



W.P.No.158



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.07.2024

Pronounced on : 31.07.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.15899 of 2021

Rajathi

... Petitioner

Vs.

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Superintending Engineer Office,
Capper Hills, Cuddalore District.

2. The Executive Engineer (O&M),
Tamil Nadu Electricity Board,
Nellikuppam, Cuddalore District.

3. The Assistant Engineer (O&M),
Tamil Nadu Electricity Board,
Melpattampakkam, Panruti Taluk,
Cuddalore District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in Ka.No.504-1/Mae.Po/Ka.Mi.Pa.Va/Kada./Ni.Mae/Nir.3/Vu.Th2/Ko.Ku.Oo/2021 dated 28.04.2021 and to quash the same and further direction directing the 1st respondent to sanction the family pension to the petitioner effective from 09.06.2014 (i.e from



the date of death of the petitioners husband Mr.Balasundaram) and to disburse the arrears with 18 percentage of interest forthwith and to continue to pay the same to the petitioner and further to pay the funeral expenses of the petitioner's husband viz., Mr.Balasundaram within a stipulated period fixed by this Hon'ble Court.

For Petitioner : Mr.C.Samivel

For Respondents : Mr.Subramanian,
Standing Counsel for TNEB

ORDER

The brief facts that are relevant for disposal of this Writ Petition are as under:-

One Mr.Balasundaram worked as 'Line Inspector' in the office of the 3rd respondent and retired from service on 30.09.2004. Thereafter, he was paid pension till the date of his demise on 09.06.2014. It is thereafter the petitioner herein made a claim for payment of family pension claiming to be the wife of the deceased Mr.Balasundaram. According to the petitioner, the said Balasundaram originally married the sister of the petitioner viz., Gnanammal and as she could not beget children, the said Balasundaram married the petitioner herein viz., Rajathi and through the petitioner, he gave birth to three children viz., B.Wilson Pushparaj, G.Florence Priyadarshini and B.Salamon Paulraj on 22.09.1984, 29.10.1986 and 19.08.1989 respectively. The said Gnanammal died on



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29.05.2012. According to petitioner, she lived with the said Balasundaram after the death of his first wife and the name of the petitioner herein was also nominated by the said Balasundaram for the purpose of receiving family pension after his death as early as on 20.04.2013 during his lifetime. As the said claim made by the petitioner was not considered by the respondents, the petitioner approached this Court by filing W.P.No.4622 of 2021 and this Court by an order dated 01.03.2021 directed the respondents to consider the claim of the petitioner. It is pursuant to the said order passed by this Court, the respondents considered the claim made by the petitioner and passed the impugned order dated 28.04.2021 rejecting the claim of the petitioner on the ground that the name of the petitioner was not found in the Legal Heir Certificate produced by the petitioner. It is aggrieved by the said order dated 28.04.2021, the petitioner approached this Court by filing this Writ Petition.

2. The learned counsel for the petitioner contended that though the petitioner married the deceased employee during the subsistence of first marriage, the petitioner continued to live and cohabit with the deceased employee even after the demise of the first wife on 29.05.2012 and she lived with the deceased employee as wife till the date of his demise on 09.06.2014



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and therefore by virtue of her cohabitation with the deceased employee after the death of his first wife, she is deemed to be the wife of the deceased employee and therefore, the illegality, if any in the marriage of the petitioner with the deceased employee during the life time of his first wife stood validated after the demise of the first wife and therefore, the petitioner is entitled for payment of family pension. The learned counsel also placed reliance on a decision of the Hon'ble Apex Court in the case of *Dhannulal and others -vs- Ganesh Ram and others* reported in **2015 (12) SCC 30** and also other decisions of this Court in W.P.No.15806 of 2015 dated 18.06.2015 and W.P.No.34952 of 2019 dated 23.01.2020.

3. On the other hand, Mr.Subramanian, learned Senior Counsel appearing for the respondents contended that the marriage of the petitioner with the deceased employee during the subsistence of his first marriage is void under Section 5 of the Hindu Marriage Act, 1955 and as such the action of the deceased employee also would amount to misconduct in terms of Rule 19 of the Tamil Nadu Government Servants' Conduct Rules, 1973. He also further contended that the petitioner failed to produce any material to show that she is the legally wedded wife of the deceased employee and therefore, she is not



entitled for payment of family pension. He also placed reliance on a decision of a learned Division Bench of this Court in W.A.No.977 of 2017 dated 05.06.2018 and another decision in W.P (MD) No.15953 of 2014 dated 23.03.2020 in support of his contentions.

4. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

5. There is no much dispute on the factual aspects. Admittedly, the petitioner married the deceased employee during the subsistence of his first marriage. It is also not in dispute that the petitioner gave birth to three children through the deceased employee. It is also not in dispute that the first wife of the deceased employee died on 29.05.2012. It is also not in dispute that the deceased employee survived for more than two years after the demise of his first wife. There is no serious dispute that the petitioner continued to live with the deceased employee after the demise of his first wife till the date of demise of the employee on 09.06.2014. The three children of the petitioner have given their 'No Objection' for payment of family pension to the petitioner herein.

6. In the light of the above admitted facts, the only question that needs to



be considered by this Court is as to whether the cohabitation of the petitioner herein with the deceased employee from 30.05.2012 till the date of demise of Mr.Balasundaram on 09.06.2012 would give rise to presumption of the relationship of wife and husband between the petitioner and the deceased employee or not ?

