



W.P.No.24508 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.24508 of 2024

Lakshmi

.. Petitioner

Vs.

1.The Principal Accountant General, (A&E),
Tamilnadu, No.361, Anna Salai, Teynampet,
Chennai – 600 018.

2.The Principal,
Government Arts College,
Coimbatore – 641 018.

3.The Treasury Officer,
District Treasury Office,
Coimbatore – 641 018.

.. Respondents

(R3 *suo motu* impleaded as per order
of this Court dated 12.09.2024 in
W.P.No.24508 of 2024)

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus calling for the
records of the 2nd respondent in Ref.O.Mu.No.2465/G/2023 dated
02.04.2024 and quash the same consequently direct the respondents to
sanction the family pension from the date of death of the petitioner's
husband namely T.Aruchamy.



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For petitioner : Mr.B.Kumarasamy
For R1 : Mr.P.Manorajan
Standing Counsel
For R2 : Mr.K.Surendran
Additional Government Pleader
For R3 : Mr.U.Baranidharan
Additional Government Pleader

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent dated 02.04.2024 and for a consequential direction to the respondents to sanction family pension to the petitioner from the date of death of her husband T.Aruchamy.

2.The case of the petitioner is that she married one T.Aruchamy and out of the wedlock, there is one daughter and two sons. The said T.Aruchamy was working in the 2nd respondent College as a Night Watchman. The petitioner also accepts the fact that her husband married one Nachammal, who is none other than the sister of the petitioner and out of this wedlock, two sons and one daughter were born.



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3.The husband of the petitioner was receiving pension after his retirement and he died on 27.12.2009. Thereafter, the petitioner was attempting to get the family pension and representation was made in this regard. The impugned proceedings came to be passed by the 2nd respondent dated 02.04.2024 rejecting the claim made by the petitioner. Aggrieved by the same, the present writ petition came to be filed before this Court.

4.When the matter came up for hearing on 23.08.2024, the following order was passed by this Court.

“Mr.P.Manorajan, learned Standing Counsel takes notice on behalf of the 1st respondent.

2.Mr.K.Surendran, learned Additional Government Pleader takes notice on behalf of the 2nd respondent.

3.The learned counsel appearing on behalf of the respondents shall take instructions as to whether Achammal was receiving the family pension during her life time. The petitioner is claiming to be the first wife of the deceased and in that capacity, she is seeking for family pension.

4.Post this case under the caption 'For Orders' on 12.09.2024.”



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WEB COPY 5.The case was once again listed for hearing on 12.09.2024 and this Court passed the following order:

“ The Treasury Officer, District Treasury Office, Coimbatore - 641 018 is suo motu impleaded as third respondent in this writ petition.

2. *Mr.U.Baranidharan, learned Additional Government Pleader, takes notice on behalf of the impleaded third respondent.*

3. *When the matter was taken up for hearing today, learned standing counsel appearing on behalf of first respondent submitted that as per records, it is Nachammal, who is the first wife of the deceased Aruchamy and the petitioner is the second wife. The petitioner is none other than the sister of the said Nachammal.*

4. *Learned standing counsel submitted that the first respondent is not able to provide with the details as to whether the family pension was received by Nachammal during her life time. In view of the same, this Court has suo motu impleaded the Treasury Officer, District Treasury Office, Coimbatore - 641 018 as the third respondent.*

5. *Learned Additional Government Pleader shall take instructions and report before this Court.*



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Post this writ petition under the same caption on 30.09.2024.”

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6.Pursuant to the above order, the learned Additional Government Pleader appearing on behalf of the impleaded 3rd respondent has received written instructions to the effect that Nachammal was never paid any family pension. The petitioner claims that the said Nachammal also died and the petitioner is the legally wedded wife of Aruchamy and therefore, she is entitled for the payment of family pension.

7.Heard the learned counsel for the petitioner, learned Standing Counsel for the 1st respondent, learned Additional Government Pleader for the 2nd respondent and the learned Additional Government Pleader for the 3rd respondent.

8.The learned Standing Counsel appearing on behalf of the respondent submitted that T.Aruchamy during his lifetime has shown Nachammal as his first wife and the petitioner as his second wife in the service records.



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9.The only issue to be considered in the present case is as to whether the petitioner will be entitled for payment of family pension under the Tamil Nadu Pension Rules, 1978.

10.This Court had an occasion to deal with a similar case in W.P.(MD).No.4784 of 2011. That was a case, where the deceased had married one Pappa and during the subsistence of the first wife, he also married one Balamani. The marriage had taken place prior to 14.10.1991. Dealing with the same, the claim made by the petitioner therein was considered in line with sub-rule 7 (a)(i) of Rule 49 of the Tamil Nadu Pension Rules, 1978. Final orders were passed on 26.08.2014 and the relevant portions are extracted hereunder:

“5.The only objection raised by the respondents 1 and 2 herein is that, as per the second proviso to Sub-Rule 7(a)(i) of Rule 49 of the Tamil Nadu Pension Rules, 1978, the petitioner is not entitled for family pension, because the marriage between her and T.K.Pandi is void as per the Hindu Marriage Act, 1955. But it is contended by the petitioner that of course it is true that the marriage between the petitioner and her husband is void, but still, the petitioner is entitled for family pension, since the second proviso to Sub-Rule 7(a)(i) of Rule 49 was introduced only on



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*14.10.1991. The learned counsel for the petitioner would submit that any wife of the second marriage, whose second marriage had taken place on or after 14.10.1991, is not entitled for family pension, whereas the petitioner is entitled for family pension, since her marriage was on 25.12.1978. The learned counsel for the petitioner would rely on a judgment of this Court in *Tamilselvi vs. The Accountant General (Accounts and Entitlements), Tamil Nadu, Chennai-18* in *W.P.(MD)No.9374 of 2010* dated 22.07.2014.*

6.I have considered the above submissions.

