

W.P.(MD)No.2831 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **11.02.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P.(MD)No.2831 of 2022

M.Muthumadasamy

...Petitioner

/Vs./

1.The Accountant General,
(Accounts & Entitlements) of Tamil Nadu,
No.361, Anna Salai, Chennai – 600 018.

2.The District Educational Officer,
Uthamapalayam,
Theni District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent, of his proceedings in AG(A&E) / PEN24 / UNIT-1 / PT.NO.8964 dated 22.12.2021 and quash the same and direct to incorporate Mrs.kavitha as a Nominee of the Petitioner in P22/12208254/3/P.P.O.No.R2208254 / EDA to receive family pension.

For Petitioner : Mr.K.P.S.Palanivel Rajan

For R1 : Ms.S.Mahalakshmi

For R2 : Mr.G.V.Vairam Santhosh

Additional Government Pleader

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ORDER

The order dated 22.12.2021 issued by the Accountant General of Tamil Nadu rejecting the request of the petitioner to include the name of his second wife as nominee in the service records is under challenge in the present writ petition.

2.The impugned order states that the writ petitioner, M.Muthumadaswamy has married Smt.M.Kavitha, when his wife is alive. Thus, Smt.M.Kavitha cannot be incorporated as family pension beneficiary, as per the Tamil Nadu Pension Rules, 1978 (in short 'Pension Rules').

3.The facts in nutshell are that the petitioner served as Assistant and Junior Assistant and retired from service on 31.08.2013 and now receiving pension. The petitioner married one Smt.Tamil Selvi in the year 1985 and she was diagnosed of suffering from Blood Cancer and she requested the petitioner to marry her younger sister Kavitha, as

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they had two children born out of wedlock. Accordingly, the petitioner married Smt.M.Kavitha on 29.05.1994, subsequently the first wife of the writ petitioner died on 18.09.1996.

4.The petitioner was making a request to include the name of the second wife, Smt.M.Kavitha as nominee in the service records for the purpose of family pension. The said request was forwarded by the District Educational Officer, Uttamapalayam. However, the Accountant General of Tamil Nadu rejected the request on the ground that the writ petitioner has married Smt.M.Kavitha, when his first wife is alive.

5.The issues to be considered in this writ petition are that :

(a) whether a Government employee can enter into a contract for second marriage during the lifetime of the first wife?;

(b) whether in the event of death of the first wife after solemnizing the second marriage, the second wife would be entitled to seek her name to be incorporated as nominee in the service records or not?;

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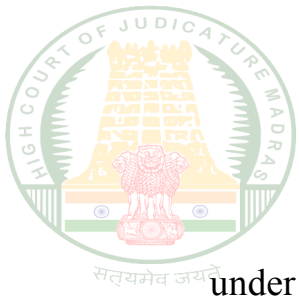
(c) What are all the governing principles with reference to the Tamil Nadu Government Servants Conduct Rules, 1973 (in short 'Conduct Rules') and the Pension Rules, which all are to be scrupulously followed as far as the Government servants are concerned?.

6.Rule 19 of the Conduct Rules speaks about the Bigamous Marriage. Accordingly, no Government servant shall enter into or contract a marriage with a person having a spouse living and no Government servant having a spouse living shall enter into or contract a marriage with any person.

7.Sub-Rule (2) to Rule 19 stipulates that no Government servant involve himself in any act involving moral turpitude on his part including any unlawful act, which may cause embarrassment or which may bring discredit to Government.

8.As far as the Government servants are concerned, the Conduct Rules are applicable and the offence of bigamous marriage

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under the Indian Penal Code cannot be compared with the Conduct Rules, as they play different Rule.

9.As far as the criminal prosecution is concerned, a complaint may be required from an aggrieved person. However, no such complaint is required for the competent authority of the Government to institute disciplinary proceedings under the Conduct Rules. Even an information is sufficient and based on the information, an enquiry is to be conducted to cull out the truth. If the facts regarding any violation of Rule 19 of the Conduct Rules are established, then the employee is liable to be punished. Therefore, the procedures contemplated under the Criminal Procedure Code with reference to the Indian Penal Code are noway connected with the departmental disciplinary proceedings and both are distinct and different.

