

W.A.(MD)No.938 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**  
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**DATED : 25.02.2025**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE J. NISHA BANU**  
**and**  
**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)Nos.938 and 1045 of 2024**  
**and**  
**C.M.P.(MD).Nos.6843 and 7662 of 2024**

**W.A(MD)No.938 of 2024**

- 1.The District Collector,  
Kanyakumari District,  
Nagercoil Post,  
Kanyakumari District.
- 2.The Assistant Director of Town Panchayats,  
Nagercoil Zone,  
Collectorate Campus,  
Kanyakumari District.
3. The Executive Officer,  
Killiyur Town Panchayat Office,  
Killiyur Post,  
Kanyakumari District.

... Appellants

Vs.

U.Sandhya

... Respondent



W.A.(MD)No.938 of 2024

**Prayer:** Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.15233 of 2023, dated 26.06.2023.

For Appellants :Mr.Veerakathiravan  
Additional Advocate General  
assisted by M/s.D.Farjana Ghoushia

For Respondent :Mr.K.Ponniah

**W.A(MD)No.1045 of 2024:**

- 1.The Directorate of Town Panchayat,  
Campus of Town Panchayat,  
Raja Annamalaipuram,  
Chennai – 28.
- 2.The District Collector,  
Collector Office,  
Nagercoil,  
Kanyakumari District.
- 3.The Assistant Director,  
Directorate of Town Panchayat,  
Collectorate, Nagercoil,  
Kanyakumari District.
4. The Executive Officer,  
Killiyur Town Panchayat,  
Nagercoil,  
Kanyakumari District.

... Appellants

Vs.

- 1.Minor.G.U.Nimal
  - 2.Minor.G.U.Nikkil
- Through their legal guardian,  
U.Bagyalakshmi



W.A.(MD)No.938 of 2024

3.The District Treasury Officer,  
Collectorate,  
Nagercoil, Kanyakumari District.

... Respondents

**Prayer:** Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.19773 of 2023, dated 16.08.2023.

For Appellants :Mr.Veerakathiravan  
Additional Advocate General  
assisted by M/s.D.Farjana Ghoushia

For R1 and R2 :Mr.G.K.Chitra Devi

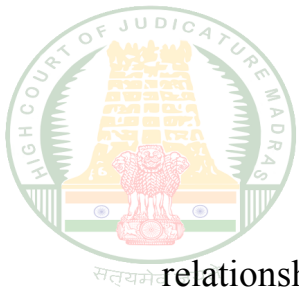
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### **COMMON JUDGMENT**

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present Writ Appeals are filed by the respondents in the writ petitions challenging the orders passed in W.P.(MD)Nos.15233 and 19773 of 2023.

2(i). The W.P.(MD)No.15233 of 2023 were filed for Writ of Mandamus to direct the respondents to disburse the family pensionary benefits to the petitioner's family and to the twin children born out of living in



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relationship of the petitioner's husband and to the widowed mother of the petitioner's husband as mandated in Tamil Nadu Pension Rules, 1978. The said writ petition was disposed of directing the respondents thereunder to consider the claim as per the legal position. Against the said order W.A.(MD)No.938 of 2024 is filed.

2.(ii) The W.P.(MD)No.19773 of 2023 were filed for Writ of Mandamus directing the respondents to sanction the share of the family pension to the petitioners of the deceased father worked as Executive Officer, Killiyoor Town Panchayat, Kanyakumari District. The said writ petition was allowed directing the respondents thereunder to grant family pension to the wife and children of the second wife and to issue terminal benefits equally to all the surviving legal heirs including the petitioner and his brother after granting opportunity to all the stake holders. Against the said order W.A.(MD)No.1045 of 2024 is filed.

