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W.P.No.30171 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

W.P.No.30171 of 2023

T.Vijayalakshmi
W/o.Thangaraj

... Petitioner

VS.

1. Union of India
Through the Secretary
Government of India
Ministry of defence
South Block, New Delhi – 110 001

2. The Chief of Army Staff
Integrated HQ's of MoD (Army)
Post DHQ, New Delhi – 110 001

3. Sena Vayu Raksha Abhilekh
Pin 908803, C/o.99 APO

4. The Principal Controller of Defence Accounts (Pension)
Draupadi Ghat, Allahabad
(UP), Pin- 211 014

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari calling for the entire records in the

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order of dismissal by the Armed Forces Tribunal, Regional Bench at Chennai, in O.A.No.98 of 2022 dated 04.08.2023 and to quash the same and consequently direct the fourth respondent to consider the petitioner representation dated 28.03.2022 to grant the family pension of Late Shri. Thangaraj and all other benefits.

For Petitioner : Mr.T.Sivagnanasambandan

For Respondents : Mr.K.Ramanamoorthy
Senior Panel Counsel

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

A cry of a spouse of a deceased Soldier for family pension is the central theme of the instant case. Order dated 04.08.2023 made in O.A.No.98 of 2022 with M.A.No.152 of 2022 by 'Armed Forces Tribunal, Regional Bench, Chennai' [hereinafter 'AFT' for the sake of convenience] rejecting the petitioner's plea for family pension has been assailed in the captioned 'Writ Petition' ['WP' for the sake of brevity]. This 'order dated 04.08.2023 made by AFT' shall hereinafter be referred to as 'impugned order' for the sake of convenience and clarity.

2. To be noted, the impugned order has been made by AFT in exercise of powers under Section 14 of the 'Armed Forces Tribunal Act, 2007 (15 of



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2007)' [hereinafter 'AFT Act' for the sake of brevity, convenience and clarity].

3. Mr.T.Sivagnanasambandan, learned counsel on record for the writ petitioner and Mr.K.Ramanamoorthy, learned Senior Panel Counsel for Central Government, instructed by Major Prashanth K Mukundan (Dakshin Bharat Area) for all the four respondents are before us.

4. To appreciate the crux and gravamen of the matter and for the sake of specificity qua bone of contention, it is necessary to set out a chronology in the form of a tabulation and the same is as follows:

<i>SI.No.</i>	<i>Date</i>	<i>Event</i>	<i>Remarks</i>
1	18.09.1968	Mr.Thangaraj joined the Army as Sepoy	-
2	01.12.1976	Writ petitioner (Ms.T.Vijayalakshmi) married Thangaraj	
3	06.12.1979	Thangaraj was discharged from the Army	Discharged on medical grounds as Nayak
4	13.07.1996	One Smt.V.Soundaram first wife of Thangaraj died	-
5	10.12.2014	Thangaraj died	-
6	11.12.2014	The date from which writ petitioner has made a claim for family pension	This claim was rejected by AFT vide the impugned order



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SI.No.	Date	Event	Remarks
7	24.11.2021	Order of R3 (Sena Vayu Raksha Abhilekh) rejecting writ petitioner's claim for pension on the sole ground that her marriage to Thangaraj is second marriage and thus plurality as it was when first marriage with Smt.V.Soundaram was subsisting	This terse order of R3 was confirmed by AFT vide impugned order
8	04.08.2023	Impugned order of AFT confirming 24.11.2021 order of R3 primarily on the ground of plurality of marriage	
9	29.09.2023	Captioned WP filed by Smt.T.Vijayalakshmi assailing the impugned order of AFT	

5. To be noted, aforementioned dates and events are undisputed and that is the platform on which the bone of contention turns.

