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W.A.No.535 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.03.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN

AND

THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.535 of 2024

and

C.M.P.No.3687 of 2024

The Managing Director
Metropolitan Transport Corporation (Chennai) Ltd.
Pallavan Illam
Anna Salai
Chennai 600 002

.. Appellant

Vs.

M.Eswari

.. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order
dated 04.08.2023 passed in W.P.No.27045 of 2022.

For appellant : Mr.T.Chandrasekaran
Standing Counsel

For respondent : Mr.B.V.Suresh Kumar
for Mr.R.Sathiyamurthi



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JUDGMENT

(delivered by R. MAHADEVAN, J.)

For the sake of convenience and clarity, the parties will be referred to as per their rank in this writ appeal.

2. The facts leading to the filing of this writ appeal could succinctly be stated thus:

2.1. The respondent's husband, who was employed with the appellant Transport Corporation breathed his last in harness on 04.03.2018. Hence, the respondent made an application on 13.04.2022 seeking family pension, which was rejected by the appellant Transport Corporation *vide* order dated 21.06.2022.

2.2. The ground of rejection was that as per the marriage certificate produced by the respondent, the marriage between her and the workman had taken place on 20.02.2004 itself, whereas, the workman's first marriage was annulled by a decree of divorce only on 01.04.2004. In other words, according to the appellant Transport Corporation, even during the subsistence of the first



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marriage, the workman had married the respondent, which is against Section 5 of the Hindu Marriage Act and hence, the respondent is not entitled to family pension.

2.3. Challenging the aforesaid order of the appellant Transport Corporation, the respondent preferred a writ petition being W.P. No.27045 of 2022, in which, a learned Judge, *vide* order dated 04.08.2023, considering the fact that after divorce, the second marriage of the workman with the respondent has even been registered and they were leading their life as husband and wife, allowed the writ petition holding that the respondent is the legally wedded wife of the workman, and that on technicalities, the respondent cannot be non-suited and that she has to be paid family pension along with arrears within a period of four weeks.

2.4. The aforesaid order of the learned Judge is called into question in this writ appeal by the Transport Corporation.

3. Heard the learned Standing Counsel appearing for the appellant, who submitted that the workman married the respondent on 20.02.2004 even when his first marriage was in subsistence and hence, the request of the



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respondent seeking family pension was rightly rejected by the appellant, by the order impugned in the writ petition; hence, the order of the learned Judge is liable to be set aside and this writ appeal deserves to be allowed.

4. *Per contra*, the learned counsel for the respondent submitted, *inter alia*, that the workman, while in service, had appointed the respondent as his nominee for all his official purposes, which factum had not weighed in the mind of the appellant while rejecting the respondent's claim for family pension. He further submitted that the rejection of the respondent's claim by the appellant on the ground of technicalities did not, rightly, find favour with the learned Judge, who allowed the writ petition by taking note of the fact that the workman's marriage with her first wife stood dissolved by a decree of divorce and the respondent's marriage with the workman was duly registered. Based on these submissions, the learned counsel for the respondent submitted that the order of the learned Judge warrants no interference.

5. Heard both sides and perused the materials available on record.

6. That the marriage of the workman with his first wife stood annulled by a decree of divorce and the marriage of the respondent with the



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workman was not unregistered are not disputed. It is also not the case of the appellant that the respondent's name does not find place as nominee in the service records of the workman and that is also not the ground for rejection of the respondent's claim by the appellant. From a perusal of the rejection order, it is limpid that the ground for rejection is that in the certificate evidencing the marriage of the workman with the respondent, the date of marriage is given as 20.02.2004, whereas, divorce was granted only on 01.04.2004. (emphasis supplied)

7. Thus, the issue to be decided in this case lies in a very narrow compass, *i.e.*, whether the rejection of the respondent's claim by the appellant on the ground that the workman had married the respondent during the subsistence for the first marriage, is sustainable.

8. At the outset, it is worth pointing out that it is not the case of the appellant that the workman and the respondent were not married to each other and they were not in cohabitation. It is clearly borne out of records that the respondent had married the workman in 2004. Further, it is the categorical stand of the respondent that till the demise of the workman in 2018, say, for a period of 14 long years, she had lived with him as wife. But, admittedly, no



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shred or iota of evidence has been produced by the appellant to dispute the relationship the respondent had with the workman.

9. At this juncture, the judgment of the Supreme Court in **Dhannulal and others vs Ganeshram and another**¹ is worthy of reference. In the said case, it has been held, in no uncertain terms, that the law presumes in favour of marriage when a man and woman have cohabited continuously for a long time. The relevant portion of the said judgment is extracted below:

“15. It is well settled that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a long time. However, the presumption can be rebutted by leading unimpeachable evidence. A heavy burden lies on a party, who seeks to deprive the relationship of legal origin. In the instant case, instead of adducing unimpeachable evidence by the plaintiff, a plea was taken that the defendant has failed to prove the fact that Phoolbasa Bai was not the legally married wife of Chhatrapati.” (emphasis supplied)

10. In **Dhannulal, supra**, the lady concerned was not a wife *stricto sensu*, but, only a mistress. But, thanks to the long cohabitation the couple had, the High Court came to the conclusion that the lady was the legally married wife, which merited acceptance by the Supreme Court. At the cost of repetition, even in the case of a mistress, considering the factum of long cohabitation, she was declared the legally married wife. Distinguishably, in the instant case, the respondent stands in a better pedestal than the lady in **Dhannulal, supra**, for, the respondent's marriage with the workman has been

¹ (2015) 12 SCC 301



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duly registered.

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11. In such perspective of the matter, the appellant Transport Corporation cannot hinge on hypertechnicality to reject the legitimate claim of family pension made by the respondent, which is neither a charity nor a bounty given by the appellant, but, a gratuitous payment made in recognition of the workman's long service. *Ergo*, we have no incertitude in holding that the stand of the appellant Transport Corporation that the respondent is not entitled to family pension on the ground that her marriage with the workman had taken place even before his first marriage was dissolved, has to fall to ground.

12. *Ex consequenti*, this Court finds no illegality or infirmity in the order passed by the learned Judge and as a sequitur, this writ appeal fails and is dismissed as being devoid of merits. Costs made easy. Connected C.M.P. is closed.

[R.M.D, J.] [M.S.Q, J.]
19.03.2024

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