



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.15610 of 2015

M.Santhakumari,
W/o.Late S.D.Nazeer Basha,
No.5/6, Chinnappan Street,
Arisipalayam,
Salem - 636 009.

...

Petitioner

versus

1.The Additional Commissioner
(Revenue Administration),
Chepauk, Chennai - 600 005.

2.The District Collector,
Salem District, Salem.

3.The Administrative Officer,
Saraswathi Mahal Library,
Thanjavur - 613 009.

4.The Accountant General (A.&E.),
Tamil Nadu, Chennai - 600 018. ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to the order in Letter No.Va.Ni.3(5)/77158/2011 dated 05.02.2015, to quash the same and to issue



consequential directions to the respondents 1 and 2 to submit proposals for authorizing Family Pension to the petitioner consequently on the death of the petitioner husband, Thiru.S.D.Nazeer Basha, who retired on 30.09.1992 from Government Service and who died on 13.04.1999, and disburse the arrears with interest at 12% per annum and disburse the Family Pension regularly hereafter.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs.V.Yamuna Devi
Special Government Pleader - R1 to R3

Mr.T.S.Selvarani-R4

ORDER

This writ petition is preferred challenging the order of the first respondent dated 05.02.2015 and for a consequential direction to authorise the family pension to the petitioner.

2. The petitioner claims to be a legally wedded wife of Thiru.S.D.Nasheer Basha who was in Government service and got retired as Deputy Collector on 30.09.1992 and died on 13.04.1999. The petitioner claims that the marriage had taken place on 12.02.1981 and later was solemnised in the presence of Registrar of Marriages, Basvanthapuri, Bangalore on 19.03.1981 under the Special Marriage Act, 1954.



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3. It is averred that the first wife of the deceased Government servant was one Kalisan Rahiman and she deserted him and her whereabouts are not known and as the second wife Tmt.Stella @ Sella Bai was suffering from illness, Nazeer Basha had married the petitioner as the third wife. She claims that after his retirement he was paying a sum of Rs.1,500/- per month as maintenance till the date of his death i.e. on 13.04.1999. As she is entitled to family pension under the Tamil Nadu Pension Rules, she had applied to the Tahsildar, Salem for legal heirship certificate and by proceedings dated 28.05.1999, the Tahsildar had relegated the petitioner to the Civil Court as the said Nazeer Basha had married 3 women belonging to different religions.

4. Pursuant to which, the petitioner had filed the suit in O.S.No.384 of 2001 on the file of the First Additional District Munsif, Salem and by judgment and decree dated 19.06.2003, the suit was decreed and she was declared as the legally wedded wife of Nazeer Basha. Based on enclosing these documents, she had made representations and since the same was not considered, she approached this Court in W.P.No.15441 of 2009



and by order dated 09.11.2011, the writ petition was disposed of directing the respondents to consider the representation and pass orders.

5. Pursuant to which, the first respondent by impugned order dated 05.02.2015, had rejected the claim of the petitioner on the ground that no proper documents had been submitted to establish her claim as the third wife. Assailing the same, the petitioner had preferred the above writ petition.

6. Mr.M.Ravi, learned counsel for the petitioner contended that the petitioner had submitted the certificate of marriage registered under the Special Marriage Act dated 19.03.1981 which would establish the special marriage. Further by relying on the proceedings of the Tahsildar dated 28.05.1999, he contended that the Tahsildar after an enquiry had categorically stated that the said Nazeer Basha had 3 wives belonging to different religions and the same was marked to the petitioner.

7. Further it is his vehement contention that by judgment and decree dated 19.06.2003, the Civil Court had already declared the petitioner to be the legally wedded wife of the deceased Nazeer Basha. He further



contended that when all these documents are unimpeached and not disputed by anyone, it is established that the petitioner is the third wife and therefore the respondents had rejected the claim merely on flimsy reasons.

8. It is his further contention that in fact the second respondent District Collector, Salem, had also sent a report confirming that the petitioner is the third wife, but merely stating that she had not been nominated by the deceased, the claim has been erroneously rejected and he contended that the nomination alone will not exclude the legal representatives from receiving the pensionary benefits and sought for indulgence of this Court.

9. Per contra, Mrs.V.Yamuna Devi, learned Special Government Pleader for the respondents 1 to 3 argued that when the deceased has submitted the Form-3 containing the details of the family, the petitioner has not been listed as a member and further one S.Shameem @ Zamrud is the first wife having a son and daughter and one Stella @ J.Sella Bai is the second wife having 3 sons and 1 daughter.



