

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.21514 of 2022

Between:

G.Vijaya Laxmi

...Petitioner

AND

1. The State of Telangana, rep. By its Principal Secretary,
Prohibition and Excise Department, Secretariat,
Hyderabad and three others

...Respondents

ORDER PRONOUNCED ON: 07.06.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH

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...Respondents

! Counsel for Petitioner : Sri G.Ravi Mohan

^ Counsel for Respondents: Assistant Government Pleader for
Services-III

< GIST :

> HEAD NOTE :

? Case referred

1. 2000 SCC Online Mad 28025

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION No.21514 of 2022

ORDER:-

This writ petition is filed under Article 226 of Constitution of India, seeking the following relief:

“....to issue writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in rejecting the claim of family pension to the petitioner vide Proceedings dated .04.01.2022 and in not releasing the family pension to the petitioner as the same is illegal, arbitrary and unjust and consequently set aside the impugned proceedings dated 04.01.2021 and direct the respondents to release the family pension w.e.f.13.12.2019 from the date of death of the husband of the petitioner”

2. Heard Sri G.Ravi Mohan, Learned Counsel for the petitioner and the Government Pleader for Services-III.

3. The learned Counsel for the petitioner submits that the husband of the petitioner viz., G.Muralidhar

retired from service as Excise Inspector on 31.03.2007 on attaining the age of superannuation and consequently on his retirement the Government issued G.O.Rt.No.1914 Revenue (Vigilance) Department dated 14.10.2008, sanctioning provisional pension pending finalization of disciplinary proceedings against him. The husband of the petitioner was receiving provisional pension till his death on 13.12.2019. The petitioner was married to G.Muralidhar (deceased Employee) in the year 1974 and they blessed with three children viz., Shailaja, G.Arvind Kumar and Swetha and all of them were married.

4. The learned Counsel for the petitioner further submits that in the year 2005 one Anantha Laxmi filed a criminal case under Sections 498-A and 494 of IPC against the petitioner and her husband in CC No.132 of 2006 on the file of VII Metropolitan Magistrate, Hyderabad and the same was dismissed

with a finding that there was no proof of marriage between Anantha Laxmi and G.Murlidhar Rao. Thereafter the said Anantha Laxmi filed a Maintenance Case in MC No.109/2008 and the said petition was allowed on 30.06.2010 and maintenance was paid by husband of the petitioner till the date of death of Anantha Laxmi i.e. in the year, 2014.

5. The learned Counsel for the petitioner further submits that after death of the husband of the petitioner, the respondents have not sanctioned the family pension and the petitioner filed W.P.No.18384 of 2020 and this Court passed order on 19.10.2020 to consider the representation of the petitioner and pass appropriate orders in accordance with law within period of two months and in view of the orders passed by this court, the petitioner made representation on 11.11.2020 and accordingly the respondents have passed the orders on 04.01.2021 stating that in the light of the judgment passed by the VIII Metropolitan

Magistrate, Cyberabad as the petitioner has no legal status and she is not eligible for family pension of Late G.Muralidhar Rao.

6. The learned Counsel for the petitioner further submits that the respondent No.2 failed to see that the findings in CC No.132/2006 were not conclusive result as the same was not a decree or order of the court to rely upon it as it is a criminal court judgment in respect of 498-A and 494 of IPC. The husband of the petitioner on his retirement submitted his pension proposals duly showing the name of the petitioner as his wife and she is eligible for family pension as per Rule-50 of Telangana Revised Pension Rules, 1980. The name of the petitioner was mentioned in service record and therefore the petitioner is entitled for family pension and requested to allow the writ petition.

7. The learned Counsel for the petitioner in support of his contention relied on the following judgment of High Court of Madras.

1. C.Sarojini Devi Vs. Director of Local Fund Audits and others¹

8. The learned Assistant Government Pleader for Services-III basing on the Counter submits that though the name of the petitioner was shown as wife of the deceased-employee, family pension benefits were not sanctioned in view of judgment dated 27.10.2009 passed in CC No.132 of 2006 by the VII Metropolitan Magistrate, Hyderabad, whereupon Smt.G.Anantha Laxmi was declared as wife of Late. G.Muralidhar Rao.

9. The learned Assistant Government Pleader further submits that the family pension is governed by Rule-50 of the Telangana Revised Pension Rules, 1980 and as per the said rules the family of the deceased is

1.2000 SCC ONLINE Mad 28025

entitled to family pension. As per the judgment dated 27.10.2009 in CC No.132/2006 Smt.G.Anantha Laxmi was declared to be the wife of Late G.Muralidhar Rao and the marriage of the petitioner with the deceased-employee was took place on 26.12.1974, thus the marriage of the petitioner with Late G.Muralidhar Rao took place subsequent to the marriage with G.Anantha Laxmi, therefore G.Anatha Laxmi was to be construed as 1st wife of Late G.Muralidhar Rao and late-G.Muralidhar Rao contracted 2nd marriage with the petitioner after the induction of APCS (Conduct) Rule, 1964 without permission of the competent authority and the petitioner has no legal status to claim of family pension of Late G.Muralihdar Rao and requested to dismiss the petition.

10. After hearing both sides and on perusing the material on record the petitioner is the wife of late G.Muralidha Rao, Retired Excise Sub-Inspector and he retired from service on 31.03.2007 on attaining the age

of superannuation and died on 13.12.2019. Before his death the husband of the petitioner submitted pension proposal papers to the concerned authorities showing the name of the petitioner as nominee for the family pension by enclosing relevant documents and also made representations to the respondent Nos.2 and 3 requesting to grant pension and terminal benefits.

