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W.P.No.19132 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.No.19132 of 2017 and

WMP No.20640 of 2017

J.Indira

... Petitioner

Vs.

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

2. The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.

3. The Chief Educational Officer,
Thiruvannamalai, Thiruvannamalai District.

4. The Head Master, Government High School,
Thiruvothur, Cheyyar, Cheyyar Taluk,
Thiruvannamalai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records



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relating to the order in Proceedings No.P13/4/11310947/AIR/328, dated 09.03.2016 of the first respondent and quash the same and to direct the first respondent to pay the family pension to the petitioner on the death of her deceased husband P.D.Janakaratchagan, worked as Graft Instructor, Pensioner died on 09.09.2015, with all attendant and consequential benefits arising out of family pension to the petitioner.

For Petitioner	: Mr.K.Thennan for Mr.T.S.Selvarani
For Respondents	: Mrs.T.Selvarani, Standing Counsel for first respondent Mr.V.M.Ravichandran, Spl.Govt.Pleader for R2 to R4.

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed to quash the Proceedings No.P13/4/11310947/AIR/328, dated 09.03.2016 issued by the first respondent and to direct the first respondent to pay the family pension to the petitioner on the death of her deceased husband P.D.Janakaratchagan, worked as Graft Instructor, Pensioner died on 09.09.2015, with all attendant and consequential benefits arising out of family pension to the petitioner.



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2. The petitioner is the wife of late P.D.Janakaratchagan and he served as craft Instructor at Government High School, Thiruvothur, Cheyyar, Thiruvannamalai District from 05.11.1971 to 31.05.2010 till his superannuation on 31.05.2010. After his retirement, he was awarded monthly pension at Rs.11,230/- and subsequently, he died on 09.09.2015. The petitioner was married to above P.D.Janakaratchagan as second wife, while the first wife namely J.Selvakumari was alive and also with her consent, as she has no issues. After marriage between the petitioner and P.D.Janakaratchagan, one daughter J.Kalaimathi and one son J.Vijay born to them and while the husband died on 09.09.2015, his first wife died on 11.09.2015 (within two days). Thereafter, the petitioner applied for family pension on 23.10.2015, but the first respondent had rejected the same vide order dated 09.03.2016 stating as "*as per TPR, 1978, the second wife shall be eligible for the benefits of family pension, only if the second marriage was solemnized before the date of commencement of Hindu Marriage Act, 1955. Hence, in this case, 2nd wife is not eligible for family pension, since her marriage had taken place during the life time of first wife.*" Hence this writ petition.



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3. The learned counsel for the petitioner submitted that the petitioner is the legally wedded wife of the deceased P.D.Janakaratchagan and to prove the same, the marriage invitation solemnized on 09.05.1987 between the petitioner and the above said P.D.Janakaratchagan and marriage ceremony photographs were filed before the first respondent. He further submitted that, the deceased had nominated the petitioner and her two children in GPF nomination form, family pension. Further, the marriage invitation card, family card, election identity card and the death certificate were also filed before the first respondent to prove that the petitioner is the legally wedded wife of the deceased government servant. However, without considering the above government documents, the first respondent has rejected family pension, by relying upon the above rule.

2.1. The learned counsel for the petitioner further submitted that, as per the Tamil Nadu pension Rules, the second wife is also entitled for pension, if the marriage was solemnized before 1992. As per Rule 49(7)(a)(i) of the Tamil Nadu Pension Rules, "***if there are more than one wife of a deceased Government Servant, then, the family pension shall be***



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

Therefore, since the second marriage was solemnized between the petitioner and the above P.D.Janakaratchagan with the consent of his first wife; and now the first wife is also died and only the petitioner and her two children are survived as legal heirs to the deceased; the documents produced are also proved the above said facts, the petitioner is entitled to get pension. Hence, the impugned order passed by the first respondent is liable to be set aside and necessary direction may be given to the first respondent to grant pensionary benefits.

3. The learned Standing counsel appearing for the first respondent has strongly opposed that even though the documents have been filed before the authorities concerned and also before this court to prove that the petitioner is the legally wedded wife, the same does not give any assistance to the petitioner, because the second marriage had took place, during the subsistence of the first marriage. Therefore, the marriage between the



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petitioner and the deceased government is not a legal one and it was not solemnized under the customary law, as per the explanation to Rule 49(7) of the Tamil Nadu Pension Rules, 1978, which was amended as per G.O.Ms.No.906, Finance (Pension) Department, dated 06.12.1995. Hence the petitioner is not entitled to get the pensionary benefits and hence, she seeks for dismissal of the writ petition.

4. The learned counsel for the respondents 2 to 4 has brought to the notice of this Court that, except the pension, all other benefits were granted to the petitioner. Therefore, to grant pensionary benefits, the petitioner has to approach the competent civil court to establish that she is the legally wedded wife of the deceased employee and her marriage is under the law.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the first respondent and the learned counsel for the respondents 2 to 5.



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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 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



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06.12.1995], which runs as follows.

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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 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



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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.

(D.K.K.J.)

(K.B.J.)

04.04.2024

Internet: Yes/No

Index : Yes/No

mst

To

1. The Accountant General (A & E)
No.361, Anna Salai, Chennai 600 018.
2. The Director of School Education,
College Road, Nungambakkam,
Chennai 600 006.
3. The Chief Educational Officer,
Thiruvannamalai, Thiruvannamalai District.
4. The Head Master, Government High School,
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