



W.P.(MD) No.18389 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.18389 of 2020

V.Sankaramammal

... Petitioner

Vs.

1.The Principal Secretary
to the Government of Tamil Nadu
St.Fort George
Chennai-600 009

2.The District Collector
Office of the District Collector
Tirunelveli District

3.The Thasildar
O/o The Thasildar
Cheranmagadevi Taluk
Tirunelveli district

4.The Accountant General
Accounts and Entitlements
361, Annasalai
Teynampet
Chennai



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5. Bagavathi

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 3rd respondent in O.Mu. (A3)/1613/2020 dated 30.05.2020 and quash the same and consequently direct the respondents to disburse the family pension to the petitioner from the date of expiry of petitioner's husband.

For Petitioner : Mr.A.Rajaram

For Respondents : Mr.D.Sasikumar for R1 to 3

Mr.P.Gunasekaran for R4

No Appearance for R5

ORDER

Petitioner has filed this Writ Petition praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 3rd respondent in O.Mu.(A3)/1613/2020 dated 30.05.2020 and quash the same and consequently direct the respondents to disburse the family pension to the petitioner from the date of expiry of petitioner's



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husband.

2. The petitioner herein is the widow of one Late Veerapandi, who worked as Village Administrative Officer and expired on 10.08.2008, while in service. After the demise of the petitioner's husband she made an application for grant of family pension. The said request of the petitioner was negatived by the 3rd respondent by passing the impugned order No.O.Mu. (A3)/1613/2020 dated 30.05.2020 on the ground that the deceased has two wives. The second wife of the deceased employee is impleaded as 5th respondent and she is served with notice. However, no appearance is entered on her behalf.

3. It is the claim of the petitioner that she is the first wife of the deceased employee and in support of her claim she also produced a legal heir certificate issued by the Tahsildar/Respondent No.3 herein. Wherein, it is clearly stated that the petitioner herein is the first wife of the deceased employee.



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4. From the perusal of the materials on record, it is noticed that the petitioners are Hindus and the second marriage if any of the deceased employee with the 5th respondent is not legal in the eye of law. Even, if it is admitted that the deceased employee had two wives, it is only the first wife who is entitled to claim the status of wife and the marriage of the 5th respondent with the deceased employee, during the subsistence of marriage of the petitioner with the deceased employee, is void.

5. In term of Sub-Rule 7(a)(i) of Rule 49 of Tamil Nadu Pensions Rules, 1978, it is only when the marriage of the 2nd wife if valid under the Personal Law of the employee concerned, then there is scope for legal claim by the second wife. In the instant case, the marriage of the 5th respondent with the deceased employee is stated to be void and there is no dispute in this regard.

6. If that be the case, the claim of the petitioner herein, the first wife of the deceased employee for payment of family pension cannot be



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denied. However, the impugned proceedings came to be issued by the 3rd respondent only on the ground that the deceased employee has two wives. It is not even the case of the 3rd respondent in the impugned order that the petitioner herein is the second wife of the deceased employee. In the absence of any such stand being taken by the 3rd respondent in the impugned order, especially in the context of the legal heir certificate issued by the 3rd respondent, it cannot be said that the petitioner is not entitled for family pension consequent upon the death of her husband on 10.08.2008.

7. As already noted above, inspite of service of notice, the 5th respondent has not chosen to contest the matter. Further, as averred in the affidavit filed in support of the Writ Petition, the 5th respondent herein eloped with someone and was not living along with her husband during the lifetime of the deceased employee. There is nothing to contradict the said averments made in the affidavit filed in support of the Writ Petition. Further, it is also stated by the learned counsel for the petitioner that the name of the petitioner was also entered as wife of the deceased employee in the Service Register.



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8. In the light of the above, there cannot be any dispute about the status of the petitioner herein being the first wife of the deceased employee.

9. In view of the above, the ground on which the impugned order came to be passed by the 3rd respondent in O.Mu.(A3)/1613/2020 dated 30.05.2020 is not sustainable and accordingly, the same is set aside. Consequently, the Writ Petition is allowed, directing the respondents 1 to 4 to forthwith take steps for payment of family pension to the petitioner consequent upon the death of her husband on 10.08.2008 by duly fixing the same from time to time and pay the entire arrears within a period of three months from the date of receipt of a copy of this order and continue to pay the same to the petitioner. There shall be no order as to costs.

12.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
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MUMMINENI SUDHEER KUMAR, J.

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