



W.P.No.18260 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	13/12/2023
Pronounced on	25/7/2024

C O R A M

The Hon'ble Dr.Justice **D.NAGARJUN**

Writ Petition No.18260 of 2014

R. Vijayalakshmi ... Petitioner

Vs

1. The Principal Accountant General
(Accounts and Entitlement) Department
Teynampet
Chennai 600 018.

2. The Deputy Chief Audit Officer
Electricity Board Audit Section
Tamil Nadu Electricity Generation and
Distribution Corporation Ltd
144 Anna Salai
Chennai 600 002.

3. The Superintending Engineer
Salem Distribution Circle
No.2/286 Kamaraj Nagar
Tamil Nadu Generation of Electricity and
Distribution Corporation Ltd
Kamarajar Nagar Colony
Salem 636 014.

4. Tamilselvi ... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order dated 23/4/2013 made in Proceedings No.SE/SEDC/ADM III/A.3/F.F.P/D.C.No.19/2013 passed by the third respondent to quash the same and consequently, direct the third respondent to sanction the family pension benefits to the petitioner or to her children.

For petitioner ... Mr.V.Meenakshi Sundaram

For respondents ... Ms.C.Sangamithirai
Special Government Pleader
for R.1.

Mr.K.Rajkumar
for R.R.2 and 3.

O R D E R

This writ petition has been filed to quash the impugned order dated 23/4/2013 made in Proceedings No.SE/SEDC/ADM III/A.3/F.F.P/D.C.No.19/2013 by the third respondent and consequently, direct the third respondent to sanction the family pension benefits to the petitioner or to her children.



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2. The facts in brief are as follows:-

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The petitioner is the second wife of Mr.Ravichandran, who was working as Assessor at respondents 2 and 3 Board. He died on 22/12/2005, while in service, leaving behind his first wife, son, mother, two daughters and one son through second wife. The petitioner's name was not included in the legal heir certificate issued by the concerned Department as the marriage of the petitioner took place during the subsistence of first marriage. There were issues between the petitioner and first wife of deceased. Third respondent has passed orders on various dates sanctioning the Special Provident Fund, Gratuity, Family Security Fund, Family Securing Subsidiary Fund, Death-cum-Retirement Gratuity, Final Payment of Special Provident Fund-cum-gratuity and GPF to all the legal heirs including the first wife and children and children of second wife excluding the petitioner.

3. It is submitted by the learned counsel for the petitioner that in so far as family pension is concerned, third respondent passed impugned order on 23/4/2013, sanctioning family pension only in favour of first wife/fourth respondent vide Proceeding No.SE/SEDC/ADM III/A.3/F.F.P/D.C No.19 of 2013, without considering the request of the petitioner. It is submitted further



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by the learned counsel that as per Rule 49 (6) (i) of Tamil Nadu Pension Rules,

1978, a widow is entitled to receive the family pension until she remarries and submitted further that as per Rule 49 (13) (b) of the Tamil Nadu Pension Rules, 1978, the unmarried daughter/through illegitimate wife and son are also entitled for family pension and thereby, the petitioner has made representations to grant family pension in favour of the petitioner and her children, however, the same was declined. Therefore, sought for setting aside the impugned order.

4. No counter affidavit is filed. However, it is submitted by the learned counsel appearing for the second and third respondents and also the learned Additional Government Pleader representing the first respondent, Principal Accountant General that as per the Tamil Nadu Pension Rules, 1978, that petitioner being the second wife of the deceased is not entitled for family pension and though the other benefits like gratuity, Special Provident Fund were given in respect of family members of the first wife of the deceased and the children of the petitioner, in so far as family pension is concerned, except the first wife, no other person is entitled.

5. Heard Mr.V.Meenakshi Sundaram, learned counsel for the petitioner, Ms.C.Sangamithirai, learned Special Government Pleader for the first



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respondent and Mr.K.Rajkumar, learned counsel for the respondents 2 and 3. I have perused the materials available on record.

