



W.A.No.2380 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM :

THE HON'BLE MR.D.KRISHNAKUMAR, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.2380 of 2024

Megala

.. Appellant

Vs

1.The Accountant General of Tamil Nadu,
Pension & Entitlement Department,
Teynampet, Chennai-600 018.

2.Internal Audit Officer,
Audit Branch,
TANGEDCO,
No.144, Anna Salai,
Chennai-600 002.

3.The Superintending Engineer,
Electricity Distribution Circle,
TANGEDCO,
Perambalur.

.. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 8.3.2024 passed by the learned Single Judge in W.P.No.23648 of 2022.

For the Appellant

: Mr.C.Prabakaran



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W.A.No.2380 of 2024

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

Challenging the order of the learned Single Judge dated 8.3.2024 passed in W.P.No.23648 of 2022 dismissing the writ petition, the original writ petitioner has filed the appeal.

2. The writ petition has been filed by the appellant to quash the order dated 31.12.2018 passed by the second respondent and to direct the respondents to sanction family pension in favour of the appellant for the death of her husband, Annadurai.

3. The learned Single Judge dismissed the writ petition holding that the appellant, being the second wife of the deceased, her marriage is void and she is not entitled to any pension. Aggrieved by the same, the present appeal is filed by the appellant.

4. Learned counsel for the appellant submitted that the



W.A.No.2380 of 2024

WEB COPY

appellant is the second wife of the deceased employee Annadurai and while in service as Class C staff in Tamil Nadu Electricity Board, Annadurai died on 13.10.2004. He would submit that, during his life-time, the first wife Anjalai died on 8.5.1993 and subsequently, the deceased employee married the appellant as his second wife. According to learned counsel, the said marriage is legally valid, as the first wife was not extant at the time of second marriage or at the time of the death of Annadurai. In such circumstances, there is no bar in considering the appellant's request for grant of family pension to her. However, the learned Single Judge declined the prayer of the appellant. Hence, he prayed for setting aside the impugned order of the learned Single Judge with a direction to the respondent authorities to grant family pension to the appellant.

5. We have considered the submissions made by learned counsel for the appellant and also gone through the records.

6. The learned Single Judge dismissed the writ petition holding that the appellant is the second wife of the deceased Annadurai and



W.A.No.2380 of 2024

WEB COPY

her marriage itself is void and, therefore, she is not entitled to any pension.

7. The appellant is the second wife of the deceased employee. The deceased Annadurai initially got married one Anjalai and from the wedlock begotten a son (Rajakkannu) and daughter (Vasanthi) are born. On 8.5.1993, Anjalai died. After the demise of Anjalai, the deceased married the appellant Megala as his second wife and they were blessed with a son (Aruldoss). While in service, Annadurai died on 13.10.2004. The learned Single Judge held that the appellant has failed to produce the document to show that the appellant got married the said Annadurai after the demise of his first wife and her son was born on 4.6.1994.

8. The records reveal that the deceased first wife's son, namely Rajakkannu and the appellant's son Aruldoss have been paid 50% each of the pension amount and later on Rajakkannu was provided with compassionate appointment in TNEB. Further, the letter dated 25.11.2021 addressed by the third respondent to the



W.A.No.2380 of 2024

WEB COPY

appellant indicates that family pension paid to the appellant's son namely Aruldoss (born on 4.6.1994) was stopped, as he crossed the age of 25 years and the appellant was required to produce the death certificate of Annadurai and marriage certificate showing that Annadurai married the appellant. According to the appellant, despite submitting the relevant documents, the respondent authorities have not paid family pension.

9. The appellant has also enclosed the legal heirship certificate issued by the Tahsildar along with the appeal papers, wherefrom we find that the appellant was referred as the second wife of Annadurai.

10. The issue involved in the present appeal is with regard to the entitlement of the appellant for family pension upon the death of Annadurai. Even though the appellant, her son Aruldoss, daughter Vasanthi (born through first wife) and Rajakannu (born through first wife) are the surviving legal heirs, in the light of the relevant Rules, the appellant has to prove that she is the legally



W.A.No.2380 of 2024

wedded wife of the deceased Annadurai. Sitting under Article 226 of the Constitution of India, this Court cannot decide the issue of declaration as to whether the marriage of the appellant with the deceased Annadurai is valid or not.

11. A Division Bench of this Court in W.P.No.19132 of 2017, dated 4.4.2024 [*J.Indira v. The Accountant General (A&E), No.361, Anna Salai, Chennai-18 and others*], one of us (*Acting Chief Justice*) held as under:

"5. Admittedly, the petitioner is the second wife of the deceased P.D.Janakaratchagan and her marriage was solemnized with him, while his first wife namely J.Selvakumari was alive. Further, after two days from the date of death of above P.D.Janakaratchagan, the first wife was also died. According to the petitioner, the marriage invitation card, family card, election card and nomination forms produced before this court are proved that the petitioner is the legally wedded wife of the deceased government servant and now the surviving legal heirs of the above deceased are, only the petitioner and her two children and hence, she is entitled for pension. Though it is stated by the petitioner that the above second marriage was solemnized only with the consent of the first wife, the



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W.A.No.2380 of 2024

same was took place during the subsistence of the first marriage. Therefore, now the legal point to be decided is that "Whether the marriage of the petitioner is valid under law or the petitioner is legally wedded wife of the deceased employee?"

6. At this juncture, it is useful to extract the Explanation appended to Rule 49(7) of the Tamil Nadu Pension Rules, 1978, [the above explanation was added as per G.O.Ms.No.906, Finance (Pension) Department, dated 06.12.1995, which runs as follows.

49. Family Pension 49(7)(c)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

(ii) Solemnised under the Mohammadan Law, in which bigamy is permissible.

It is an admitted fact that the other terminal benefits were granted to the petitioner. Therefore, the issue is only with regard to the entitlement of the petitioner to the family pension upon the death of the deceased employee. Even though the petitioner and her two



WEB COPY



W.A.No.2380 of 2024

children are the only surviving legal heirs of the deceased government employee, in the light of the above explanation, to get the family pension, the petitioner has to prove that she is the legally wedded wife of the deceased. In such circumstances, we are of the view that this Court sitting under Article 226 of the Constitution of India, cannot go into issue of declaration as to whether the marriage of the petitioner with the deceased government servant is valid under law or not. Hence, we are not inclined to entertain this writ petition and it is for the petitioner to approach the civil court to substantiate her right and if such relief is granted to her, thereafter, she can approach the authorities concerned for granting family pension.

7. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed."

12. Qua the finding of the learned Single Judge that the marriage of the appellant with the deceased is void, we make it clear that the appellant has to seek appropriate relief before the civil court to substantiate her right and, if such relief is granted by the civil court, thereafter, she can approach the respondent



W.A.No.2380 of 2024

authorities for granting family pension. In view of the above, we are not interfering with the order of the learned Single Judge. However, we make it clear that none of the observations made by the writ court or in this judgment shall influence the decision to be arrived at by the Civil Court, in case the appellant approaches it seeking appropriate relief.

13. The writ appeal is dismissed in terms aforesaid. There shall be no order as to costs.

(D.K.K., ACJ.) (P.B.B., J.)
09.09.2024

Index : Yes/No
NC : Yes/No
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To

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W.A.No.2380 of 2024

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