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W.P. No.19707 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.19707 of 2021

S.Ramani

... Petitioner

Vs.

1.The Internal Audit Officer,
Board office Audit Branch/TNEB,
NPKRR Maaligai, 1st Floor,
800, Anna Salai, Chennai – 600 002.

2.The Superintending Engineer,
TANGEDCO TN EB,
Kancheepuram Electricity Circle,
Olimohamedpet,
Kancheepuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent herein relating to the impugned order in his proceedings in க,எண்,3233/நிபி 3/உதவி 2/கோ,06(07)/2021, நாள்.31.08.2021, quash the same and issue consequential directions to the 2nd respondent herein to sanction Family Pension to the petitioner with effect from 23.02.2021 i.e., the date of death of her husband K.Selvaraj.



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For Petitioner : Ms.Uma Maheswari for
B.Arun Kumar
For Respondents : Mr.K.Rajkumar
Standing Counsel for TANGEDCO

ORDER

The petitioner herein, claiming to be the second wife of one Late.K.Selvaraj, has filed the present writ petition. The said Selvaraj worked in the respondent Board as Foreman Grade-I and retired from service on 30.06.2007. Thereafter, he was paid pension by the respondent Board till the date of his death i.e., on 23.02.2021. It is only thereafter, the petitioner herein made a claim for payment of family pension claiming that, she is the second wife of the said Late.K.Selvaraj. In support of her contention, the petitioner also produced a legal heir certificate wherein, the petitioner herein was shown as wife and names of six children were shown at Serial No.2 to 7. The said legal heir certificate is not in dispute and the same was admittedly issued by the competent authority.

2. It is the case of the petitioner that the Late.K.Selvaraj had got married to another person by name Tmt.Poosammal. The said marriage was dissolved by the judgment and decree dated 21.07.1986 passed in H.M.O.P.No.9 of 1986 and thereafter, the petitioner herein, got married with the said Late.K.Selvaraj. The second wife of the deceased employee is legally



entitled for drawing family pension, consequent upon the death of the employee. The claim of the petitioner for payment of family pension was negatived by the respondent Board through the impugned proceedings dated 31.08.2021 only on the ground that the petitioner herein is the second wife of the deceased employee and therefore, she is not entitled for drawing family pension.

3. Though this writ petition is of the year 2021, no counter affidavit is filed as on date. As it is the matter pertinent to a claim for family pension, this Court is not inclined to adjourn the matter and no further time is given for filing counter.

4. Mr.K.Rajkumar, the learned Standing Counsel for TANGEDCO contended that, from the perusal of the legal heir certificate produced by the petitioner, it is noticed that the first daughter of the petitioner was aged 32 years as on the date of issuance of the said certificate in the year 2021 and as such the first daughter namely, R.Sumathi was born in the year 1981 and therefore, the marriage of the petitioner with the deceased employee is deemed to have taken place prior to the year 1981 i.e.,much prior to the dissolution of the marriage of the deceased employee with his first wife. Therefore, the marriage of the petitioner with the deceased employee is a void



marriage. Thus he contended that the petitioner herein, being a second wife under void marriage is not entitled for drawing family pension. In support of his contention, he also placed reliance on the decision of the learned Single Judge of this Court in W.P.(MD)No.2831 of 2022.

5. This Court has carefully considered the contentions on either side and also perused the entire material on record.

6. It is not in dispute that the deceased employee got married with his first wife which was dissolved by the judgment and decree dated 21.07.1986. There is also no material that is placed before this Court to refute the contentions of the petitioner that she has been living throughout with the deceased employee as wife and husband till the date of demise of the employee in question and she has given birth to six children through the deceased employee.

7. As seen from the legal heir certificate, the last child was aged about 33 years in the year 2021 and thus, it is evident that the last child namely, Dheenadhayalan S was born in the year 1988 i.e., much after the date of dissolution of the marriage of the deceased employee with his first wife. It is established that the petitioner herein lived with the deceased employee after the dissolution of the marriage and also gave birth to the



children and also lived with the deceased employee till the date of death of the deceased employee in question. Even assuming that the marriage of the petitioner with the deceased employee was void at inception, by virtue of the relationship continued after the dissolution of the marriage with the deceased employee with first wife, the same shall stand legalized in the light of the settled legal position.