*7.Admittedly, the marriage between the petitioner and her husband is void as per Section 5 of the Hindu Marriage Act. But the question whether the wife of such void marriage is entitled for family pension or not had been dealt with elaborately by this Court with reference to Sub-Rule 7(a)(i) of Rule 49, in *W.P.(MD)No.9374 of 2010*. In that case, this Court took a view that the second proviso to the said provision was inserted only with effect from 14.10.1991 and therefore, any wife of the void marriage whose marriage had taken place on or after 14.10.1991 alone is not entitled for family pension. In paragraphs 12 to 18 of the order passed by this Court in *W.P.(MD)No.9374 of 2010* dated 22.07.2014, this Court has held as follows:*

"12.As I have already pointed out, so far as Tamil Nadu State is concerned, family pension is governed by



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the Tamil Nadu Pension Rules, 1978, which is a statutory Rule. As per Sub-Rule (7)(a) of Rule 49, it is crystal clear that if there are more than one wife to a Government Servant who died, they are entitled for family pension in equal moieties, until the amendment which was brought into force on 02.06.1992 did not prohibit the wife of a bigamous marriage from getting a share in the family pension. The explanation to the said Rule was introduced by amending the Rule only with effect from 02.06.1992. Therefore, on or after 02.06.1992, if any Government Servant dies, then, the wife of a bigamous marriage, which is void, is not entitled for family pension. This Rule, in my considered opinion, is prospective in operation. In the case on hand, the deceased died in the year 1988. That is the reason why the family pension was shared between Mrs.Amsavalli and the petitioner in equal moieties.



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13.Now the question is as to whether the petitioner is entitled for getting the remaining 50% of pension which was hitherto paid to Mrs.Amsavalli. As I had already extracted, the second proviso to Sub-Rule 7(a)(i) of Rule 49 makes it very clear that if the widow is survived by a child, her share of the family pension shall be payable to her child, if the child is eligible. If there is no child, who is eligible to get pension, the share which was hitherto paid to the widow would cease. This proviso was in force only until 14th October 1991. Thereafter, the same was substituted by the proviso which reads as under:

“Provided that 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.”

14.Here in this case, the first wife, Mrs.Amsavalli had a



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child and therefore, this proviso is not applicable to the petitioner so as to insist for payment of full pension.

15.Now, turning to the judgment of the Division Bench of this Court in A.S.No.154 of 2004 dated 07.03.2012, (Krishnaveni and others vs. Meera @ Devaki and others), relied on by the learned counsel for the respondent, it is not applicable to the facts of the present case. In that case, the deceased died subsequent to the amendment, by which explanation was introduced with effect from 02.06.1992. It was in those circumstances, applying the explanation, the Division Bench held that the wife of the bigamous marriage which is void, is not entitled for family pension. In this case, the deceased died even before the amendment and that is the reason why the second wife, viz. the petitioner, has been paid 50% of pension.



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16.Now, turning to Rameshwari Devi's case, cited supra, relied on by the learned counsel for the respondent, it cannot be taken as a precedent to govern the issue involved in this case. In that case, obviously there was no Rule which enables the wife of a void marriage to get a share in the pension. It was in those circumstances, the Hon'ble Supreme Court held that the wife of a void marriage is not entitled for pension. But so far as Tamil Nadu State is concerned, as I have already pointed out, the Tamil Nadu Pension Rules, 1978, has made a specific provision to enable the wife of a void marriage to get pension. Therefore, that judgment is not applicable.

17.In Yamunabai's case, the entitlement of the wife of a void marriage for maintenance under Section 125 Cr.P.C., was considered. That cannot be imported to the facts of the present case. Here, in



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this case, there is a specific Rule which entitles the wife of a void marriage to get pension. Though I am holding so, I am of the further view that in the instant case, the petitioner is not entitled for the balance 50% of pension which was hitherto paid to Mrs.Amsavalli, because Mrs.Amsavalli had a child.

18.In view of all the above, the petitioner is not entitled for the relief as prayed for."

8.In view of the said settled position of law, since the marriage between the petitioner and T.K.Pandi was prior to the crucial date, she is entitled for family pension. As a matter of fact, the respondents 3 and 4 have filed an affidavit expressing no objection for sanction of family pension to the petitioner."

11.In the case in hand, it is quite clear that the first wife Nachammal never received any family pension. The said Nachammal and the petitioner herein are sisters. The petitioner was born on 07.09.1952. She is having a son after being married to T.Aruchamy, who is aged about 58 years in the year 2023. The same is evident from the



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Legalheirship Certificate that has been relied upon by the petitioner. In view of the same, the marriage of the petitioner must have taken place before 14.10.1991. In view of the same, the above judgment that was relied upon by the learned counsel for the petitioner will apply to the facts of the present case. The marriage between the petitioner and the deceased T.Aruchamy was prior to the crucial date (i.e.,) 14.10.1991 and therefore, the petitioner will be entitled for family pension.

12.This Court is not inclined to order for any arrears of family pension in this case. Considering the fact that the petitioner is aged about 78 years, this Court is inclined to direct the respondents to pay 50% family pension to the petitioner during her lifetime.

13.In the result, the impugned proceedings of the 2nd respondent dated 02.04.2024 is hereby quashed. There shall be a direction to the respondents to sanction 50% family pension to the petitioner on account of the demise of T.Aruchamy and orders in this regard shall be passed within a period of six (6) weeks from the date of receipt of a copy of this order. The pension amount shall be sanctioned and paid within a period of eight (8) weeks.



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14.10.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

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Tamilnadu,
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N.ANAND VENKATESH, J.

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