6. Learned counsel for writ petitioner submits that writ petitioner's spouse Late Thangaraj was granted Service Element of Disability Pension with effect from 06.12.1979 vide a PPO dated 05.03.1981 ['PPO' stands for 'Pension Payment Order']. This was being drawn by the Late Soldier. It was pointed out that the writ petitioner has made a claim on and from 11.12.2014 (to be noted, date of demise of Soldier is 10.12.2014). It was



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also contended that plurality of marriage cannot be a ground to reject the pension claim in the light of judgment in *Shiramabai* case [*Shiramabai Vs. Captain Record Officer for O.I.C Records, Sena Corps Abhilekh, Gaya, Bihar State and another*] reported in 2023 SCC OnLine SC 1026. Learned counsel for writ petitioner advertent to the facts in *Shiramabai* case drew our attention to paragraph 24 thereof.

Facts in Shiramabai case :

Subedar Pundalik Bhave enrolled in the Army in the year 1960 and in the year 1984, he was discharged from the service at his request and was granted service pension. He married three times: first in 1972; after his first wife died in two and half years, he married Anusuya and while the said marriage was subsisting, he married the appellant in 1981. In the year 1990, he and Anusuya were granted divorce by mutual consent. Thereafter, Subedar Bhave approached the second respondent for deleting the name of Anusuya and endorsing the name of first appellant in the PPO. He also submitted a certificate issued by the Village Sarpanch, Gram Panchayat Bahirewadi, certifying that he and the first appellant got married along with a copy of their wedding card as proof of the marriage. He died in the year 2001. After his death, the first appellant approached respondents for grant of family pension but the request was denied because she married the deceased while the marriage with Anusuya was subsisting. In 2005, the appellant and her children



instituted a civil suit for declaration and for issuing direction to respondents to grant pensionary benefits. The trial court ruled in their favor but the District Judge reversed that decision and in 2013, the Karnataka High Court dismissed the appeal preferred by appellants but on review Application, it had clarified that appellants 2 and 3 are entitled to the estate of Late Subedar Bhawe. Aggrieved over the order of High Court, appellants approached Hon'ble Supreme Court.

Para 24:

'24. In the instant case, if the period upto the year 1990 was to be excluded as the marriage between Late Subedar Bhawe and Anusuya had got dissolved only on 15th November, 1990, fact remains that even thereafter, the deceased had continued to cohabit with the appellant No. 1 for eleven long years, till his demise in the year 2001. The appellant No. 1 was the mother of two children born from the relationship with the deceased, namely, appellants Nos. 2 and 3. Appellants No. 2 and 3 have been held entitled to the estate of the deceased by virtue of the order passed by the High Court on the Review application moved by them. In the above background, a presumption ought to have been drawn in favour of the validity of the marriage between the deceased and the appellant No. 1, more so, when during his life time, the deceased had approached the respondent authorities for seeking deletion of the name of his previous wife - Anusuya from his



service record and for endorsement of the name of the appellant No. 1 therein, which was duly acted upon by the respondents vide letter dated 05th July, 1999. It is also not in dispute that the ex-wife did not claim any pension from the respondents on the demise of Subedar Bhave.'

7. In response to the aforementioned argument, learned counsel for respondents submitted that the impugned order of AFT is predicated inter alia on Regulation 212 of 'Pension Regulation for the Army, 1961' [hereinafter 'said Regulations' for the sake of convenience]. This Court wanted to know the source of power qua said Regulation. Learned counsel for respondents Mr.K.Ramanamoorthy, instructed by Major Prashanth K Mukundan pointed out that said Regulations are a set of Regulations made by Central Government in exercise of Regulation making power under Section 192 of the 'Army Act, 1950 (46 of 1950)' [hereinafter 'Army Act' for the sake of brevity]. It was submitted that said Regulations are in vogue and are operating.