11. Now the respondents have rejected the case of the petitioner for sanction of family pension on the ground that the petitioner is the 2nd wife of the deceased-G.Muralidhar Rao and stated that Smt.G.Anantha Laxmi has been declared to be the wife of late G.Muralidhar Rao having performed the marriage on 23.02.1974, and the marriage of the petitioner with the deceased took place on 26.12.1974 as per the Discharge Petition filed in CC No.132 of 2006 and the husband of the petitioner without permission of the competent authorities contracted

second marriage and the petitioner has no *locus standi* and not eligible to receive family pension.

12. In fact in the service records, the name of the petitioner was shown as wife of late Sri G.Muralidhar Rao. The respondents have not taken any action during the course of his employment and till his death for having contracted the 2nd marriage. It is an admitted fact that the alleged first wife Smt.G.Anantha Laxmi expired in the year 2014. At the time of death of the deceased-G.Muralidhar Rao, the petitioner is only surviving wife and her name was also recorded in all the service records of the deceased-Muralidhar Rao. Now, the respondents cannot reject the claim of the petitioner for release of family pension to her.

13. The Rule 50 (6) (a) (i) of Teoanganana State Revised Pension Rules, 1980, provides family pension payable to more widows than one, the family pension shall be paid to the widows in equal shares. After

nearly more than 47 years of the marriage of the petitioner with the deceased-G.Muralidhar Rao, the respondents cannot decide who is the first wife and who is the second wife of the deceased and the respondents cannot refuse to pay family pension to the petitioner on the ground that she is the second wife of the deceased.

14. The service records of the deceased-service pensioner, clearly shows the petitioner and her three children were shown as Family Members of the deceased-G.Muralidhar Rao and the pension papers were forwarded to the respondent No.3 mentioning that the petitioner was nominee of Late G.Muralidhar Rao. Further, the circulars cannot over ride the Rule and there is a specific provision for granting family pension to more than one wife as per the Telangana Revised Pension Rules, 1980 and the respondents cannot take into account of the circulars and reject the case of the petitioner.

15. The judgment relied on by the learned Counsel for the petitioner in **C.Sarojini Devi (supra 1)**, apply to the instant case, wherein at para No.12 to 14, held as under:

12. *Even in the above judgment, the petitioner therein had married the Government Employee during the subsistence of the first marriage. The only difference is that in that case, the first marriage got dissolved in the year 2003 and the first wife died in the year 2005. This Court took into consideration the judgment of the Hon'ble Supreme Court in Dhannulal's case. The Hon'ble Supreme Court, in the said case has held that Law presumes in favour of marriage WP.No.34952/2019 and against concubinage, when a man and woman have cohabitated continuously for a long time. By relying upon this judgment, this Court held that after the dissolution of marriage with the first wife and after her death, the petitioner therein was living with the deceased Government servant till his death. This was taken into consideration by this Court and this Court held that the petitioner therein must be considered to be the wife of the deceased Government servant at least after the dissolution of the first marriage and the subsequent death of the first wife.*

13. *This Court is in complete agreement with the proposition of law that has been enunciated in the above judgment. It is very easy to brand the petitioner as a concubine and deprive her of her livelihood. However, the fact remains that the petitioner lived with the deceased Dr.A.Chinnasamy from the year 1975 up to his death in the year 2009. This means that she lived with him*

for nearly 34 years. The petitioner also gave birth to three children. If the petitioner had made this claim when the first wife is alive, then obviously the petitioner will not be entitled for Family Pension, since her relationship is not recognized by law.

14. The march of law happens only while considering the co-habitation that continues after the death of the first wife. That is the most crucial factor that was taken into consideration by this Court while granting the Family Pension WP.No.34952/2019 the petitioner in the case cited supra. Even in the present case, the first wife died on 02.04.1997. Thereafter, the petitioner lived with the deceased Dr.A.Chinnasamy till his death on 20.01.2009. During this period, it can always be construed that the petitioner and the deceased Dr.A.Chinnasamy were living as husband and wife and their long co-habitation itself raises that presumption of marriage. Added to that the deceased Dr.A.Chinnasamy had also nominated the petitioner on 11.05.1999 to receive the Family Pension after his death.

16. In the instant case also, the respondents stated that the petitioner got married the deceased Service Pensioner viz., G.Muralidhar Rao on 26.12.1974 and the husband of the petitioner died on 13.12.2019 which means the petitioner and her husband lived together about more than 45 years and name of the petitioner was also shown in service records as wife of the deceased. Moreover, as per the impugned orders

there was a matrimonial dispute between the deceased-Muralidhar Rao and Anantha Laxmi and she filed case against the petitioner and her husband for the allegation of bigamy and the same was closed in favour of the petitioner in CC No.132 of 2006.

17. Admittedly, the petitioner was the only surviving wife as on the date of death of the deceased-service pensioner Late Sri G.Muralidhar Rao on 13.12.2019 and as per TS Revised Pension Rules, 1980, the petitioner is eligible for family pension consequent on death of her husband.

18. In view of the above findings, the impugned orders dated 04.01.2021 issued by the Deputy Commissioner of Prohibition and Excise, Hyderabad Divisions is liable to be set aside.

19. Accordingly, this writ petition is allowed by setting aside the impugned proceedings in

Cr.No.B1/900/2007 dated 04.01.2021 issued by the Deputy Commissioner for Prohibition and Excise, Hyderabad and the respondents are directed to release the family pension to the petitioner forthwith.

20. As sequel to it, Miscellaneous Petitions, if any pending, shall stand closed. No order as to costs.

JUSTICE K.SARATH

Date:07 /06/2023

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