8. The Hon'ble Apex Court held that in case, men and women lived together as wife and husband under the same roof for long period, the same would amount to deemed marriage, even in the absence of complying with ceremonies of last marriage and the wife of such deemed marriage also would be entitled to all her legal rights as legally wedded wife. Therefore, in the instant case, when it is established that the petitioner herein lived as a wife of the deceased employee and gave birth to six children including the one after the dissolution of first marriage of the deceased employee, the marriage between the petitioner and the deceased employee is liable to be presumed. Even if there is any illegality in the marriage of the petitioner with the deceased employee prior to the date of dissolution of marriage with the first wife of the deceased employee, the same shall stand legalized or validated after 21.07.1986 on which date the marriage of the deceased employee with



the first wife was dissolved.

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9. The very same legal issue has fallen for consideration before this Court, wherein the learned Single Judge of this Court in W.P.No.15806 of 2015 and the learned Judge by an order dated 18.06.2015 considered and having taken note of the decision of the Hon'ble Apex Court in ***Dhannulal and others V. Ganeshram and another read in (ILC-2015-SC-civil)*** allowed the similar claim made in the said writ petition. The Hon'ble Apex Court in the above said decision held as under:

“14.In the case of Gokal Chand vs. Parvin Kumari, 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 co-habitation 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 cocubinage, when a man and woman have cohabited continuously for a long time. However, the presumption an 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 the phoolbasa Bai was the legally married wife of Chhatrapati. The High Court, therefore, came to a correct conclusion by recording a finding the Phoolbasa Bai was the legally married wife of Chhatrapati.”

The learned Judge, having taken note of the above decision held as under:

“13. In view of all the above, I am of the view that the second respondent while passing the impugned order failed to take into account the entire facts of the case, particularly, the dissolution of marriage between the deceased Government servant and his first wife in the year 2003; the death of the first wife of the deceased Government servant in the year 2005 and the continuous living together of the deceased Government servant with the petitioner from 1976 till the death of the deceased Government servant in the year 2011. Hence, the first respondent has rightly thought it fit to send proposal for family pension to the petitioner. If it is so, I am of the view that the second respondent is not correct in rejecting the proposal for family pension. It is now accepted that without the formal marriage, living together relationship



has conferred every right for the parties aggrieved to claim for their legal rights. In the aforesaid facts and circumstances of the case, the order passed by the second respondent is liable to be interfered with.”

In the light of the above, this Court is of the considered view that the petitioner is very much entitled for drawing family pension consequent upon the death of Late.K.Selvaraj.

10. Then, coming to the decision in W.P.(MD).No.2831 of 2022 which is relied upon by the learned counsel for the respondents, in the considered view of this court, the said decision has no application to the facts in the case on hand. In that case, the claim was made to include the name of the second wife as nominee in the Service Register by the petitioner/pensioner. That was considered by the learned Single Judge of this Court, who having taken note of the fact that the marriage between the petitioner therein and the second wife was said to have taken place while the marriage of the petitioner therein, i.e., first wife was in subsistence, held that the same was void and such an act of the petitioner therein was contrary to the Conduct Rules. In such view, the request made by the petitioner therein for including the name of the second wife as nominee in Service Register was



negatived by this Court. The aspect as to whether the continued habitation of the second wife with the petitioner therein after the demise of his first wife would amount to a marriage or not was not the matter that was fallen for consideration before the learned Single Judge in the said decision. Only the conduct of the Government servant was considered by the learned Judge in the said decision. Hence, in the considered view of this Court, the said decision has no application to the case on hand.

11. From the perusal of the impugned order, it is noticed that the respondents have not taken note of the dissolution of the marriage of the first wife as early as on 21.07.1986. Therefore, the impugned order cannot be sustained.

12. In the light of the above, the impugned order dated 31.08.2021 passed by the respondents is not sustainable and the same is accordingly set aside and the writ petition is allowed directing the respondents to sanction family pension to the petitioner with effect from 23.02.2021 i.e., from the date of death of her husband, Late.K.Selvaraj and pay entire arrears of family pension as expeditiously as possible at any rate within a period of eight (8) weeks from the date of receipt of a copy of this order.

13. Accordingly, the writ petition is allowed. The connected



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miscellaneous applications, if any, shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
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