10.The procedures to be followed for criminal prosecution is entirely different and the procedures to be followed for departmental disciplinary proceedings are under the Service Rules applicable. To

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convict a person under the criminal law, a strict proof is required.

However, no such strict proof is required to punish a Government servant under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 and the Conduct Rules.

11. Even preponderance of probability or any immoral act would be sufficient to punish a public servant. Therefore, the contention of the petitioner that the offence contemplated under the Indian Penal Code, 1860 is to be considered deserves no merit consideration.

12. The writ petitioner retired from service on 31.08.2013. He married the first wife in the year 1985 and admittedly, he married Smt.M.Kavitha as second wife on 25.05.1994, when he was very much in service. Therefore, the petitioner has committed a misconduct under the Conduct Rules as per his own admissions in the affidavit filed in support of this writ petition.



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13.This apart, the first wife died in the year 1996. The above facts would reveal that the writ petitioner committed a misconduct and unfortunately, the competent authorities during the relevant point of time have not initiated any action, since the fact would not have been brought to their knowledge or otherwise.

14.May that as it be, this Court is of the considered opinion that a public servant is expected to maintain good conduct and utmost integrity both in office and outside. It is not as if a government servant has to maintain good conduct, only in the office during office hours. He is duty bound to maintain good conduct, even in the Society, outside the office and in all circumstances. Public servants are enjoying a special status in the society. By virtue of the special status, then gain respect from the people. Therefore, the maintenance of integrity, good conduct, honesty and devotion of duty are the integral parts of the Conduct Rules and Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, and also other related service rules.



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15. Even Rule 8 of the Pension Rules speaks about 'pension subject to future good conduct'. Rule 8 (1) (a) contemplates that 'Future good conduct shall be an implied condition of every grant of pension and its continuance under these Rules. Sub-Clause (b) stipulates that 'The pension sanctioning authority may by order in writing withhold or withdraw a pension or part thereof, whether Permanently or for a specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct'.

16. Contracting a second marriage during the lifetime of the first wife is the grave misconduct under the Rule 19 Conduct Rules. Therefore, even under Section 8 of the Pension Rules, if any employee is convicted of a serious crime or found guilty, then the competent authorities are empowered to initiate action against the pension already sanctioned itself.

17. Pension is a portion of the deferred wages for the services already rendered by a Government employee. Therefore, there is a lien continues between the employer and the employee, even after retirement.

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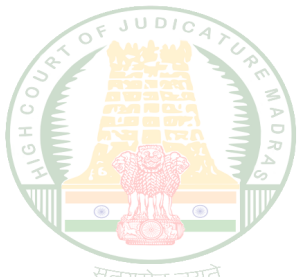
Only by virtue of the lien, pension schemes are being implemented.

Thus, so long as the pension is being received by a retired employee, he is covered under the Pension Rules and therefore, if any conviction or grave misconduct is established, the authorities competent are empowered to initiate action even under Rule 8 of the Pension Rules.

18.As far as the claim of the writ petitioner is concerned, the learned counsel for the petitioner made a submission that the second marriage was solemnized with the consent of the first wife. Any consent given contrary to law cannot be construed as a valid consent. In other words, consent for violating the rule of law cannot be a ground to claim rights. Thus, consent given by the first wife for contracting second marriage itself is illegal and void.

