
(2014) 09 MAD CK 0054

In the Madras High Court

Case No : W.P. No. 17442 of 2012 and M.P. No. 1 of 2012

P. Magudeshwari

APPELLANT

Vs

General Manager, Tamil Nadu State Transport Corporation
(Kovai) Limited

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Citation : (2015) 1 MLJ 104

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Advocate : S. Saravanan, Advocates for the Appellant; S. Sairaman, Advocates for the Respondent

Judgement

D. Hari Paranthaman, J.—The husband of the petitioner was employed as a Technician Staff at Dharapuram Branch of the State Transport Corporation. During his service, he met with an accident on 02.08.2011 and he was admitted in the hospital at Coimbatore. Ultimately, he died on 13.09.2011. According to the petitioner, her husband Late N. Palanisamy, married one Eswari @ Murugeswari in the year 1984. But her husband divorced the said Eswari @ Murugeswari as per the customary practice in the year 1990. Only thereafter, he married the petitioner in the year 1991. Thereafter, H.M.O.P. No. 37 of 1992 was also filed before the Sub-Court, Dharapuram for grant of divorce.

2. By an order dated 16.12.1992, the Sub-Court granted divorce. The following passage may be usefully extracted hereunder:

3. In these circumstances, the petitioner obtained a Legal Heir Certificate, dated 11.10.2011, issued by the Tahsildar, Dharapuram. As per the Legal Heir Certificate, the petitioner and her two children are shown as the legal heirs of the deceased N. Palanisamy.

4. In the said circumstances, the petitioner made a request to the first respondent for payment of Family Pension and other benefits payable due to the

death of her husband viz., Late N. Palanisamy.

5. The first respondent, by the impugned order dated 04.01.2012 informed her that she is not entitled for pension for the reason that at the time of her marriage, divorce was not granted dissolving marriage between her husband Late N. Palanisamy and K. Eswari @ Murugeswari. However, it was informed that since her son is a minor, he is entitled to get the pensionary benefit on account of her husband's death, if relevant documents are produced.

6. The petitioner has come up with this writ petition to quash the aforesaid order and for a direction to pay Family Pension and other terminal benefits including gratuity, within a time frame.

7. In the writ petition, the petitioner has shown the said Eswari @ Murugeswari as the second respondent. Though notice was served on the second respondent, she has not chosen to appear before this court either in person or through counsel.

8. The first respondent has filed a counter affidavit reiterating the stand as stated in the impugned order.

9. When the matter came up on 18.08.2014, this court recorded the statement made by the learned counsel for the Corporation that a letter was written to the second respondent to produce the documents to answer the claim made by the writ petitioner. Today, it is submitted by the learned Standing Counsel for the first respondent that though the Corporation has sent a letter, the second respondent has not chosen to respond to the same.

10. As stated above, the second respondent has not chosen to appear before this Court even after notice. The second respondent has also not responded to the letter sent by the first respondent Corporation to make any objections to grant relief to the petitioner.

11. On the other hand, the petitioner has produced the undertaking affidavit of the second respondent, wherein, it is stated that she has no objection to give all the benefits to the petitioner herein, as the marriage between her and late N. Palanisamy got dissolved in 1990 itself as per the customary practice of the community.

12. Further more, the petitioner has also produced the Identity Card issued by the first respondent, which is found enclosed at page 12 of the typed set of papers. The Identity Card issued by the first respondent shows the family photo of late N. Palanisamy along with the petitioner and her two children. In the Identity Card, against the name petitioner, it is mentioned as wife. Likewise, against the names of viz., Lalitha and Rubakan, it is mentioned as daughter and son, as found in the Legal Heir Certificate.

13. In the light of the above, the first respondent is not correct in stating that it would not recognise the petitioner as the legally wedded wife of late N.

Palanisamy. Having issued the identity card mentioning the petitioner as his wife, now, the first respondent cannot take a different stand.

14. Further more, the second respondent herself gave an undertaking that the marriage between her and Late N. Palanisamy got dissolved as per the customary practice in the year 1990 before the village Panchayat. The first respondent has not chosen to dispute the same. In these circumstances, I am of the view that the petitioner cannot be deprived of the benefit as sought for.

15. However, the learned counsel for the first respondent relied on the order passed by this Court in E. Padma v. District Collector, Krishnagiri District and Others W.P. No. 6308 of 2009 dated 18.02.2010 and sought to dismiss the writ petition.

16. I have perused the said order. In that case, the petitioner, therein, was the second wife of a Sanitary Worker employed in Thenkanikottai Town Panchayat. The first wife was alive. The Sanitary Worker had children through his first wife as well as the petitioner, the second wife therein. When a Legal Heir Certificate was applied by the petitioner therein, the concerned Tahsildar, while issuing Legal Heir Certificate did not include the name of the petitioner therein, but issued it in the name of the first wife, her children as well as the petitioner's children. The grievance of the petitioner is that she was not shown as one of the Legal Heirs in the Legal Heir Certificate. The petitioner sought for Family Pension on the ground that she is also one of the wives and that she is entitled to Family Pension. The said writ petition was dismissed in the facts and circumstances of the case by a learned single Judge of this Court, and it was left open to the petitioner to question the correctness of the Legal Heir Certificate before the competent civil Court. The afore said facts would make it clear that the same is not applicable to the facts of the case on hand. Hence, I am not inclined to agree with the submission made by the learned counsel for the first respondent. In the light of the above, the writ petition stands allowed and the impugned order is quashed. A direction is issued to the first respondent to settle Family Pension and other benefits payable due to the death of her husband Late N. Palanisamy, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.