3. The W.P.(MD)No.19773 of 2023 is filed by the minors through the natural guardian mother. The brief facts as stated in W.P.(MD)No.19773 of 2023 are that the petitioner's father, Umakanthan, joined Panchayat service,



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then served as Executive Officer at Sholavandhan Town Panchayat from 01.12.2008, then as Executive Officer at Killiyoor Town Panchayat, thereby had served for 35 years and died on 05.04.2020 due to liver failure. The petitioner's father legally wedded one U.Sandhya and had two children namely Ruban (38 years) and Rubini (37 years). The petitioner's father had a long cohabitation relationship with petitioner's mother namely Bagyalakshmi and as a result the petitioners were born. The petitioner's mother had spent Rs.20/- lakhs for the father's Liver treatment, but the 1<sup>st</sup> wife has not spent any amount. Even though the petitioners are illegitimate children, they are entitled share in petitioner's father pensionary benefits. In the meanwhile, the first wife one U.Sandhya had filed W.P(MD)No.15233 of 2023 suppressing the existence petitioner's mother Bagyalakshmi and the said writ petition was disposed of directing the respondents to disburse the terminal benefits within a period of 5 months from the date of the said order. The contention of the petitioners is that they are entitled to family pension, compassionate appointment and a share in the terminal benefits. Hence the W.P.(MD)No.19773 of 2023 came to be filed.

4. The brief facts as stated in W.P.(MD)No.15233 of 2023 are that the petitioner is a widow of Late.G.Umakanthan and out of the wedlock two



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children namely Ruban (35) and Rubini (36) was born. While the petitioner's husband was working as Executive Officer in Killiyoor Town Panchayat, he died on 05.04.2020, due to illness. After the demise of petitioner's husband, the petitioner approached the respondents along with death certificate dated 14.04.2020 issued by the Registrar, Thiruvudagam Village, Madurai, to disburse the eligible pensionary benefits of the deceased. The respondents directed the petitioner to produce legal heir certificate. Accordingly, the Tahsildar, Madurai North Taluk in the Certificate No.TN-8202107031427 dated 12.07.2021 detailing the following are the legal heirs of the deceased person.

| Sl.No. | Name                          | Age | Relationship for deceased | Marital Status |
|--------|-------------------------------|-----|---------------------------|----------------|
| 1.     | Sandhya U                     | 55  | Wife                      | Widow          |
| 2.     | Ruban U                       | 34  | Son                       | Married        |
| 3.     | U.Rubini                      | 33  | Daughter                  | Married        |
| 4.     | G.U.Nikkil S/o.Bagyalakshmi   | 4   | Son                       | unmarried      |
| 5.     | G.U.Nimal<br>S/o.Bagyalakshmi | 4   | Son                       | Unmarried      |
| 6.     | Jeyalakshmi G                 | 77  | Moth of the deceased      | Widow          |

Along with the legal heir certificate the petitioner submitted the representations dated 09.05.2022 and 29.07.2022 before the 2<sup>nd</sup> respondent in person for disbursement of the pensionary benefits. The respondent informed



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that the petitioner's husband was facing certain charges under section 17(b). Thereafter, vide order in Na.Ka.No.20/2023/Oo3 dated 20.02.2023 the charges were held to be abated. Hence there is no impediment to disburse the family pension and terminal benefits. Again, the petitioner submitted representation dated 20.03.2023, but the respondent informed that one Bagayalakshmi claiming to be second wife is claiming benefits. Hence the petitioner submitted that the petitioner is not against disbursing proportionate pensionary benefits for the twin children born to the second wife, since there is catena of judgments to disburse the pensionary benefits even to illegitimate children, but not to the second wife. Hence the W.P.(MD)No.15233 of 2023 to disburse the family pension and terminal benefits.

5. After hearing the rival submissions, the Writ Court in W.P. (MD)No.15233 of 2023 had held as under:

*“It is well settled that it is only one person can be a legally wedded wife and there is no such recognition for the second wife. However, children born through the second wife would also be entitled to a share in the terminal benefits but the pension has to be given only for the spouse”*



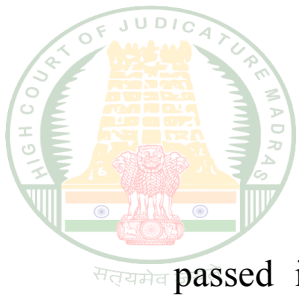
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The Writ Court in W.P.(MD)No.19773 of 2023 had passed the following order:

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*“(5. This Court in a similar case in W.P(MD)No. 15233 of 2023 vide order, in 26.06.2023 has held that the children born through the 2<sup>nd</sup> wife is also be entitled share in the terminal benefits of the deceased employee. In yet another case Hon'ble Apex Court reported in 2002 SCC 431, dated 27.01.2000, Apex Court has held that minor children of second marriage were also entitled to family pension, but not the second widow. Hence, this Court directs the respondents to bear the legal position in mind and prepare the pension proposals accordingly within a period of four (4) weeks from the date of receipt of a copy of this order. That apart, this Court directs the respondents to sanction family pension to the wife and minor children of the second wife. The respondents are directed to take necessary steps to issue the terminal benefits equally to all the survived legal heirs including the petitioner and his brother after giving notice to all stakeholders and opportunity of hearing to the respective rival claimants as well. The entire exercise shall be completed within a period of five months from the date of receipt of a copy of this order.”*

6. The appellants are aggrieved by the two different orders passed in the aforesaid two writ petitions. Infact the appellants are not aggrieved by the order passed in W.P.(MD)No.15233 of 2023. But aggrieved by the order



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passed in W.P.(MD)No.19773 of 2023, wherein it has directed to grant proportionate family pension to the children born to the second wife. The contention of the appellants is that the family pension is payable to the first wife alone and not to the second wife or her children.

7. In order to consider the issue raised by the appellants, the relevant provisions ought to be considered. Under Rule 49 of Tamil Nadu Pension Rules, 1978 provides for family pension. Under Rule 49(6) it states that

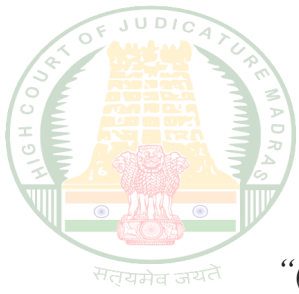
*(6) The period for which family pension is payable shall be as follows :-*

*i) in the case of widow or widower, up to the date of death or remarriage, whichever is earlier ;*

*(ii) in the case of a son, until he attains the age of '[twenty one years] [twenty-five years]; and*

*(iii) in the case of an unmarried daughter, until she attains the age of '[twenty-four years] (thirty years) '[twenty five years] or until she gets married whichever is earlier:*

Under Rule 49(13)(a) it has indicated what a “**family**” of deceased employee means and the same is culled out hereunder:



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WEB COPY “(13) For the purposes of this rule,-  
(a) "continuous service" means...

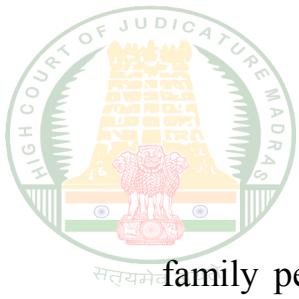
*(b) **family**, in relation to a Government servant mean –*

*(i) (a) wife in the case of a male Government servant or husband in the case of a female Government servants;*

*(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.]*

*[ii) son who has not attained the age of [twenty one years] [twenty five years] and unmarried daughter who has not attained the age of [twenty four years] [thirty years] [twenty five years] [including such son or daughter legally adopted and also such son or unmarried daughter born through illegitimate wife] \*\*\*] [and such son or daughter born after retirement, on or after the 1<sup>st</sup> January 1979].”*

From the combined reading of Rule 49(6) and Rule 49(13)(b)(ii) it is evident that the minor sons and daughters are eligible for family pension until they attain the age of twenty five years. **And the illegitimate minor sons and daughters are also eligible for family pension.** In the present case, the minor sons were born to second wife (relationship), when the first marriage was subsisting, then the minor sons born to second wife becomes illegitimate minor sons and consequently covered under Rule 49(13)(b)(ii) and entitled to



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family pension. Therefore, the minors sons born to the second wife namely Minor.G.U.Nimal and Minor.G.U.Nikkil are entitled to family pension along with the first wife namely U.Sandhya.