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10. Further she contended that the civil court judgment relied on by the petitioner would be of no use as neither the first wife nor the second wife had been arrayed as parties to the suit and further none of the legal heirs had been made as parties. Only since the petitioner is not the third wife as claimed, her claim has been rightly rejected.

11. Mr.T.S.Selvarani, learned counsel for the fourth respondent submitted that only if any proposal is forwarded by the respondents 1 and 2, they can process the same and until then they do not have any role in respect of the claim made by the petitioner.

12. Heard the respective counsels and perused the materials available on record.

13. One S.D.Nazeer Basha had worked as Tahsildar in Salem District and was promoted as Deputy Collector and posted as Administrative Officer on deputation in Saraswathi Mahal Library, Thanjavur. He retired from service from the post of Deputy Collector on 30.09.1992. He had furnished the details of the members of his family as on 30.09.1992 through



Form-3 as per Rule 49(12) of the Tamil Nadu Pension rules, 1978. The relevant rule has been extracted hereunder for easy reference:

“49. Family Pension:

...

(12) (a) (i) As soon as a Government servant has completed one year's service, he shall give the details of his family in Form 3 to the Audit Officer, if he is a self-drawing Government servant and to the Head Officer, if he is a non-self drawing Government servant.

Provided that a Government servant holding a lien or suspended lien on a non-self drawing service or post and holding a self-drawing service or post in a temporary or officiating capacity shall furnish the details of his family in Form 3 to the Head of Office.

(ii) (a) If the Government servant has no family, he shall furnish the details in Form 3 as soon as he acquires family.

(b) The Government servant shall communicate to the Audit Officer or the Head of Office, as the case may be, any subsequent change in the size of his family, including the fact of marriage of his female child.

(c) The Audit Officer shall on receipt of the said Form 3, keep it in safe custody and acknowledge the receipt of the said Form 3, all further communications received from the Government servant in this behalf.



(d) The Head of Officer shall, on receipt of the said Form 3, paste it in the service book of the Government servant concerned and acknowledge receipt of the said Form 3 and all further communications received from the Government servant in this behalf.

(e) The Audit Office or the Head of Office, as the case maybe, on receipt of communication from the Government servant regarding any change in the size of family shall incorporate such a change in Form 3.”

14. Along with the details he had also enclosed the passport size joint photographs with his first wife S.Shameem @ Zamrud and also another photograph with his second wife Stella @ Sella Bai and this form has been submitted by him on 07.08.1995. The said Form is extracted hereunder:-

“

FORM 3

See Rule 49(12)

Details of family

Name of the Government servant .. S.D.NAZEER BASHA.
Designation .. Retired Dy. Collector.
Date of Birth .. 13-9-1934
Date of appointment .. 6-8-1954
Details of the members of my family as on 30-9-1992.

Sl. No.	Name of the members of the family	Date of birth	Age	Relation ship with the family	Initials of the head of office	Remarks
(1)	S. Shameem @ Zamrud	16-4-35	57	First Wife		
(2)	Shamshad Begum	6-11-58	34	Daughter (Unmarried)		



- (3) Kaleelul Rehman 16-6-64 28 Son (Unmarried)
- (4) STELLA @ J. SELLAI BAI 3-9-35 57 Second Wife
- (5) John Emmanuel 15-5-59 33 Son (Married)
- (6) Christopher Ravi 28-5-60 32 Son (Married)
- (7) Lazarus Yabes 6-73 20 Son (Unmarried)
- (8) Juli Daisy Rani 14-3-77 15 Daughter (Unmarried)

I hereby under taken to keep the above particulars upto date by rectifying to the Audit Officer/Head of office any addition or alteration.

Signature of the. Government Servant."

15. Pursuant to his superannuation on 30.09.1992, the entire retirement benefits have been settled to him and further the fourth respondent by order dated 29.04.1996 had passed the commutation payment order by fixing the reduced pension at Rs.934/- from the original pension of Rs.1,400/-. From the details furnished and the commutation order, it is evident that Nazeer Basha who got retired on 30.09.1992 was settled with the terminal benefits and he was in receipt of pension till his death on 13.04.1999. Therefore the only thing that was left available was the payment of family pension.



