



W.A.No.547 of 2020

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.A.No.547 of 2020 and

CMP No.7827 of 2020 and

CMP No.12112 of 2021

The Principal Accountant General
(Accounts and Entitlement), No.36,
Anna Salai, Chennai 600 018,
Tamil Nadu.

... Appellant

Vs.

1. E. Pramila

2. The Assistant Director of Sericulture,
Khaderpet, Vaniyambadi 635 751,
Vellore District.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside
the order passed by this Court in W.P.No.19686 2018 dated 14.10.2019.

For Appellant : Ms.T.S.Selvarani

For Respondents : Mr.R.Kamaraj

for Mr.L.Chandrakumar for R1

Mr.V.M.Ravichandran, Spl.Govt.Pleader



W.A.No.547 of 2020

for R2

Mr.Karthik Rajan and

Mr.P.Godson Swaminathan

appearing as Amicus Curiae.

JUDGMENT

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

This Writ Appeal has been filed by the Government, challenging the order passed by this Court in W.P.No.19686/2018, dated 14.10.2019, in and by which, the appellant/Department was directed to *forward the proposal for disbursement of family pension and other benefits in favour of the first respondent herein to the authorities concerned and also the authorities concerned was directed to pass appropriate orders, extending the benefits in favour of the first respondent, within 8 weeks from the date of receipt of the proposal.*

2. The brief facts leading to the filing of the writ appeal are as follows.

The first respondent was married to one A.S.Elumalai on 05.06.1992



W.A.No.547 of 2020

and a son by name Vishnuvardhan born to them on 26.06.1994. The said A.S.Elumalai died on 24.12.2015 leaving the first respondent and his son as his legal heirs and to that effect, legal heirship certificate was also issued to them. The said late A.S.Elumalai nominated the first respondent as his nominee to avail pension and other retirement benefits. However, the first respondent's request to sanction the family pension, DCRG and other death benefits was denied by the Department on 07.05.2018, on the ground that the first respondent was the second wife of A.S.Elumalai and instructed her to obtain court order declaring that she is the legally wedded wife of deceased Elumalai.

2.2. According to the first respondent, her husband married one Valarmathi in the year 1982, but she did not live with him and she got separated and married another person, soon after the separation. Further, her whereabouts is not traceable and there is no counter claim by the said Valarmathi before the respondents with regard to the retireal benefits like family pension, DCRG etc. Hence, to quash the above impugned order dated 07.05.2018 and also to grant pension and other retireal benefits, the



W.A.No.547 of 2020

first respondent had filed W.P.No.19686 of 2018 before this court and the same was allowed by the learned Single Judge. Challenging the same, the present writ petition has been filed by the Department.

3 . The learned counsel for the appellant submitted that the first respondent got married to A.S.Elumalai, during the subsistence of the first marriage of A.S.Elumalai with A.Valarmathi. Therefore, the marriage between the first respondent and A.S.Elumalai is void, as per the provisions of the Hindu Marriage Act. In the service records, the deceased A.S.Elumalai nominated the said Valarmathi on 06.03.1984 and also on 10.07.1987 to receive the terminal benefits. Subsequently, the said Elumalai filed nomination in favour of E.Pramila on 30.07.1993, conferring the right to receive the family pension. She further submitted that, the marriage held between A.S.Elumalai and Valarmathi had not been dissolved by a court of law when the second marriage was took place. Though it is claimed by the first respondent that A.Valarmathi got customary divorce from A.S.Elumalai in the year 1983 itself, it is clarified by the Government of Tamil Nadu in letter No.80118/Pension/8904 Finance (Pension) Department dated



W.A.No.547 of 2020

05.01.1990 that divorce by custom is recognised under law, unless it is proved that such custom existed in the particular case and that every case has to be examined individually, in the light of case law and judicial precedents and a decision has to be taken among them.

3.1. The learned counsel for the appellant further submitted that, the provisions of Rule 48 and 49 of the Tamil Nadu Pension Rules and Rule 2(c) and 7 of GPF (TN) Rules, do not include illegitimate wife, within the scope of definition of family and any nomination in favour of an illegitimate wife is therefore invalid. She also brought to the notice of this court to 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. wherein, it is stated as follows***

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

The learned counsel for the appellant submitted that since the marriage of the first respondent with A.S.Elumalai was solemnized during the



W.A.No.547 of 2020

subistence of the first marriage, the petitioner is not entitled to get the pensionary benefits, unless she proved that she is a legally wedded wife of late A.S.Elumalai and hence, she seeks to set aside the order passed by the learned Single Judge.