8. Now the share of the family pension ought to be determined. Under Rule 49(6)(iii)(ii)(b) it has been stated that the twins are entitled to equal shares and the relevant provision is culled out hereunder:

*“(b) in cases of twin children to such twin children in equal shares. In the event of any of such children ceasing to be eligible for family pension his or her share of family pension will become payable to the other such child and when both such children become ineligible for family pension, the family pension will become payable to the next eligible child or twin children, as the case may be;”*

9. Under Rule 49(7)(b) proviso it has been stated that the widow and minor child is entitled to equal shares. Therefore, this Court is of the considered opinion as per the above provisions the first wife U.Sandhya is entitled to 50% of the family pension. The Minor.G.U.Nimal and Minor.G.U.Nikkil are entitled to balance 50% (each 25%) of family pension and the minors are entitled to receive family pension until they attain 25 years



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and thereafter the family pension shall be stopped to the children. After stopping of such pension to the said minors on attaining 25 years, the first wife is entitled to receive full pension until her life time or until remarriage.

10. As far as the terminal benefits are concerned, the 1<sup>st</sup> wife U.Sandhya, the children of first marriage namely Ruban (38 years) and Rubini (37 years), the minor children Minor.G.U.Nimal and Minor.G.U.Nikkil are entitled to equal shares, which comes to five equal shares. At this juncture, the Learned Counsel appearing for the minors submitted that the mother of the minor children had spent more than 20 lakhs for the father Umakanthan liver treatment. Further the major children namely Ruban and Rubini are earning. Hence, the terminal benefits may be divided into three equal shares. But such a plea cannot be entertained. However the parties are at liberty for private negotiations and settlement for three equal shares.

11. Based on the above discussions the following orders are passed:

- i. As far as **family pension** is concerned, the first wife U.Sandhya is entitled to 50% of the family pension. The Minor.G.U.Nimal and Minor.G.U.Nikkil are entitled to balance 50% (each 25%) of family pension.



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ii. The minors are entitled to receive family pension until they attain 25 years and thereafter the family pension shall be stopped to the minor children.

iii. After stopping of such pension to the said minors on attaining 25 years, the first wife is entitled to receive full pension thereafter until her life time or until remarriage.

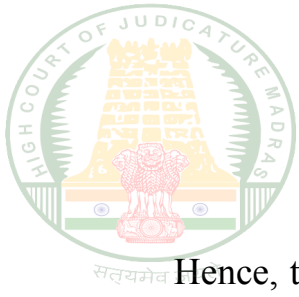
iv. As far as **Terminal benefits** are concerned, the 1<sup>st</sup> wife U.Sandhya, the children of first marriage namely Ruban (38 years) and Rubini (37 years), the minor children Minor.G.U.Nimal and Minor.G.U.Nikkil are entitled to equal shares, which comes to five equal shares.

v. As far as the claim of three equal shares are concerned, the parties are at liberty for private negotiations and settle for three equal shares.

vi. The appellants shall take necessary steps to disburse the family pension and terminal benefits within a period of eight weeks from the date of receipt of the copy of this order.

12. With the above said observations, the writ appeals in

W.A.(MD)No.938 of 2024 and W.A.(MD)No.1045 of 2024 are **disposed of**.



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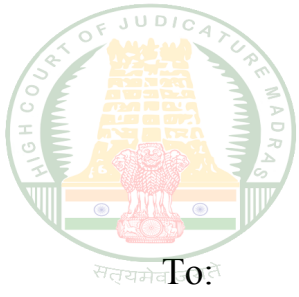
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Hence, the order passed in W.P.(MD)No.15233 of 2023 and the order passed in W.P.(MD)No.19773 of 2023 are **clarified and modified** to the extent stated supra. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B., J.] [S.S.Y., J.]  
25.02.2025

Index : Yes / No

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To:

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1. The District Collector,  
Kanyakumari District,  
Nagercoil Post,  
Kanyakumari District.
2. The Assistant Director of Town Panchayats,  
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Campus of Town Panchayat,  
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W.A.(MD)No.938 of 2024

**J.NISHA BANU, J.**

and

**S.SRIMATHY, J.**

Tmg

**W.A(MD)Nos.938 and 1045 of 2024**

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