6. There is no dispute that the petitioner is the second wife of Late Mr.Ravichandran. During the subsistence of first marriage of Ravichandran with fourth respondent, marriage of the petitioner with Ravichandran has taken place. The Hindu Marriage Act, 1956 does not permit second marriage during the subsistence of first marriage. Payment of Family Pension is being governed by Tamil Nadu Pension Rules, 1978. The relevant provision which attracts the facts of the case is Rule 49 (7) and the same is extracted hereunder:-

“(7) (a) (i) Where family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares.

(ii). On the death of widow, her share of the family pension shall become payable to her eligible child;

[Provided that if the widow is not survived by any child, her share of family pension shall be payable to the other widows in equal shares, or if there is only one such widow, in full to her.]



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(b) Where the deceased Government or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

[Provided that on the share or shares of family pension payable to child or children or to a widow or widows ceasing to be payable, such share or shares shall be payable to the other widow or widows and or to the other child or children otherwise eligible, in equal shares, or if there is only one widow, or child, in full, to such widow or child.]

[*Explanation.* - For the purpose of this rule, the second wife shall be eligible for the benefits of family pension only if the second marriage-

(i) solemnised as per the customary law prevailed among the community before the date of commencement of the Hindu Marriage Act, 1955 (Central Act 25 of 1955); or



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(ii) solemnised under the Mohammadan Law in which bigamy is permissible.]

[(7-A) Where family pension is payable to more than one person, each share containing a fraction of a rupee, it shall be rounded off to the next higher rupee (Except in cases where family pension, if all the shares are put together exceed the maximum limit of family pension admissible).

Provided that if a family pension (exceptional and rare) where the share of family pension as so rounded off under this sub-rule when added, causes an excess over the maximum limit, such case shall be referred to the Government.]

(8) (i) Except as provided in sub-rule(7), the family pension shall not be payable to more than one member of the family at the same time.

[*Explanation.* - For the purpose of this rule the twin children born at a single birth shall be treated as of the same age and made eligible for family pension in equal shares".]



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(ii) If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.

[(iii) (a) If sons and unmarried daughters are alive, the eligible male or female children will be entitled for family pension in the order of their birth, irrespective of the sex of the child, and the immediate younger of him or her will be eligible for family pension only after the elder above him or her become ineligible for family pension.

(b) In the case of twin children, family pension is payable to such twin children in equal shares in the event of anyone of such children ceasing to be eligible for family pension, his or her share of family pension will become payable to the other such child and when both such children become ineligible for family pension, the family pension will become payable to the next eligible child or twin children, as the case may be.]

7. On going through the above though 7 (a) speaks that family pension is payable to widows equally in case more than one widow are alive.



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The said Rule is subject to a rider given in the explanation. According to which more than one widow is entitled for equal share in the family pension, if the second marriage is solemnised as per the customary Law, prior to commencement of Hindu Marriages Act, 1955 and the other rider is that more than one widow is entitled for Family Pension equally in case if the second marriage is solemnised under Mohammedan Law where bigamy is permissible. That means except where the second marriage has taken place prior to 1955 or if marriage is solemnised as per Mohammedan Law, in respect of other situations including that of the present one, the family pension can be given only to the widow and not to the widows.

8. As already observed, The Hindu Marriages Act, does not permit and recognise the second marriage during the subsistence of first marriage, wife of the first marriage alone will get the status of the widow of the deceased and petitioner being the second wife of the deceased, will not get the status of widow. Therefore, the Family Pension cannot be given to the second wife/second widow. While appreciating the maintenance of second wife under Section 125 of the Code of Criminal Procedure, in certain occasions, the second wife can claim maintenance from her husband. Similarly, the rights of the person who is in live in relationship is also well recognised under the



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provisions of Domestic Violations Act, wherein during the subsistence of marriage, if a male or female is in live in relationship with the other spouse, the said relationship is recognised and the person who was subjected to domestic violence can make a claim under the Domestic Violence Act. However, in so far as the payment of Family Pension is concerned, Rules under Tamil Nadu Pension Rules are very clear specifically prohibiting the grant of family pension to more than one widow, except in certain conditions as discussed above.

