



WEB COPY



W.P.No.8850 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 8850 of 2023
&
W.M.P.Nos. 9007 & 9010 of 2023

S.Jancy Lilly Pushpam

...Petitioner

Vs.

1.The Assistant Divisional Engineer,
Office of the Assistant Divisional Engineer (H),
Highways Construction and Maintenance Department,
Kangeyam,
Tirupur.

2.The Divisional Engineer
Office of the Divisional Engineer (H),
Highways Construction and Maintenance Department,
Tirupur.

3.The Accountant General
Office of the Accountant General,
Accounts and Entitlements Tamil Nadu
361, Anna Salai, Teynampet,
Chennai- 600 018.

...Respondents



W.P.No.8850 of 2

Prayer: Writ Petition is filed under Section 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the 1st respondent in Ku.No.486/ 2022 / E Ne Vu dated 23.01.2023 and quash the same as illegal, incompetent and ultra vires and consequently direct the 1st respondent to pay all the service benefits of her deceased husband to the petitioner and to pay the pension benefits continuously by considering the petitioner's representation dated 06.01.2023

For Petitioners : Ms. S.Thankira

For Respondents : Mr. P.Kumaresan
Additional Advocate General

Assisted by
Mrs. S.Anitha
Special Government Pleader

ORDER

This writ petition has been filed challenging rejection of the petitioner's request for paying the pension and service benefits due to her deceased husband to the petitioner on the representation dated 06.01.2023. The facts are briefly set out herein below.



W.P.No.8850 of 2

WEB COPY

2. The petitioner married one Suresh Kumar on 07.02.2005 and was living with him along with her mother-in-law, Amma Kannu. The petitioner gave birth to two daughters out of the wedlock on 04.11.2005 and 29.11.2008, respectively. The petitioner's husband was earlier married to one Prabha Hari. While the marriage was subsisting, the petitioner's husband had contracted marriage with the petitioner herein. The said Prabha Hari was stated to have deserted the deceased Suresh Kumar in the year 2003, after which the petitioner had got married to him.

3. The petitioner's contention is that, at the time of marriage she was unaware about the marriage of her husband with the said Prabha Hari. Thereafter, the said Suresh Kumar had made an application for divorce under the Indian Divorce Act, in IDOP.NO.11 of 2015 on the file of the Family Court, Erode and had obtained a decree for dissolution of marriage on 17.03.2016. The petitioner's husband passed away 6 years after the divorce

.



WEB COPY

4. After the death of her husband, the petitioner made an application for grant of terminal benefits which has been rejected by the impugned order on the ground that her marriage to the deceased government servant taken place when the first marriage was subsisting. Challenging the same, the petitioner is before this Court.

5. In a counter affidavit, the respondents have reiterated the very same fact.

6. Heard the learned counsels on either side and perused the records.

7. From the narration in the affidavit filed in support of the petition and the documents, it is seen that the said Suresh Kumar and the petitioner had a long cohabitation and have begotted two girl children. It is also evident from a perusal of the Judgement in the divorce petition, namely, IDOP.No.11 of 2015, that the deceased Suresh Kumar and his first wife had been living separately since the year 2003.



In her counter to the said IDOP, the said Prabha Hari had clearly admitted that she has not had any association with the deceased Suresh Kumar since the year 2003. Her only contention was that the said Suresh Kumar had not taken any steps to take her back to the matrimonial home. In fact she has consented for divorce.

8. In the Judgement of the Hon'ble Supreme Court in ***Dhannulal and others Vs. Ganeshram and another – 2015 (12) SCC 301***, the Hon'ble Supreme Court has held that long cohabitation of the petitioner with the deceased husband is enough to presume marriage. The learned Judges relying upon the Judgement reported in ***Andrahennedige Dinohamy Vs. Wijetunge Liyanapatabedige Balahamy – 1928 (27) LW 678***, had observed as follows:

“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. The High



WEB COPY



W.P.No.8850 of 2

Court, therefore, came to a correct conclusion by recording a finding that Phoolbasa Bai was the legally married wife of Chhatrapati.”

9. This Judgement has been relied upon by the Co-ordinate Bench of this Court in ***WP.No.34952 of 2019 – C.Sarojini Devi Vs. The Director of Local Fund Audits, Chennai***, dated 23.01.2020.

10. Considering the above discussion, the impugned order is set aside and the writ petition is allowed. The 1st respondent is directed to pay all the service benefits of her deceased husband to the petitioner and to pay the pension benefits, within a period of 8 weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed. No costs.

19.12.2025

Index : Yes/No

Internet : Yes/No

kan



W.P.No.8850 of 2

WEB COPY

To

1.The Assistant Divisional Engineer,
Office of the Assistant Divisional Engineer (H),
Highways Construction and Maintenance Department,
Kangeyam,
Tirupur.

2.The Divisional Engineer
Office of the Divisional Engineer (H),
Highways Construction and Maintenance Department,
Tirupur.

3.The Accountant General
Office of the Accountant General,
Accounts and Entitlements Tamil Nadu
361, Anna Salai, Teynampet,
Chennai- 600 018.



WEB COPY



W.P.No.8850 of 2

P.T. ASHA, J

kan

W.P.No.8850 of 2023

19.12.2025