



W.P.No.39127 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2024

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THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.39127 of 2015 and
M.P.No.1 of 2015

1.Gowri
2.G.Ramya
3.G.Rajesh

... Petitioners

Vs

1.The Principal Secretary,
Government of Tamil Nadu,
Secretariat Fort St.George,
Chennai 600 009.

2.The Secretary,
Home Department,
Secretariat Fort St.George,
Chennai 600 009.

3.The Commissioner of Police,
Greater Chennai,
Vepery, Chennai 600 007.

4.The Joint Commissioner,
Greater Chennai,
South Zone, St.Thomas Mount,
Chennai 600 016.

5.Muniamma

... Respondents



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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 fourth respondent in R.C.Pen(s) 746/33006/2013 dated 14.05.2014, quash the same and consequentially direct the respondents 1 to 4 to grant pensionary and other benefits to the petitioners.

For Petitioners : Mr.S.R.Shanmughadoss for
M/S.M.L.Ramesh

For Respondents : Mr.S.John J.Raja singh,
Additional Government pleader for R1, R2, R3.

ORDER

The instant writ petition has been filed to quash the proceeding of the fourth respondent dated 14.05.2014.

2. The short facts to be decided in the present writ petition is that whether the first petitioner, being the second wife of the deceased Mr.Ganesan, is entitled for pension. In this regard, the learned counsel for the petitioners relied upon the judgment of this Court in *Balamani v. the Accountant General* made in *W.P.(MD).No.4784 of 2011, dated 26.08.2014*



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wherein, this Court, after referring to the second proviso to sub-Rule 7(a)(i) of Rule 49 of Tamil Nadu Pension Rule, 1978, has held that, since the above rule came into effect only on 14.10.1991, any second marriage that took place prior to the above date, then the second wife would be entitled for pension. In addition to that, the learned counsel for the petitioners also relied upon the judgment of this Court in S.A.No.470 of 2016 dated 26.02.2019, wherein, this Court has held that a second wife is entitled for pension. Absolutely, this Court do not have any grievance over the above legal principles. Now the issue to be considered is whether the petitioner is the second wife of the deceased and that, whether her marriage was prior to 14.10.1991.

3. Per contra, the learned Additional Government Pleader would vehemently contend that there is no proof to show that the first petitioner Gowri is the wife of the deceased. It is to be noted that even in the service record, the 5th respondent name has been mentioned as wife of the deceased, and no where the first petitioner's name has been referred as wife. Therefore, it is the contention of the learned Government Pleader that there is a factual dispute in respect of the very material factum as to the marriage between



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deceased employee and the first petitioner and such factual dispute cannot be gone into the writ jurisdiction.

4. It is an admitted fact that there is no proof to show the marriage between the first petitioner and the deceased Ganesan. However, the learned counsel would rely upon the birth certificate of the petitioners 2 and 3, where there is reference that the deceased Ganesan was the father and the first petitioner as mother. This Court could not rely upon the above birth certificate as proof of marriage between the petitioner and the deceased Ganesan and such factum must be established only by letting evidence before the Civil Court in Trial proceedings. Such exercise cannot be undertaken by Writ Court.

5. In view of the above settled legal principle and in the absence of clear proof that the first petitioner is the wife of the deceased, no order can be passed in the writ petition.

6. In the result, the Writ Petition stands dismissed. However, liberty is granted to the first petitioner to approach the Civil Court to establish her



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alleged right. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2024

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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To:

- 1.The Principal Secretary,
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Chennai 600 009.
- 2.The Secretary,
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- 3.The Commissioner of Police,
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- 4.The Joint Commissioner,
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C.KUMARAPPAN, J.

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