



W.P.No.7311 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.7311 of 2022

N.Chandra

...Petitioner

-Vs-

The Senior General Manager,
HVF Avadi,
Chennai-600 054.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the orders passed by the respondent in No.0926/PENCELL/03/85/KN dated 27.02.2021 and 01.02.2022 respectively and quash the same and consequentially issue direction directing the respondent to issue family pension in favour of the petitioner by recognizing the petitioner as a legally wedded wife to the deceased Natesan.

For petitioner

: Mr.R.Marudhachalamurthy

For respondent

: Mr.K.Subbu Ranga Bharathi
Additional Central Government
Standing Counsel



WEB COPY



W.P.No.7311 of 2022

ORDER

This writ petition has been filed challenging the order dated 27.02.2021 and 01.02.2022 passed by the respondent thereby rejected the request made by the petitioner and her husband to enter the petitioner's name as 2nd wife in his service records for future correspondence.

2. The petitioner's husband had worked as Slinger in the department of the respondent and retire from service on 31.03.1985 as he attained the age of superannuation. After his retirement he had received pension. In the year 1954, the said Natesan married Manickammal who is elder sister of petitioner herein and they lived for ten years. However, they had no issues. Therefore, while the 1st marriage was in existence and his first wife was also alive, he married the petitioner as second wife. Thereafter, they gave birth to children. The first wife died on 17.10.2014. Immediately, after his first marriage, he had entered the name of Manickammal as his wife in his service records for the purpose of monetary benefits including family pension. After the demise of his first wife, on



W.P.No.7311 of 2022

17.09.2020 the petitioner's husband made representation to register the petitioner's name as his nominee in the service register. The said request was rejected by an order dated 27.01.2021 on the ground that only legally wedded wife is eligible for family pension and any second marriage contracted during the life time of 1st wife is null and void. Subsequently, the petitioner also submitted representation dated 24.11.2021 seeking for family pension. The said request was also rejected by an order dated 01.02.2022.

3. The learned counsel for the petitioner submitted that the reason stated in the impugned orders is against the dictum lay down by Hon'ble Supreme Court of India and this Court. While first wife was living with him and with her consent only her husband married the petitioner in the year 1964 itself. They lived together and gave birth to children. In fact they were living under the same roof and on 17.10.2014 his first wife died. When the petitioner and her husband were living together for past several years and gave birth to the children she is entitle for family pension. In support of his contention he relied upon the judgment of this Court in W.P.No.34952 of 2019 dated 23.01.2020 in the case of ***C.Sarojini Devi vs***



W.P.No.7311 of 2022

The Director of Local Fund Audits and Ors. This Court relied upon the judgment of Hon'ble Supreme Court of India in the case of ***Dhannulal and others vs Ganeshram and another*** reported in ***Manu/SC/0391/2015 : ILC-2105-SC-Civil*** wherein the Hon'ble Supreme Court of India held as follows:

"14. In the case of Gokal Chand vs Parvin Kumari, MANU/SC/0077/1952 : AIR 1952 SC 231, this Court observed that continuous co-habitation of woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

15. It is well settled that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a long time. However, the presumption can be rebutted by leading unimpeachable evidence. A heavy burden lies on a party, who seeks to deprive the relationship of legal origin. In the instant case, instead of adducing unimpeachable evidence by the plaintiff, a plea was taken that the defendant has failed to prove the fact that phoolbasa Bai was the legally married wife of Chahtrapati. The



W.P.No.7311 of 2022

High Court, therefore, came to a correct conclusion by recording a finding that Phoolbasa Bai was the legally married wife of Chhatrapati."

After relying upon the said judgement this Court held as follows:

"Even in the above judgement, the petitioner therein had married the Government Employee during the subsistence of the first marriage. The only difference is that in that case, the first marriage got dissolved in the year 2003 and the first wife died in the year 2005. This Court took into consideration the judgement of the Hon'ble Supreme Court of India in Dhannulal's Case. The Hon'ble Supreme Court, in the said case has held that Law presumes in favour of marriage and against concubinage, when a man and women have cohabitated continuously for a long time. By relying upon this Judgement, this Court held that after the dissolution of marriage with the first wife and after her death, the petitioner therein was living with the deceased Government Servant till his death. This petitioner therein was living with the deceased Government Servant till his death. This was taken into consideration by this Court and this Court held that the petitioner therein must be considered to be the wife of the deceased Government Servant atleast after the dissolution of the first marriage and the subsequent death of the first wife.



