**(2008) 07 MAD CK 0024**

**In the Madras High Court**

**Case No :** Writ Petition No. 27744 of 2006 and O.A. No. 2472 of 1996

R. Ramachandraiah APPELLANT

Vs

The Government of Tamil Nadu RESPONDENT

**Date of Decision :** 11-07-2008

**Acts Referred:**

**Citation :** (2008) 07 MAD CK 0024

**Hon'ble Judges :** M. Jaichandren, J

**Bench :** Single Bench

**Advocate :** P. Rajendran, for the Appellant; T. Seenivasan, Additional Government Pleader for R1 and R3 and V. Vijaya Shankar, for R2, for the Respondent

**Final Decision :** Allowed

# Judgement

M. Jaichandren, J.—Heard Mr. P. Rajendran, the learned Counsel appearing for the petitioner and Mr. T. Seenivasan, the learned

Additional Government Pleader appearing for the first and third respondents and Mr. V. Vijayashankar, the learned Counsel appearing for the

second respondent.

2. The petitioner has stated that he is a retired Headmaster. He was working at the Panchayat Union Elementary School, Naduvanapalli,

Krishnagiri Taluk, Dharmapuri District. The petitioner had married, B. Padma, in the year 1959. As the petitioner''s wife, B. Padma, had suffered

mental disorder, in the year 1963, she was not in a position to look after the petitioner and their children. In such circumstances, the petitioner had

married B.Santha, the sister of his first wife, B. Padma, in the year 1963. The petitioner had nominated B.Santha as a nominee to receive the

Special Provident Fund. While she was working as a teacher at the Panchayat

 

Union Primary School, Veppanapalli, B.Santha, had died in

harness, on 14.7.91.

3. The petitioner had further stated that B. Santha had nominated the petitioner to receive the terminal benefits. In the letter No.AG.(A&E)

Pen/20/II/92-93, issued by the Office of the Accountant General (A & E), Tamilnadu, Chennai, addressed to the Assistant Educational Officer,

Veppanapalli, Dharmapuri District, a sum of Rs. 40,098/- was sanctioned in favour of the petitioner as gratuity. Similarly, in the letter No.Pension

20/I/598/587/91-92802, dated 25.1.92, issued by the Accountant General(A & E), Tamilnadu, to the Assistant Educational Officer,

Veppanapalli, Dharmapuri District, it was directed that the family pension of Rs. 933/- per month, from 15.7.91 to 14.7.98 and Rs. 560/- from

15.7.98, onwards be paid to the petitioner from 19.7.91 and in the event of his death it was payable to the minor children of the deceased, subject

to the conditions laid down in G.O.Ms. No. 950, Finance (Pension), dated 29.7.64. While so, the Treasury Officer, Dharmapuri, in his letter

K.Dis.11465/93-G.2, dated 29.4.94, had requested the Accountant General, Chennai, to clarify as to whether the family pension authorised to be

paid to the petitioner could be continued from 1.1.93. The Principal Accountant General (A&E), Tamilnadu, in his letter, dated 25.8.95, had

stated that the Family Pension in respect of late B. Santha was not admissible to the petitioner as she was his second wife and she had married a

person, who had a living wife. Since the second marriage cannot be held to be valid the family pension that was being paid to the petitioner had

been cancelled from 15.7.91. The Principal Accountant General had also directed that the pension paid, from 15.7.91 to 31.12.92, should be

recovered from the pension payable to the petitioner, in instalments. In the said order, it was also stated that since the second marriage was null

and void, Selvi.Premalatha, the daughter of B.Santha, was not eligible to receive the family pension. Thereafter, on 31.10.94, the Assistant

Treasury Officer, Krishnagiri, in his letter No.O.Mu.5446/94, dated 31.10.94, had directed the petitioner to pay a sum of Rs. 28,108/-. On

17.11.94, the petitioner had remitted the said sum. Subsequently, he had made a representation, on 27.10.94, requesting the respondent to pay

the family pension to his daughter, Selvi. Premalatha, in Letter No. PM2/II/315, dated 4.1.96. The Principal Accountant General (A & E),

Tamilnadu, had stated that as per the present rules of the Tamilnadu Pension Rules, the family pension is not admissible to Selvi. Premalatha, since

the children born through the illegitimate marriage were not entitled to the benefits of family pension. In such circumstances, the petitioner had filed

an original application before the Tamilnadu Administrative Tribunal in O.A. No. 2472 of 1996, which has been transferred to this Court and

renumbered as W.P. No. 27744 of 2006.

