time on 25.11.1987, which was registered on 06.01.1990. Therefore, the marriage of the petitioner with the deceased S.Shanmugam cannot held to be a valid marriage in the eye of law. Hence, based on the audit objection, the family pension from the month of July 2010 was not paid and the petitioner was required to repay the family pension received from 7 months from December 2009 to June 2010.

7. In this case, the first marriage of the deceased S.Shanmugam



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was annulled by an *exparte* Order of divorce dated 23.08.1989 in H.M.O.P.No.51 of 1989 by the Sub-Court, Udumalpet. From a careful perusal of the marriage certificate pertaining to the petitioner, it appears that her marriage was solemnized with the deceased Shanmugham on 25.11.1987 before the above said date.

8. It is relevant to note that though the deceased Shanmugam got married on 19.03.1979 and one daughter was born to them on 02.05.1980. They got separated from 01.05.1985 onwards.

9. It is also pertinent to note that for 7 months family pension was received by the petitioner. All other death benefits, namely SSS Fund, workers share of Provident Fund, Gratuity, Family Welfare Fund and 3 days salary were paid to the petitioner consequent to the death of her husband Shanmugam. Besides that the deceased had also shown the petitioner as his nominee in his service records. Therefore, having extended the pension for 7 months and paid all the death benefits pertaining to Shanmugam to the petitioner and the respondents merely on the technicality is not permitted to turn around and state that the marriage of Shanmugam with the petitioner Eswari is not valid marriage. Therefore,



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viewing in any angle and in given circumstances, the petitioner's plea is acceptable. Therefore, based on the aforesaid discussions, proceedings dated 18.10.2010, issued by the 1st respondent is liable to be quashed, hence, quashed.

10. Based on the aforesaid observations, this writ petition is allowed. The respondents shall extend the family pension benefits to the petitioner and to her children. The said exercise shall be carried out within a period of eight (8) weeks from the date of receipt of a copy of this Order. Petitioner is entitled to be paid pension from the date of death of her husband w.e.f., November 2006 onwards.

12.06.2024

Index : Yes / No
Neutral Citation Case : Yes / No
Speaking Order / Non-Speaking Order
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To

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R.KALAIMATHI, J.,

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