

G.Sathyavani ... Vs. the District Elementary Educational Officer, and ors.

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Court : Chennai

Decided On : Jul-06-2010

Judge : T.Raja, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.No. 43331 of 2006

Appellant : G.Sathyavani ...

Respondent : The District Elementary Educational Officer, and ors.

Advocate for Def. : Mr.V.Manoharan, Adv.

Advocate for Pet/Ap. : Mr.K.Rajkumar, Adv.

Judgement :

1. On abolition of the Tribunal, the Original Application in O.A.No.1486 of 1999 filed before the Tamil Nadu Administrative Tribunal stood transferred to this Court and re-numbered as W.P.No.43331 of 2006.

2.The petitioner married one R.Govindarajan, who served as Higher Grade Teacher in Panchayat Union Middle School of Pudhuvayal Village in Gummudipoondi Union. Before her marriage with one R.Govindarajan, the said R.Govindarajan was already married to one S.Vijayalakshmi. Unfortunately, the said Vijayalakshmi died in the year 1980. Finally, the petitioner's husband R.Govindarajan also died on 14.07.1997. Before the death of her husband, she

has driven out of the matrimonial home and, therefore, the petitioner filed Matrimonial Case No.1 of 1996 on the file of the Judicial Magistrate, Thiruvarur, claiming maintenance at the rate of Rs.500/- from the deceased. The Judicial Magistrate, Thiruvarur by order dated 18.04.1996, allowed the petitioner's claim by awarding of Rs.500/- as maintenance. As there was a delay caused by the said R.Govindarajan in paying the maintenance amount of Rs.500/-, the petitioner filed E.A.No.2270 of 1996 before the Judicial Magistrate, Tiruvarur, claiming of Rs.4,000/- being the arrears of maintenance for eight months. In view of the judicial order, the petitioner is entitled to have maintenance of Rs.500/- from the deceased. It is proved that the petitioner is the legally wedded wife of R.Govindarajan as the petitioner's marriage with Govindarajan, though was second marriage but it was after the death of Vijayalakshmi in the year 1980 and, therefore, the marriage of the petitioner cannot be questioned. Subsequently, during the life time of R.Govindarajan, a Will dated 11.06.1997 was also registered as Document No.33/97 bequeathing the entire estate and property in favour of the third respondent, daughter of the deceased Govindarajan through his first wife. After her marriage, she settled down with her husband and living happily. In the above mentioned Will, the deceased has stated that he has married the petitioner as second wife, consequent to the death of his first wife. It also proves that the petitioner is the legally wedded wife of the deceased. Whiles, after the death of the petitioner's husband Late.Gonvindarajan, the petitioner is entitled to get family pension as per the Rule 49 of the Tamil Nadu Pension Rules.

3. The learned counsel appearing for the petitioner submits that the petitioner has been recognised by her husband as his second wife consequent to the death of his first wife by his registered Will dated 11.06.1997. The petitioner is entitled to receive the family pension from respondents 1 and 2. Rule 49(2)(b) of the Tamil Nadu Pension Rules provides that where a government servant dies after retirement from service, if he was in receipt of pension on the date of death, the family of the deceased shall be entitled to family pension. In his further submission, he also relied upon a Judgment of this Court reported in J.Kanniga Parameswari v. The Special Commissioner and Commissioner of Treasury and Accounts Office, Panakar Part, Chennai and 2 others - 2007 (3) CTC 630 to allow the prayer made in the present writ petition. In the said Judgment, this Court has

held that if the petitioner is the legally wedded wife of the deceased government servant and there is no dispute with regard to her status, the petitioner is entitled for the family pension, provided that there was no divorce between the petitioner and the deceased government servant. Further, it is made clear that if a nominee has not been made in Form-E, the family pension cannot be negated on the ground that no nomination has been made in Form-E.

4. On the other hand, the learned counsel for the third respondent submits that the petition is not maintainable since the petition was filed on 13.11.1998, which is one year after the death of the government servant i.e., 14.07.1997. The learned counsel for the third respondent further submits that the third respondent, daughter of the deceased through his first wife, though being married is still entitled to get pension as the legal heir of the deceased government servant. It was contended that the petitioner is not entitled to the benefit of family pension as claimed in the petition by reason of the Will executed by her deceased father and in view of the Will executed by her deceased father, the entire benefits should be paid only to her and on the basis of the said the petitioner cannot claim any benefit under the Will which was executed with good intention.

5. The learned Government Advocate appearing for respondents 1 and 2 submits that the petitioner having not been divorced by the deceased government servant on the date of death of the petitioner's husband, the petitioner is the legally wedded wife of the government servant. This has been further fortified by the registered Will dated 11.06.1997 executed by the deceased government servant in favour of the parties, wherein, Late. Govindarajan also specifically admitted the fact that he married the petitioner. The stand taken by the learned counsel for the third respondent that the petition is not maintainable, cannot be sustained as the petition has been presented well within time.