19.Therefore, any consent, which is running counter to the Conduct Rules or the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, which would be applicable to the Government servants cannot be construed as a valid consent, as far as the public servants are

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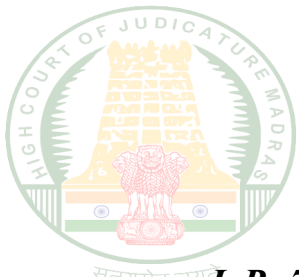
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concerned. When the Service Rules contemplate a prohibition and describing a particular conduct as a misconduct, then, public servant has to follow the conduct and even in case of consent, he is expected to reject the consent and it is not as if a public servant may take protection by stating that his first wife has given a consent and therefore, he contracted second marriage. If such consent or contract is permitted, then the very purpose and object of the Conduct Rules would be defeated and the public servant, by relying on the consent of the first wife cannot seek protection from the Conduct Rules, which is otherwise prohibited contracting of second marriage during the lifetime of the first wife.

20.The learned counsel for the petitioner relied on a judgment of this Court dated 23.11.2020 passed in WP.No.34952 of 2019, wherein the solemnization of second marriage by a public servant during the lifetime of the first wife was considered. In this regard, this Court would like to draw attention with reference to the judgment of the Hon'ble Division Bench of this Court in the case of ***R.Rajathi vs. The Superintendent Engineer, TANGEDCO Ltd.***, reported in ***2018-1-Writ***

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सत्यमेव जयते **L.R.-725**, held as follows:

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“42. We have discussed the basis on which the various judgments, of course conflicting views, have been rendered. Insofar as the view that the second wife of the Government Servant, who died prior to 02.06.1992 as held in Tamilselvi's case, referred to supra, and the view that a widow of an invalid second marriage that had taken place prior to 14.10.1991, as held in Pushpavalli's case, have given our reasons, as to why, we are unable to subscribe to the said conclusions of the learned Single Judge. We are, therefore, of the opinion that in order to enable a second wife to claim family pension the marriage should have been valid under the Personal Law applicable to the parties, to hold otherwise would be in violation of the law of the land, viz. the Personal Law of the parties as well as the Criminal Law, which prohibits bigamous marriage.

43. We are, therefore, constrained to conclude that the judgments which conclude that a second wife would be entitled to family pension, irrespective of her marriage being void, under the provisions of their relevant Personal Law's applicable to the parties do not reflect the correct position of law and therefore will stand overruled. The applicability of Sub Rule 7(a)(i) is confined only to cases where the second marriage is valid under the Personal Law applicable to the parties, only in such cases, widows of such marriages would be entitled to family pension.”



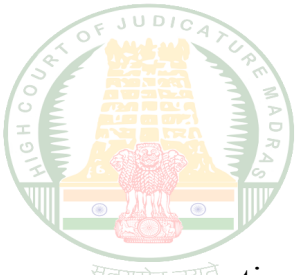
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21.The Hon'ble Division Bench, in unequivocal terms held that the judgment, which construed that the second wife would be entitled to family pension, irrespective of her marriage being void, under the provisions of their relevant personal laws applicable to the parties, do not reflect the correct position of law and therefore, will stand overruled. Therefore, any judgment, which is running counter to the principles laid down by the Hon'ble Division Bench in a writ petition considered by the learned Single Judges cannot be applied as precedent.

22.As far as the writ petition on hand is concerned, the petitioner is the pensioner and he seeks incorporation of the name of his second wife, as nominee, in his service records for the purpose of availing the benefit of family pension. In the case of the petitioner, the marriage between the petitioner and Smt.M.Kavitha was void marriage in the eye of law and therefore, she is not entitled for family pension under the Pension Rules. Even as per the Rule 8 of the Pension Rules as discussed above, any pensioner is bound to maintain good conduct and

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actions may be taken under the Pension Rules by the competent authority. Unfortunately, suitable actions were not taken when the petitioner was in service, despite the fact that he contracted the second marriage, while he was in service.

23.The Courts cannot encourage in cases where the public servants committed an act of misconduct and claiming benefits. If such a practice is allowed, then the very purpose and object of the Conduct Rules for public servants will be defeated and therefore, the Conduct Rules are to be followed scrupulously in order to maintain efficient and clean public administration, which is the mandate under the Indian Constitution. As considered above, public servants by virtue of their special status is bound to maintain good conduct and devotion to duty in the interest of public, as they are receiving salary from the public funds.