8. Regulation 212 of said Regulations, which deals with 'Ordinary Family Pension' reads as follows:

'212. An ordinary family pension may be granted to the



family of Junior Commissioned Officer granted honorary commission as a Commissioned Officer while on the effective list, who dies during service or after retirement of causes neither attributable to nor aggravated by military service. '

9. In the impugned order of AFT, there is also a mention about there being no legally valid marriage and there can be no sanctity attached to the marriage in terms of Section 11 read with Section 5(1) of Hindu Marriage Act, 1955 as regards marriage of writ petitioner with Late Thangaraj on 01.12.1976. This Court is of the considered view that this is hardly a ground and it pales into insignificance in the light of ***Shiramabai*** principle supra and ***S.P.S.Balasubramanyam*** principle being principle laid down by Hon'ble Supreme Court in ***S.P.S.Balasubramanyam Vs. Suruttayan alias Andali Padayachi and Others*** reported in (1994) 1 SCC 460. Facts in ***S.P.S.Balasubramanyam*** case are that one Manthi had three sons. One of his sons, namely Chinathambi married one Pavayee. He also lived with another woman, whose name was also Pavayee through whom, Chinnathambi had issues, one of them being Ramaswamy. He sold his one-third share, which he received from his father to the appellant. The same



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was resisted by descendants of other two branches. The appellant therefore filed suit for declaration and recovery of possession. Two main questions were raised and they were, if Ramaswamy was legitimate child of Chinathambi and the second one was the property being ancestral and coparcenary property bequeathed by Manthi in favour of his sons and grandsons but excluding Ramaswamy, could any valid title vest in him under deed of settlement executed by his father in 1968. The trial court accepted the claim of defendants and found that the deed of settlement made by Chinathambi could not convey any right, title or interest in favour of Ramaswamy or his mother as it was in respect of coparcenary property or joint family property and, therefore, the deed of settlement was invalid. In appeal, both findings were set aside. The Appellate Court found that as Chinathambi and second Pavayee having lived together as husband and wife since 1920, a presumption arose in law that they were husband and wife. The Appellate Court also found that in the compromise entered between three sons of Manthi in the suit filed by Chinathambi, there was a partition and the parties agreed that the compromise arrived at by them may be given effect to without effecting any partition by metes and bounds as they were in



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possession of their separate share. It was held that Chinathambi got exclusive right over his share under the compromise and he was entitled to execute the deed of settlement in 1968. In second appeal before the High Court, the presumption drawn by the Appellate Court was found to have been rebutted and it was found that when compromise was arrived between the members of the family on a suit filed by Chinathambi, no reference was made either to Pavayee or Ramaswamy. Reliance was also placed on the depositions of PW 6 and DW 4 to support the conclusion that no legal marriage had come into being between Chinathambi and Pavayee No. 2. The High Court has set aside the judgment of the first appellate court. Hence the appeal before Hon'ble Supreme Court. It was held that the omission to mention the name of a woman who was living as a concubine and her offspring in the will executed by the father-in-law could not destroy the presumption which otherwise arose in law. To be noted ***S.P.S.Balasubramanyam*** principle was rendered on 13.10.1993.

10. In any event, ***Shiramabai*** is directly on the point and it applies in all fours to the case on hand. The reason is ***Padma Sundara Rao*** principle.



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[***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in (2002) 3 SCC

533: 2002 SCC OnLine SC 334]. To be noted, ***Padma Sundara Rao*** is a Constitution Bench declaration of law. Facts in ***Padma Sundara Rao*** are a notification issued under Section 6 of the Land Acquisition Act, 1894 was assailed in Madras High Court and the High Court relying on N.Narasimhaiah case reported in (1996) 3 SCC 88 held that the same was validly issued. The matter was carried to Hon'ble Supreme Court on the question of law as to whether after quashing of a notification under section 6, a fresh period of one year is available to the State Government to issue another notification under section 6. It is in this context, i.e., while deciding this legal question, a Constitution Bench of Hon'ble Supreme Court declared the law as regards how courts should place reliance on case laws / precedents and relevant paragraph is paragraph 9 which reads as follows:

"9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2



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WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