6. Heard the learned counsel on either side.

7. It is an admitted fact that there was a registered Will by late Govindarajan when he was alive. In the said Will, though the deceased had bequeathed all the service benefits in favour of the children of the deceased first wife who died in the year 1980, the said Will went to recognise the factum of marriage that took place

between the petitioner and the deceased on 11.09.1985 which is after the death of the first wife Vijayalakshmi. Secondly, after the misunderstanding between the petitioner and the deceased, the petitioner filed a Matrimonial Case on the file of the Judicial Magistrate, Tiruvarur and the said application also came to be allowed in her favour. Further, the deceased government servant namely Late.Govindarajan, while admitting the factum of his marriage with the petitioner, after the death of his first wife Vijayalakshmi, did not mention anywhere in the registered Will dated 11.06.1997 that the petitioner was divorced either legally or by any Panchayat. This admission made by the deceased Govindarajan in the registered Will goes to show that the petitioner continued to be the legally wedded wife of the deceased. In this context, as rightly claimed by the learned counsel for the petitioner, the Judgment of this Court reported in 2007 (3) CTC 630 makes the issue very clear that the petitioner being legally wedded wife of the deceased government servant and there being no dispute with regard to her status as legally wedded wife, and further, she also given maintenance as ordered by the learned Judicial Magistrate, Tiruvarur, is entitled to the relief sought for.

8.In the above cited Judgment, this Court has given a direction to the respondents to relax the requirements that would require such an extent and subject to exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. Paragraphs 8 and 9 is extracted here under; "8.But, under Rule 82 of the Tamil Nadu Pension Rules, 1978, power of relaxation has been given wherein any department of the government is satisfied that the operation of any of these rules causes hardship in any particular case, the Department may, by order for reasons to be recorded in writing, dispense with or relax the requirements that would require to such an extent and subject to exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

9.As far as this case is concerned, only on technicalities, family pension has been denied to the petitioner and apart from this, though a stand has been taken by the respondents and also the petitioner was informed that in Form-E, nomination has not been made and therefore, she is not eligible for any benefit, the object of the family pension scheme is to enable the family of the deceased Government

servant to survive even after his death. It is an admitted fact that the husband of the petitioner was an employee of the third respondent and after his retirement, he was given all the terminal benefits and till his death, he has also received pension. As such when a welfare measure has been introduced with the purpose to enable the family of the deceased Government servant to survive, that cannot be defeated standing on mere technicalities. If the impugned order is allowed to stand, in my opinion, the object of the scheme will be defeated. That apart, when the power of relaxation has been given, using that power of relaxation, the condition of nomination can be relaxed and the petitioner's request of family pension can be considered and the family pension can be sanctioned to the petitioner." 9. In view of the above, if the department feels impeded by any technical procedure since the power is already given under Rule 82 of the Tamil Nadu Pension Rules, 1978 to the department to relax the nomination as mentioned by this Court in the above said judgement, since the object of the family pension scheme is to enable the family of the deceased government servant to survive even after his death. It is also an admitted fact that the husband of the petitioner, before his death, was given all the terminal benefits and after his death, he has also received pension and the children through the first wife also received the terminal benefits as mentioned by him in his registered Will.

10. In view of the fact that the registered Will is executed by the deceased bequeathing all terminal benefits in favour of the children through the first wife, this Court finds no justification to grant the terminal benefits in favour of the petitioner as the same were already disbursed to the third respondent and other children through the first wife.

11. That apart, the contention that there was no nomination given by the deceased in force cannot be a ground to deny family pension to the petitioner. In any event, the third respondent has already got married and settled down with her husband, namely Thiru. Jeyasankar, residing at 235, Balaji Street, Thiruvengadapuram, Ponneri- 601 204. Further, she is not even depending on the family pension of the deceased.

12.Further, this Court finds no justification in the stand taken by the learned counsel appearing for the third respondent in denying family pension to the petitioner. Further, the third respondent has already received the service benefits of her deceased father, though the petitioner is entitled to receive the same as a surviving undivorced widow, but in view of the fact that the third respondent has received the entire terminal benefits, the petitioner has sought for only the family pension to which the third respondent, being a married daughter, is not legally entitled to.

13.In view of this matter, this Court finds merits in favour of the petitioner and allows the petition by setting aside the impugned order passed by the respondents, giving a direction to the respondents to pay the family pension to the petitioner, daughter of the deceased through his first wife had already received all the retirement benefits from the respondents 1 and 2, it is also made clear that the petitioner will not be entitled to get any other service benefits except the family pension in view of the registered Will executed by the deceased. The above said direction shall be complied with within a period of five weeks from the date of receipt of a copy of this order. Accordingly, this writ petition is allowed. No costs.

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