



W.P.No.27374 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM:

**THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR JUSTICE K.KUMARESH BABU**

**W.P.No.27374 of 2022
and WMP.No.26577 of 2022**

1.Union of India, Rep. by
The General Manager,
Southern Railway,
Park Town, P.O. Chennai-600 003.

2.The Division Personnel Officer,
Southern Railway,
Madurai Division,
Madurai-625 010.

...

Petitioners

vs.

1.A.Lydia Arockiamary,
D/o (Late) S.Ambrose Savrimuthu

2.The Registrar,
Central Administrative Tribunal,
Chennai.

.. Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the records from the file of the 2nd respondent in O.A.No.09/2021 dated 24.03.2022 and quash the same.

For Petitioners : Mr.C.Kulanthaivel

For Respondents : Mr.R.Pandian for R1
R2- Tribunal

ORDER

[Order of the Court was made by *D.KRISHNAKUMAR, J.*]

The official respondents before the Tribunal are the petitioners herein. The first respondent / divorced daughter of the deceased employee has filed O.A.No.310/00009/2021 before the Central Administrative Tribunal, Chennai, challenging the order passed by the second petitioner dated 24.10.2019, rejecting the claim of the first respondent for grant of family pension. The Tribunal allowed the said original application in favour of the first respondent, vide impugned order dated 24.03.2022, against which the present writ petition has been filed.

2. According to the writ petitioners, the Tribunal has accepted the contention of the first respondent and allowed the original application without



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WEB COPY taking into consideration the grounds raised by the petitioners department / Southern Railways in the aforesaid original application. It is the specific case of the petitioners department that the first respondent's father late S.Ambrose Savarimuthu retired from railway service on 28.02.1983 on attaining superannuation and after his retirement, he was receiving pension till his demise and thereafter, his wife namely Maria Pushpam was receiving family pension till her demise on 08.07.2015 and thereafter, the first respondent, being the divorced daughter of the deceased railway employee made an application claiming family pension under Rule 54(6)(iii) of the Central Civil Services (Pension) Rules, 1972 and the said request of the first respondent was rejected on the ground that the first respondent has not produced records to show that she got decree of divorce from the competent Court during the lifetime of the her father / deceased employee or her mother. The said contention of the petitioner's department was not considered by the Tribunal, in the light of the clarification issued by the Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners Welfare, Government of India, New Delhi in No.1/13/09-P&PW(E) dated 19.07.2017.



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3. The learned Standing Counsel appearing for the petitioners department contended that the first respondent has not obtained the Decree of Divorce from a competent Court and therefore, the claim of the first respondent for grant of family pension was rightly rejected by the petitioners department and hence, the order of the Tribunal is liable to be set aside and prays for allowing of this writ petition.

4. *Per contra*, learned counsel appearing for the first respondent has vehemently contended by drawing the attention of this Court to the Decree of Annulment of Marriage dated 05.04.1999 issued by the Diocesan Tribunal of Trichirapalli, which has been annexed in the typed set of papers, declaring that the marriage of the first respondent with one A.Benjamin Sahayaraj as null and the said decree of divorce was granted during the lifetime of her deceased mother and in the light of the aforesaid clarification issued by the Ministry of Personnel, P.G. & Pensions, Government of India dated 19.07.2017, the first respondent,



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being the divorced daughter of the deceased, has satisfied the eligibility criteria for getting family pension and the Tribunal has rightly passed the order in favour of the first respondent and therefore, prays for dismissal of the writ petition.

5. This Court has considered the rival submissions and also perused the materials on record.

6. At the outset, it is useful to refer to the communication of the second respondent in No.U/P.500/III/781/ Pension-Adalat -49/2007 dated 10.12.2007 addressed to the deceased railway employee, which is enclosed in the typed set of papers filed by the petitioners department, wherein it has been stated as under:

"Your request for inclusion of your divorced daughter's name for Family Pension vide ref.above is noted. It is informed that in terms of Rly. Bd's Lr.No.F(E) III / 98/PN-1/14, dt.13/10/2006, "family pension shall be admissible to divorced / widowed daughter from 25/8/2004 or from the date on which her turn for family pension materializes,whichever is later". As such, family pension has already been sanctioned to your wife, Smt.Maria Pushpam vide PPO No.P.500/MDU/PSB 636 and the claim of your divorced daughter for family pension will be considered in future as per her turn, provided she fulfils the eligibility conditions specified in Rly. Bd's letter above.