11. All that learned counsel for writ petitioner seeks is family pension for writ petitioner. In this regard, learned counsel for respondents pointed out that writ petitioner has made a claim on and from 11.12.2014 (to be noted, date of demise of Soldier is 10.12.2014) but claim has been rejected by R3 only on 24.11.2021. The writ petitioner if at all can only claim family pension for three years prior to 24.11.2021 when R3 made the order i.e., from 24.11.2018 is learned counsel for Respondents' say. We accept this submission made by learned counsel for respondents on the basis of **Tarsem Singh case [Union of India and Others Vs. Tarsem Singh]** reported in **(2008) 8 SCC 648**. Facts in **Tarsem Singh** are Subedar Tarsem Singh was invalidated out of the Army on November 13, 1983. In 1999, he filed a writ petition in the High Court seeking to pay him disability pension. By order dated 06.12.2000, a learned Single Judge ordered payment of disability pension and arrears limited to 38 months prior to the petition and he was also directed to appear before resurvey medical board. The appellant granted



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him pension and released arrears for 38 months. The respondent preferred appeal contending his arrears should be from November 1983. Hon'ble Division Bench allowed his appeal, directing payment of arrears for the full 16 years period and subsequently by a modification, it had also granted interest at 6% per annum. The appellant approached Hon'ble Supreme Court challenging the direction of High Court for payment of arrears for 16 years. It is in this context, Hon'ble Supreme Court considered the submissions and came to the conclusion. Relevant paragraph is paragraph 6 and the same reads as follows:

'6. In [Shiv Dass vs. Union of India](#) - 2007 (9) SCC 274, this Court held:

'8.....The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition..... If petition is filed beyond a reasonable period say three years



normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years.'

12. In the light of narrative, discussion and dispositive reasoning thus far, we have no difficulty in coming to the conclusion that the finding of AFT posited and predicated on Regulation 212 does not hold water and it has to straightaway yield to the ***Shiramabai*** principle. To this extent we interfere with the impugned order of AFT and set aside the same and accede to the claim of the writ petitioner partially.

13. This Court deems it appropriate to make a short adumbration of certain buttressing points and they are as follows:

i) Lone bone of contention is whether the writ petitioner contracted valid marriage with Late Thangaraj. On a demurrer if the writ petitioner had contracted the marriage after 13.07.1996 (after demise of first marriage with Smt.V.Soundaram), there would have been no difficulty and would have been entitled to pension. Therefore, what is described as 'plurality of marriage' is the only point;



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ii) It is nobody's case that both wives were / are claiming pension. To be noted, in any event, first wife is no more and her date of demise is 13.07.1996 and she pre-deceased the Soldier;

iii) In the light of ***Shiramabai*** and ***S.P.S.Balasubramanyam*** principles, we have no difficulty in writing that the writ petitioner who has undisputedly continuously lived together with the Soldier under the same roof and cohabited for a number of years with the late Soldier is good enough to accede to her claim;

iv) It is not the case of the respondents that writ petitioner is not married wife of Late Soldier Thangaraj. All that AFT has said in the impugned order is writ petitioner is not 'legally married wife' of Late Thangaraj as her marriage was when marriage of Thangaraj with Smt.V.Soundaram was subsisting.

v) As a sequitur to the previous point, we are after all not testing the case of bigamy.



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14. Ergo sequitur of narrative, discussion and dispositive reasoning thus far is, the following order is made:

i) The impugned order of AFT being order dated 04.08.2023 made in O.A.No.98 of 2022 with M.A.No.152 of 2022 is set aside to the extent that it rejects the entire claim of the writ petitioner;

ii) The writ petitioner will be entitled to Family Pension with effect from 24.11.2018 being 3 years prior to the date of order of R3 dated 24.11.2021 vide which writ petitioner's claim was rejected;

iii) The arrears of family pension from 24.11.2018 shall be paid by R4 with 6% per annum simple interest as expeditiously as the business of R4 would permit but in any event on or before 31.08.2025;

iv) In the light of view taken by this Court, it is open to the writ petitioner to make application/s for any other benefit or any other claim which she may make and the same



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shall be considered on its own merits and in accordance with

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law by the respondents.

Captioned main WP allowed partly to the extent indicated above.

There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

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Index : Yes/No

Speaking order/Non speaking order

Neutral Citation: Yes/No

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To

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1. The Secretary,
Government of India
Ministry of defence
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