7. Whether the cohabitation of a man and women would lead to a presumption of marriage or not has fallen for consideration before the Hon'ble Apex Court in the case of ***Dhannulal's*** case, wherein the Hon'ble Apex Court held as under:-

“14. In Gokal Chand v. Parvin Kumari[Gokal Chand v. Parvin Kumari, (1952) 1 SCC 713 : AIR 1952 SC 231] this Court observed that continuous cohabitation 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



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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 not the legally married wife of Chhatrapati. The High Court, therefore, came to a correct conclusion by recording a finding that Phoolbasa Bai was the legally married wife of Chhatrapati.”

8. The said decision of the Hon'ble Apex Court was followed by a learned Single Judge of this Court in W.P.No.15806 of 2015 dated 18.06.2015 and in another decision in W.P.No.34952 of 2019 dated 23.01.2020. In the said decision dated 23.01.2020, a learned Single Judge of this Court after having referred to ***Dhannulal's*** case held as under:-

“12. Even in the above judgment, 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



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*dissolved in the year 2003 and the first wife died in the year 2005. This Court took into consideration the judgment of the Hon'ble Supreme Court 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 woman have co-habitated continuously for a long time. By relying upon this judgment, 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 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.*

13. This Court is in complete agreement with the proposition of law that has been enunciated in the above judgment. It is very easy to brand the petitioner as a



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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.

14. The march of law happens only while considering the co-habitation that continues after the death of the first wife. That is the most crucial factor that was taken into consideration by this Court while granting the Family Pension to the petitioner in the case cited supra. Even in the present case, the first wife died on 02.04.1997. Thereafter, the petitioner lived with the deceased Dr.A.Chinnasamy till his death on 20.01.2009. During this period, it can always be construed that the petitioner and the deceased Dr.A.Chinnasamy were living as



husband and wife and their long co-habitation itself raises that presumption of marriage. Added to that the deceased Dr.A.Chinnasamy had also nominated the petitioner on 11.05.1999 to receive the Family Pension after his death.

15. In the considered view of this Court, this Court has to necessarily lean towards the presumption of marriage rather than branding the petitioner as a concubine. This will be the most appropriate way to deal with the facts of the present case, if justice has to be done to the petitioner.

16. In view of the above discussion, this Court has no hesitation to quash the impugned order passed by the first respondent on 01.02.2016 and accordingly, the same is quashed. The first respondent is directed to pass necessary orders and sanction Family Pension to the petitioner with effect from the date of death of



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Dr.A.Chinnasamy i.e., from 20.01.2009 and disburse the arrears of pension to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order. The petitioner shall be continued to be paid with the Family Pension till her life time.”

9. From the above, it is evident that in case if there is no dispute that the petitioner cohabited with the deceased employee for more than two years coupled with the fact that the petitioner had given birth to three children through the deceased employee, there is every scope for drawing a presumption that the petitioner and the deceased employee lived as wife and husband for more than two years after the death of the first wife of the deceased employee. In the above referred decision of a learned Single Judge of this Court, the fact situation is almost identical like the case on hand and this Court has taken a view that the presumption has to be drawn in favour of the second wife of the deceased employee.

10. Then, coming to the decisions relied upon by the learned Senior Counsel for the respondents in W.A.No.977 of 2017 dated 05.06.2018 and W.P (MD) No.15953 of 2014 dated 23.03.2020 are concerned, in the said decisions,



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only the rules governing the payment of family pension were alone considered, and the decision of the Hon'ble Apex Court in ***Dhannulal's*** case was not considered. Further, the concept of presumption of marriage has not been agitated nor considered by the learned Judges in the said decisions and therefore, in the context of the claim made by the petitioner herein by placing reliance on the decision of the Hon'ble Apex Court in ***Dhannulal's*** case, the decision relied upon by the learned Senior Counsel for the respondents have no application to the facts of the case on hand. No doubt, the Legal Heir Certificate produced by the petitioner does not contain the name of the petitioner, but the petitioner has contended that the name of the petitioner was nominated as wife and the person entitled to receive family pension by the deceased employee during his lifetime on 20.04.2013.

11. In the light of the above, the impugned order issued by the respondents rejecting the claim of the petitioner only on the ground of non-inclusion of the name of the petitioner in the Legal Heir Certificate cannot be sustained. The respondents failed to take into account the cohabitation of the petitioner with the deceased employee and also failed to take note of the law laid down by the Hon'ble Apex Court in ***Dhannulal's*** case and therefore, in the



considered view of this Court, this is a fit case where the matter is required to be remitted back to the Respondent No.1 for reconsidering the claim of the petitioner in the light of the observations made herein above and also in the light of the law laid down by the Hon'ble Apex Court in ***Dhannulal's*** case and the decisions of this Court in W.P.No.34952 of 2019 dated 23.01.2020.

12. Accordingly the impugned order bearing க.எண்.504-1/மேபொ/கமிபவ/கட/நிமே/நிர்3/உத2/கோ.கு.ஓ2021 dated 28.04.2021 is set aside and the matter is remanded back to the Respondent No.1 for reconsidering the claim of the petitioner in the light of the above observations and for passing appropriate orders in accordance with law by duly affording an opportunity of personal hearing to the petitioner. The Respondent No.1 is further directed to pass orders as directed above as expeditiously as possible at any rate within a period of eight weeks from the date of receipt of a copy of this order.

13. Accordingly, the Writ Petition is allowed as indicated above. No costs.



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Connected Miscellaneous Petitions, if any shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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MUMMINENI SUDHEER KUMAR, J.

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Pre-Delivery Order made in
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