9. It is pertinent to refer to a **Division Bench decision of this Court** in the case of **R.RAJATHI VS. THE SUPERINTENDING ENGINEER,TANGEDCO, NAGAPATTINAM DISTRICT** (W.A.No.977 of 2017, DATED 05.06.2018), wherein, in a similar circumstance regarding grant of pension to the second wife of the deceased employee, it has been held as under:

“43. We are, therefore, constrained to conclude that the judgments which conclude that a second wife would be entitled to family pension, irrespective of her marriage being void, under the provisions of their relevant Personal Law’s



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applicable to the parties do not reflect the correct position of law and therefore will stand overruled.

The applicability of Sub Rule 7(a)(i) is confined only to cases where the second marriage is valid under the Personal Law applicable to the parties, only in such cases, widows of such marriages would be entitled to family pension.”

10. The above cited Division Bench judgment of this Court squarely applies to the facts of this case. Therefore, in view of the above, the petitioner who is the second wife of late Ravichandran whose marriage was performed during the subsistence of first marriage and fourth respondent is not entitled for the family pension.

11. The learned counsel for the petitioner has also raised another issue that even if the petitioner being the second wife of her husband is not entitled for the family pension, her two daughters and son born through her are entitled for family pension, as per Section 49 (13) (b) (ii) of Tamil Nadu Pension Rules, 1978. Therefore, it has to be examined whether the widow alone is entitled for family pension or other family members are also entitled for the family members.



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12. It is true that children of the deceased through second wife are entitled for share, though not their mother. According to the petitioner in case if she being the second wife of the deceased is not entitled for pension, at least her children born through deceased are entitled for pension. Children of the petitioner are not parties before this Court. The payment of pension will have to be recovered purely on the basis of the Tamil Nadu Pension Rules, 1978. As mentioned earlier, the provisions of Rule 49 (7) of the Act decides as to who is entitled for pension. Rule 7 (a) (i) of the Act speaks that the pension has to be paid to the widow and in case if more than one widows, it has to be paid equally to the widows provided the second marriage was performed either under Mohammedan Law or should have been performed prior to 1955.

13. Therefore, on perusal of Rule 49 (7) of the Act , it is clear that since widow is alive, family pension shall be paid to the widows, in case if the widow is not available and pre deceased, even then the Rules have been provided as to whom the pension will go including the children of the widow. In the case on hand, first wife of the deceased is alive and thereby, as per Section 7 (a) (i) of the Act, the widow is entitled for pension. Therefore, it cannot be examined as to who else is entitled for the maintenance. However, in



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so far as the properties of the deceased are concerned, certainly, children of the petitioner are entitled for share. Therefore, on this ground, the petitioner cannot seek for sharing the pension to the children of the petitioner.

14. The Hon'ble Supreme Court of India in the case decided between ***NITU Vs. SHEELA RANI AND ORS in Civil Appeal No.9823 of 2016 (Arising out of SLP (C) No.21187 of 2015)***, reported in MANU/SC/1108/2016, wherein at para Nos.18 and 19, it has been held as follows:-

“18. It is pertinent to note that in this case the pension is to be given under the provisions of the Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it. Similar issue had arisen before this Court in the case of [Violet Issaac \(Smt.\) v. Union of India](#) (1991) 1 SCC 725 and after considering the relevant provisions, this Court came to the conclusion that family pension does not form part of the estate of the deceased and therefore, even an employee has no right to



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dispose of the same in his Will by giving a direction that someone other than the one who is entitled to it, should be given the same. In the instant case, as per the provisions of the Scheme, the appellant widow is the only family member who is entitled to the pension and therefore, the respondent mother would not get any right in the pension. Of course, it cannot be disputed that if there are other assets left by late Shri Yash Pal, the respondent mother would get 50% share, if late Shri Yash Pal had not prepared any Will and it appears that late Shri Yash Pal had died intestate and no Will had been executed by him.

19. For the aforestated reasons, in our opinion, the High Court committed an error by giving a direction that the respondent mother should also get 50% share in the pension. In view of the aforestated legal position, the entire pension would be payable to the appellant widow.”

15. In view of the above, the petitioner has failed to make out any valid grounds to quash the order dated 23/4/2013 passed by the third



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respondent in Proceedings No.SE/SEDC/ADM III/A.3/F.F.P/D.C.No.19/2013.

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16. Accordingly, this writ petition is dismissed. No costs.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Principal Accountant General
(Accounts and Entitlement) Department
Teynampet
Chennai 600 018.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in



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