W.P.No.7311 of 2022

This Court is in complete agreement with the proposition of law that has been enunciated in the above judgement. It is very easy to brand the petitioner as a concubine and deprive her of her livelihood. However, the fact remains that the petitioner lived with the deceased Dr.A.Chinnasamy from the year 1975 up to his death in the year 2009. This means that she lived with him for nearly 34 years. The petitioner also gave birth to three children. If the petitioner had made this claim when the first wife is alive, then obviously the petitioner will not be entitled for Family Pension, since her relationship is not recognized by law. "

4. In the case before Hon'ble Supreme Court of India was that the first marriage was dissolved in the year 2010 and thereafter his wife also died in the year 2005. Therefore, live-in relationship between the employee and the petitioner was considered as marital relationship and ordered for family pension. Relying upon the said judgement this Court held that the petitioner lived with deceased employee till the employee's demise and gave birth to three children. If the employee made claim when the first wife is alive he will not be entitled for family pension. The said judgement is not applicable to the case on hand for the reason that in the year 1954 the



W.P.No.7311 of 2022

deceased husband of the petitioner got married with the sister of the petitioner while the first marriage was very much in existence and the 1st wife was alive he got married to the petitioner in the year 1964. After giving birth, the husband of the petitioner retired from his service on 31.03.1985 itself. Though, her husband got married to the petitioner in the year 1964 itself. He did not take any steps to include the petitioner's name as his wife. Instead he submitted representation only on 17.09.2020 that too after the demise of his first wife on 17.10.2014 to include the petitioner's name in his service record. That apart, while the petitioner's husband was in death bed he submitted application to include the petitioner's name in the service book as nominee. It clearly shows that only for the purpose of getting family pension that too after a period of 35 years from the date of his retirement the petitioner's husband made representation to include the petitioner's name in the service register. Therefore, the above judgement is not at all applicable to the case on hand, though the petitioner had living in relationship with the deceased. Further, as per the Rule 21 of Central Civil Services (Conduct) Rules, 1964 no Government Servant shall enter into a contract or marriage with a person having spouse living. Thus, the said



W.P.No.7311 of 2022

husband of the petitioner has violated Rule 21 of CCS (Conduct) Rules by entering into contract of marriage with the petitioner herein when his first wife was very much alive and without obtaining any decree of divorce from the competent Court of law. In fact, if the petitioner's husband informed about his 2nd marriage to the petitioner when there is first wife who was very much alive he would have been disqualified from continuation of any Government Service. Therefore, he did not disclose the 2nd marriage with the petitioner in the department to include her name in the service register. In fact his first wife's name is entered as nominee of the deceased service register. After her demise that too when the husband of the petitioner was in death bed he submitted application to include the petitioner as his wife. That apart, as per Rule 54 of Central Civil Services (Pension) Rules, 1972, only legally wedded wife is eligible for family pension and any second marriage contracted during the lifetime of first wife is alive, is considered null and void. Thus, the petitioner cannot claim that she has status of legally wedded wife consequent to the death of first wife. Since, even according to the petitioner, she got married with Natesan in the year 1964 when the first wife was very much alive and the first marriage was very



W.P.No.7311 of 2022

much in existence.

WEB COPY

5. In view of the above, this Court cannot find any infirmity or illegality in the order passed by the respondent dated 27.02.2021 & 01.02.2022 respectively. Hence, this writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. No costs.

27.02.2024

Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No
gvn

To

The Senior General Manager,
HVF Avadi,
Chennai-600 054.



WEB COPY



W.P.No.7311 of 2022

G.K.ILANTHIRAIYAN,J.
gvn

W.P.No.7311 of 2022

27.02.2024