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7. A perusal of the aforesaid communication reveals that the petitioners department itself has admitted that the first respondent's claim for family pension will be considered in future as per her turn, provided she fulfils the other eligibility conditions. The said communication was made during the life time of the deceased railway employee. The clarification issued by the Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners Welfare, Government of India, New Delhi in No.1/13/09-P&PW(E) dated 19.07.2017, wherein it was clarified as under:

"4.It was clarified that a daughter if eligible, as explained in the preceding paragraph, may be granted family pension provided she fulfils all eligibility conditions at the time of death / ineligibility of her parents and still on the date her turn to receive family pension comes. Accordingly, divorced daughters who fulfil other conditions are eligible for family pension if a decree of divorce has been issued by the competent court during the life time of at least one of the parents."

Admittedly in the case on hand, the first respondent obtained decree of divorce much during the lifetime of her parents. The family identify card of the deceased reveals that the first respondent has been included in the dependants list and



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shown as the widowed daughter.

8. A Division Bench of this Court in the decision in ***W.P.No.9460 of 2019 dated 13.08.2019 [Union of India v. The Registrar,CAT, Madras Bench and another]*** wherein it has been observed as under:

"8. A perusal of the records would show that on 09.01.1997, there was an agreement between the second respondent herein and her erstwhile husband to part ways which has been reduced into writing in an agreement dated 09.01.1997. It is also seen that from the date of her marriage coming to an end by mutual agreement, the second respondent was living with her father. This is evident from a perusal of the family card issued by the Civil Supplies and Consumer Protection Department (Ration Card). The father has made an application on 04.02.2005 requesting the petitioners to include the name of his daughter in the place of his deceased wife for pension. The said request was then denied on the ground that the second respondent was over aged. It appears that thereafter there has been a revision in the Rules wherein the restriction of age with reference to the widowed/divorced daughters had been removed.

9. After the amendment, the father had renewed the request by his letter dated 14.2.200. This request has also been turned down by the petitioners stating that the daughter can apply only from the date on which her turn for family pension materializes provided she is not remarried/employed. In compliance of this direction, on the death of her father, the second respondent had made an application for granting family pension on 28.10.2013. The second respondent had



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also enclosed the agreement of divorce entered into between herself and her erstwhile husband. By letter dated 08.05.2014 the petitioners had requested her to submit an order from the Court. In view of the above direction, it appears that the second respondent had made an application for dissolution of her marriage dated 19.08.1996 in HMOP.No.80 of 2014 before the Sub Court Sivagangai. The Sub Court was also pleased to grant a decree of divorce. The agreement dated 09.1.1997 which has been entered into between the second respondent and her erstwhile husband has been marked as Ex.P3 and it was also referred to in the order for grant of divorce. When the said order was produced before the petitioners, the impugned order dated 18.11.2016/07.12.2016 was passed stating that since the divorce had come into existence after the death of the father, she was not entitled to the family pension. As stated supra even during the life time of the father, the second respondent was separated from her husband and was dependant on the deceased employee right from the year 1997. The second respondent has been living apart from her husband ever since 1997 and ultimately on the directions of the petitioners she had made an application for divorce and the court taking note of the fact that an agreement was entered into between the second respondent and her husband on 09.01.1997 (which was marked as Ex.P3 in the proceedings) granted her divorce. Therefore as rightly held by the Tribunal, it is clear that the second respondent is entitled to the family pension.

10. We do not find any cause for interference with the order passed by the Tribunal. The Writ Petition is dismissed with a direction to the petitioners to grant the family pension to the second respondent within a period of two (2) months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition



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9. Considering the facts and circumstances of the case and the decision cited supra and the documents relied on by the first respondent that the family identity card has been issued which clearly establishes that the first respondent has been shown as divorced daughter in the dependants list and therefore, in the light of Rule of the Central Civil Services (Pension) Rules, 1972, the first respondent is entitled to family pension. The Tribunal has rightly considered all these aspects in proper perspective and allowed the Original Application in favour of the first respondent. This Court finds no reason to interfere with the order of the Tribunal and finds no merit in this writ petition.

10. In the result, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

(D.K.K., J.) (K.B., J.)
10.04.2024

Intex : Yes/No
Internet : Yes/No
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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

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