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16. It is not in dispute that the whereabouts of the first wife S.Shameem @ Zamrud is not known and the second wife Stella @ Sella Bai had also died. From the details of the age furnished in respect of the legal heirs, it is also evident that except the daughter Juli Daisy Rani through the second wife, all others have crossed 25 years of age as on the date of death of their father and therefore they are not entitled for any family pension. At the best, the daughter Juli Daisy Rani alone would have been around 22 years on the date of death of her father and she would have been entitled for the family pension for 3 years till 2002, however, her status of marriage is not known post-1999 for being eligible for payment of family pension.

17. While the facts stood thus, the petitioner had come up with the claim that she is the third wife of the deceased Nazeer Basha. In support of her claim, 3 documents are submitted as referred earlier i.e. (i) Marriage certificate dated 19.03.1981; (ii) Tahsildar proceedings dated 28.05.1999 and (iii) Judgment and decree dated 19.06.2003 in O.S.No.384 of 2001.

18. First to deal with the marriage certificate dated 19.03.1981, it could be seen that the certificate dated 19.03.1981 has been issued under



Section 13 of the Special Marriage Act, 1954. At the first instance, when both the petitioner and the deceased Nazeer Basha are admittedly residents of Salem, it is unclear as to what necessitated the marriage to have been solemnised and registered before the Registrar of Marriages at Bangalore. Further the copy of the Notice of Intended Marriage dated 12.02.1981 which is available reveals that the deceased Nazeer Basha is stated to have been residing at No.39, 2nd Cross, Azadnagar, Mysore Road, Chamarajpet, Bangalore. When the deceased was a Government servant working at Tahsildar in Salem as on that day, the very details available in the notice stating him to be a resident of Bangalore itself is, on the face of it, incorrect.

19. Further as per Section 4 of the Special Marriage Act, 1954, a marriage can be solemnised between two persons only when there is no earlier marriage in subsistence. Section 4 is extracted hereunder:-

“4. Conditions relating to solemnization of special marriages:

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:

- (a) neither party has a spouse living;*
- (b) neither party-*



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(i)is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(ii)though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the protection of children; or

(iii)has been subject to recurrent attacks of insanity;

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

(d) the parties are not within the degrees of prohibited relationship:

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

Explanation. In this section, custom, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied



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(i)that such rule has been continuously and uniformly observed for a long time among those members;

(ii)that such rule is certain and not unreasonable or opposed to public policy; and

(iii)that such rule, if applicable only to a family, has not been discontinued by the family.”

20. When the petitioner is a Hindu by religion marrying a Muslim man with subsisting wives, then the very registration of marriage under the Special Marriage Act becomes void as it violates the conditions of section 4 as extracted above and further the validity of marriage under personal law is also questionable, therefore the certificate relied on by the petitioner as proof of marriage cannot be taken to be a valid document when its genuineness and validity is to be established.

21. In respect of the second document i.e., the proceedings of the Tahsildar dated 28.05.1999, it only states that on enquiry he came to know that the deceased Nazeer Basha had 3 wives belonging to different religions and therefore since the petitioner had made an application along with the son of first wife Kaleelul Rahman and second wife Stella @ Sella Bai, Tahsildar had relegated them to the Civil Court. The Tahsildar has not stated that the



petitioner is the wife of the deceased Nazeer Basha and even otherwise until the legal heirship certificate is issued, any claim made by the petitioner basing on this letter would be of no use.

22. The third document relied on by the petitioner is the judgment and decree dated 19.06.2003 in O.S.No.384 of 2001 on the file of the First Additional District Munsif, Salem. The perusal of the above judgment reveals that though the petitioner is aware of the entire details of the first and second wife along with the legal heirs, for the reasons best known to her, she had filed the suit only by arraying Kalisan Rahman showing her as the divorced wife of late Nazeer Basha.

23. As referred above, when S.Shameem @ Zamrud is the first wife and Stella @ Sella Bai is the second wife, the wives have not been arrayed as parties to the suit and only someone in the name of Kalisan Rahiman was arrayed as the defendant in the suit. Even the son of the first wife as per the certificate is Kaleelul Rahman. As such it is evident that the petitioner has not arrayed either of the wives or any of the legal heirs and simply filed the suit on a fictitious person Kalisan Rahiman and had



obtained an ex parte decree. Further the perusal of the judgment reads as follows:-

*“Plaintiff present. Defendant called absent; set-ex parte.
No representation. Proof affidavit filed and recorded.
Exhibits A1 to A4 marked. Suit claim is proved. Suit is
decreed as prayed for with costs.”*

24. Even though it is an *ex parte* judgment, the Court has to analyse the evidences and documents and pass the judgment in compliance with Order 20 Rule 4(2) CPC. The said Rule is extracted hereunder:-

“4(2) Judgments of other Courts.—Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.”