4. The learned counsel for the first respondent submitted that the deceased A.S.Elumalai had nominated the first respondent in his service records before the Department to avail pension and other retireal benefits. Further, there is no rival counter claim from the above said Valarmathi before the Department with regard to retireal benefits, family pension, DCRG etc., and hence, based on the nomination given by the late A.S.Elumalai, the first respondent is entitled to receive the above benefits. Therefore, the appellant/Department is not competent to conduct roving enquiry, unless there is proper complaint from the said Valarmathi or any other aggrieved persons. The learned Judge, upon perusing the service record of late Elumalai and the declaration made by him in Form E nominating the first respondent to receive the family pension, and also taking into account that there is no rival claim before the Department. has



W.A.No.547 of 2020

directed the Department to grant the benefits and family pension to the first respondent. As such, the order passed by the learned single judge does not warrant any interference by this Court.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

6. On perusal of the records reveals that the deceased A.S.Elumalai, who was working as Inspector of Sericulture in the office of the Assistant Director of Sericulture, retired on 30.04.2011. However, since he was under suspension, due to the disciplinary proceedings, no pensionary benefits were granted to him and subsequently he died on 24.12.2015. Afterwards, as per the G.O.No.(D) 118, Rural Development and Panchayat Raj Department dated 18.03.2016, disciplinary proceedings were dropped.

7. According to the appellant, in the service records, the deceased Elumalai had nominated one A.Valarmathy in the year 1984 to receive



W.A.No.547 of 2020

Provident Fund, death cum retirement gratuity and subsequently on 10.07.1987 also he had nominated the said A.Valarmathi alone. Therefore, the claim of the first respondent that the said A.Valarmathi got customary divorce from the deceased Elumalai in the year 1983 is not correct. Further, it is the contention of the appellant that, since the first respondent has not established that subsistence of marriage between her and the said A.S.Elumalai is recognized under law, she is not entitled to get pension.

8. Admittedly, the deceased Elumalai married one Valarmathi and subsequently, he married the first respondent. But there is no material to prove that the marriage between Elumalai and his first wife Valarmathi had been dissolved under law. Even though, it is contended by the first respondent that A.Valarmathi got customary divorce in the year 1983 itself and thereafter, she got married to Elumalai on 05.06.1992, as per the explanation appended to Rule 49 (7) of the Tamil Nadu Pension Rules, 1978, she has to prove that her marriage was solemnized as per the customary law. At this juncture, it is useful to extract the ***Explanation appended*** to Rule 49(7) of the Tamil Nadu Pension Rules, 1978, [the above



W.A.No.547 of 2020

explanation was added as per G.O.Ms.No.906, Finance (Pension)

Department, dated 06.12.1995], which runs as follows.

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)

Therefore, as per the above explanation, for granting pension to the first respondent, she has to satisfy the authorities that she is the legally wedded wife of the deceased employee. But there is no evidence and materials to prove the same. Therefore, the appellant/Department has rightly returned the claim of pension by the first respondent, advising her to approach the competent civil court to obtain necessary declaration order. To that extent, we inclined to interfere with the order passed by the learned Single Judge.

9. As far as the claim of other benefits, viz., DCRG, Provident Fund, etc., are concerned, it is not disputed by the appellant/ Department that in the Service Register of the deceased Elumalai, on 30.07.1993, he had nominated the first respondent in the capacity of wife. Therefore, as per the nomination, the appellant/Department has to settle other benefits to the first respondent.



W.A.No.547 of 2020

WEB COPY 9. Inview of the above discussion, we inclined to pass the following order.

i) The first respondent is directed to give an application to the authorities concerned seeking benefits, namely DCRG, Gratuity, GPF, etc.

ii) On such application being received from the first respondent, the appellant/ Department is directed to settle the other benefits such as DCRG, Gratuity, GPF, etc., to the first respondent, within a period of twelve weeks from the date of receipt of a copy of this order.

iii) As far as the claim of family pension is concerned, the first respondent is directed to approach the civil court to get the declaratory order that she is the legally wedded wife of the deceased Elumalai and after getting order from the civil court, she can approach the authorities concerned seeking family pension.

10. With the above directions, this writ appeal is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.



WEB COPY



W.A.No.547 of 2020

(D.K.K.J.)

(K.B.J.)

04.04.2024

Internet: Yes/No

Index : Yes/No

mst

To

The Assistant Director of Sericulture,
Khaderpet, Vaniyambadi 635 751,
Vellore District.



WEB COPY



W.A.No.547 of 2020

D.KRISHNAKUMAR, J.
and
K. KUMARESH BABU, J.

mst

W.A.No.547 of 2020

04.04.2024