24.This Court is of the considered opinion that if a public servant contracted for a second marriage during life time of the first wife, then the second wife is not entitled for any service benefits, as the second

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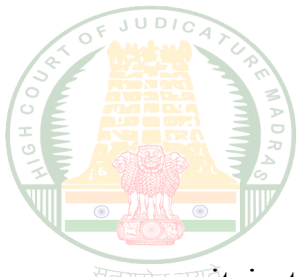
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marriage is void in the eye of law. Secondly, the mere consent of the first wife for contracting a second marriage cannot be accepted as the ground for the purpose of considering the claim of the pensioner for inclusion of the name of the second wife as nominee in the service records for the purpose of grant of family pension.

25.Thirdly, in the event of considering such claims, the very purpose and object of the Conduct Rules are defeated and therefore, the Courts are bound to exercise restraint in such matters in granting relief in favour of the second wife merely on misplaced sympathy or considering any other factors which cannot play any role so as to compromise the good conduct, devotion of duty, integrity to be maintained by the public servants.

26.The Constitutional Courts across the country have interpreted the rights of the citizen under the Constitution of India. The rights of the citizen under the Constitution of India, if infringed, the Courts would never hesitate to interfere and grant appropriate relief. But,

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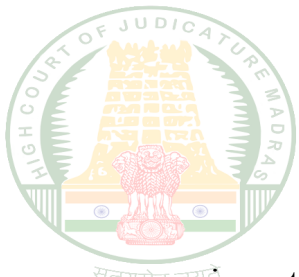
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It is the high time, the Constitutional Courts are bound to ensure that duties are performed to the expectation of the Indian Constitution. In the event of not insisting for performance of duties, then an imbalance would be created, which will affect the democratic principles. The democracy can flourish only if rights and duties are equally balanced. The rights of the citizen are being protected, but the duties are yet to be enforced effectively. Enforcement of duty is an integral part of the Constitution of India. Rights and duties being corresponding, people cannot fight only for rights, but also to enforce the duties. There are many slackness in performance of the duties in the Governmental Organizations. Therefore, a balancing approach in between the rights and duties are to be adopted by the Constitutional Courts so as to ensure that the democratic principles are protected in consonance with the constitutional philosophy and ethos.

27.No right is absolute under the Indian Constitution. Every right, including the fundamental right, is subject to restrictions. Article 51A of the Constitution of India contemplates fundamental duties, but it

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is yet to be enforced in its real spirit. Thus, it is the time for the Constitutional Courts to ensure that the rights and duties are enforced in an equal manner. Large number of dereliction of duties and lapses are noticed on account of the non-enforceability of duties in a manner contemplated. Therefore, the Government also should come out with a clear system with enforceability of duties and citizen in general also must be insisted for performance of their duties towards the public at large.

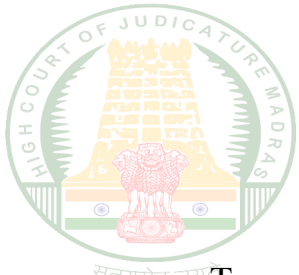
28. In view of the facts, circumstances and the legal principles considered in the afore-mentioned paragraphs, the petitioner has not established any right for the purpose of grant of relief as such sought for in this writ petition.

29. Accordingly, the writ petition stands dismissed. No costs.

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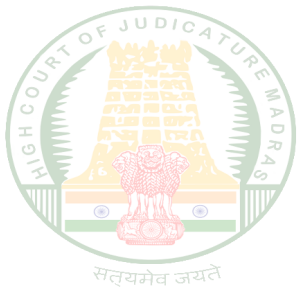
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To
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1. The District Educational Officer,
Uthamapalayam,
Theni District.



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S.M.SUBRAMANIAM,J.

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Order made in
W.P.(MD)No.2831 of 2022

Dated:
11.02.2022