25. Unless the judgment and decree is passed in compliance with the provision, the same cannot be termed to be a judgment within the meaning of this provision.

26. In this regard, a three-Judge Bench of the Hon'ble Supreme Court in *Asma Lateef & Anr. Vs. Shabbir Ahmad & Ors.* reported in (2024) 4 SCC 696 has held as follows:



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“54. Reference may once again be made to Balram Taneja [Balraj Taneja v. Sunil Madan, [(1999) 8 SCC 396] where the law has been reiterated succinctly, as follows : (SCC pp. 414-15, paras 41-46)

“41. There is yet another infirmity in the case which relates to the “judgment” passed by the Single Judge and upheld by the Division Bench.

42. “Judgment” as defined in Section 2(9) of the Code of Civil Procedure means the statement given by the Judge of the grounds for a decree or order. What a judgment should contain is indicated in Order 20 Rule 4(2) which says that a judgment “shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision”.

It should be a self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment.

*43.-44. ****

45. The learned counsel for Respondent 1 contended that the provisions of Order 20 Rule 4(2) would apply only to contested cases as it is only in those cases that “the points for determination” as mentioned in this rule will have to



be indicated, and not in a case in which the written statement has not been filed by the defendants and the facts set out in the plaint are deemed to have been admitted. We do not agree. Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10, the court has to write a judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

46. ... Even if the definition were not contained in Section 2(9) or the contents thereof were not indicated in Order 20 Rule 4(2)CPC, the judgment would still mean the process of reasoning by which a Judge decides a case in favour of one party and against the other. In judicial proceedings, there cannot be arbitrary orders. A Judge cannot merely say “suit decreed” or “suit dismissed”. The whole process of reasoning has to be set out for deciding the case one way or the other. This infirmity in the present judgment is glaring and for that reason also the judgment cannot be sustained.”

(emphasis supplied)

We concur with the observation that a judgment, as envisaged in Section 2(9)CPC, should contain the process of reasoning by which the court arrived at its conclusion to resolve the controversy and consequently to decree the suit.



55. It is indubitable that a “judgment”, if pronounced by a court under Order 8 Rule 10 CPC, must satisfy the requirements of Order 20 Rule 4(2)CPC, and thereby conform to its definition provided in Section 2(9) thereof.

...

58. It is one of the cardinal principles of the justice delivery system that any verdict of a competent judicial forum in the form of a judgment/order, that determines the rights and liabilities of the parties to the proceedings, must inform the parties what is the outcome and why one party has succeeded and not the other — the “why” constituting the reasons and “what” the conclusion. Apart from anything else, insistence of the requirement for the reason(s) to support the conclusion guarantees application of mind by the adjudicator to the materials before it as well as provides an avenue to the unsuccessful party to test the reasons before a higher court.

...”

27. In view of the above, the judgment dated 19.06.2003 relied on by the petitioner does not satisfy the requirements of Order 20 Rule 4 of CPC and further the judgment obtained without arraying both the wives and other legal heirs as parties and simply making some fictitious person as the defendant in the suit will be of no avail to the petitioner.

28. The submissions made by the learned counsel for the petitioner relying on the above three documents are as such rejected. The first



respondent in the impugned order had referred in detail that the deceased employee at the time of submitting the Form-3 had only submitted S.Shameem @ Zamrud as the first wife and Stella @ Sella Bai as the second wife and had not mentioned the petitioner anywhere in the records as the third wife.

29. Further the legal heirs had also objected to the claim made by the petitioner. Since sufficient documents had not been submitted, the claim had been ultimately rejected by the first respondent which cannot be found fault with as the claim made by the petitioner based on these documents cannot be accepted. It was always open to the petitioner to approach the civil court by making all the relevant persons as parties to the suit and agitate their claim for a declaration to declare her as the legally wedded wife but for the reasons best known to her, the petitioner had not preferred the same in spite of the fact that even when the deceased was in receipt of the pension after his retirement from 1993 till 1999, he has never entered the petitioner as a wife in any of his records.

30. In view of the above deliberations, the impugned order passed by the first respondent dated 05.02.2015 is perfectly justified and the claim



made by the petitioner fails and accordingly, this Writ Petition stands
dismissed.

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31. There shall be no order as to costs.

31.01.2025

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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W.P.No.15610 of 2015



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W.P.No.15610 of 2015

31.01.2025