4. In the reply affidavit filed on behalf of the respondents, it has been stated that the claim for family pension by the petitioner and the claim made

on behalf of his daughter, Selvi. Premalatha, has been rightly rejected, since the petitioner''s second marriage with B.Santha is null and void in the

eye of law, as he had married B.Santha while his first wife, B. Padma, was alive. It has also been stated that the claim of the petitioner that the

family pension be paid to Selvi. Premalatha, who was born through his second wife B. Santha, cannot be sustained since the child was born

through an invalid second marriage. Therefore, the second respondent had cancelled the family pension already sanctioned and ordered for its

recovery.

5. At the time of the final hearing of the writ petition, a counter affidavit has been filed on behalf of the second respondent wherein it has been

stated that the petitioner was in receipt of family pension, authorised in the case of B. Santha, who was the second wife of the petitioner, vide PPO

No. FA 595084. On verification, it was found that B. Santha was working as a Secondary Grade Teacher in the Panchayat Union Primary

School, Veppanapalli, and she had died while she was in service, on 14.7.91. The petitioner had married B. Santha while his first wife, B. Padma,

was alive. As the second marriage had taken place after the enactment of the Hindu Marriage Act, 1955, the second marriage is null and void in

law. Therefore, the family pension already sanctioned to the petitioner, with effect from 15.7.91, was directed to be stopped and the family

pension already paid was ordered to be recovered. The Treasury Officer, Dharmapuri, in his Letter No.11465/93/G.2, dated Nil, had sought for

clarification from the office of the second respondent as to whether the family pension could be sanctioned to Selvi. Premalatha, daughter of

B.Santha and if it could be paid to the petitioner, as her guardian. By a Letter No. Pen 20/IV/875, dated 25.8.94, it was confirmed that both the

petitioner and his daughter, Selvi. Premalatha, were not eligible for the family pension as the second marriage is null and void.

6. Further, in paragraph-3 of the counter affidavit filed on behalf of the second respondent, it has been stated that the Government had issued

orders in G.O.Ms.No.602, Finance (Pension), dated 13.9.96, directing that family pension be sanctioned to legitimate children born through the

second/subsequent wife where the second/subsequent marriage is not legal. It was specifically clarified in Government letter, dated 24.7.2000, that

all past cases settled prior to 13.9.96 need not be re-opened. Since the case of the petitioner has been settled prior to 13.9.96, it could not be

reopened.

7. From the averments made on behalf of the petitioner, it is clear that the petitioner had married B. Santha as the second wife, while his first wife,

B. Padma, was alive. The only issue to be decided by this Court in the present writ petition is whether Selvi. Premalatha, the daughter of the

petitioner, born through his second wife B. Santha, is eligible and entitled to receive the family pension due to the death of her mother, B. Santha.

While deciding a similar issue, the Supreme Court, in Rameshwari Devi Vs. State of Bihar and others, , had held that even if the second marriage

contracted by a government employee, a hindu, during the subsistence of his first marriage, may be invalid, the children born out of the second

marriage, according to the Hindu Marriage Act, 1956, were legitimate though the marriage itself was void. The minor children born out of the

second marriage were entitled to Family Pension till they attained majority, but not the widow. The Government can itself hold a proper and

bonafide enquiry for determining entitlement of rival claimants to family pension. Further, a learned Single Judge of this Court, by an order, dated

19.12.2007, made in W.P. No. 3119 of 2007 had held that the women in India are suffering discrimination in silence. Self-Sacrifice and self-denial

are their nobility and fortitude and they have been suffering inequities and indignities thrust on them by the male dominated society in utter disregard

of the constitutional provisions against inequity. The learned Counsel had also relied on the judgment reported in C. Narayani Ammal v.

 

Govindasamy Naidu 1976 (88) MLW 129 in support of proposition that even a legitimate son cannot exclude an illegitimate daughter. Further, in

the counter affidavit filed on behalf of the second respondent, it has been stated that the Government in G.O.Ms.No.602, Finance (Pension), dated

13.9.96, had ordered the sanctioning of family pension to illegitimate children through the second/subsequent wife, where the second/subsequent

marriage is not legal.

8. It is also brought to the notice of this Court by the learned Counsel for the respondents that there are no rival claims with regard to the issue of

payment of family pension arising due to the death of B.Santha, the second wife of the petitioner. Even if the second marriage could be held as null

and void, as it had taken place during the life time of the first wife of the petitioner, it would not disentitle the children born through the second

marriage. Though the Pension Rules applicable to the case do not specifically provide for payment of family pension to an illegitimate child, born

through the second marriage, the law has been settled, in view of the decision rendered by the Supreme Court cited supra.

9. In such circumstances, the impugned order of the second respondent, dated 4.1.96, is set aside and the respondents are directed to disburse the

family pension, as prayed for by the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order. Hence, the writ

petition stands allowed with the above directions. No costs.