

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.69 of 2013

Wednesday, the 06th day of November, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

M. Athi Lakshmi @ Sumathi,
W/o Late Hav. Muthu Kamatchi,
5/400, Renganathapuram,
N.G.O. Colony, Dindugal.

... Applicant

By Legal Practitioner:
Mrs.Vijayakumari Natarajan

Vs.

1. The Adjutant General,
Integrated HQ of MoD (Army),
Adjutant General Branch,
Additional Dte General Personal Service,
New Delhi-110105.
2. PCDA (P),
Draupadighat, Allahabad.
3. Chief Record Officer for OIC Records,
The Record Signals,
PIN-908770, C/o 56 APO.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

(Order of the Tribunal made by
Hon'ble Justice V.Periya Karuppiyah, Member-Judicial)

1. This application is filed by the applicant to call for the records of the 1st respondent dated 19.10.2009 in reference No.B/41042/FP/AG/PS-5 and of the 2nd respondent dated 29.12.2008 in ref.No.G-4/III/Audit II/G-1059208 and to set aside them and to direct the respondents to grant Family Pension to the applicant from the date of death of her husband Havildar Muthu Kamatchi and to pass such other orders deemed fit in the said circumstances.

2. The case of the applicant as told in the application would be as follows:-

The applicant was the second wife of Late Havildar Muthu Kamatchi. Her husband was working as Havldar in Indian Army, who was discharged from service with effect from 13.7.1969. After his retirement, he was receiving Service Pension, till his death (i.e.) on 22.5.2007. The said Havildar Muthu Kamatchi firstly married one Bagawathi Ammal. Since there was no issue through his first wife, the said Bagawathi Ammal became an ascetic and renounced her family life. As per her wish and willingness of elders of both families, Havildar Muthu Kamatchi married the applicant on

21.1.1961 as per the custom prevailed at that time in their community. After the marriage of the applicant, she lived with her husband Havildar Muthu Kamatchi in Jabalpur and Ambala, where he was serving. They had four children out of the wedlock. The first wife of her husband Bagawathi Ammal died on 24.5.2005 without leaving any issue. The applicant's husband Muthu Kamatchi died on 22.5.2007. The applicant applied for Family Pension on 23.7.2007 and the respondents have directed her to produce certain relevant records for verification and for the grant of Family Pension. After verifying the relevant papers, the Chief Record Officer in his communication dated 12.11.2008 recommended and forwarded to the Office of the PCDA (P), Draupadighat, Allahabad, for passing necessary orders. The Department of Ex-Servicemen Welfare also sent recommendation to PCDA (P) with a request to take further necessary action. However, the PCDA (P) in its order dated 29.12.2008 in ref.No.G-4/III/Audit II/G-1059208 took a view that the marriage between the applicant and Havildar Muthu Kamatchi took place during the life time of the first wife Bagawathi Ammal and, therefore, the said marriage was not in accordance with the Hindu Marriage Act, 1955 and the applicant was, therefore, not entitled to Family Pension. The Chief Record Officer in his communication dated 27.1.2009 intimated the rejection order to the applicant. The applicant made representation to the 1st respondent explaining the relevant facts and circumstances and requested for the sanction of Family Pension in her favour. But the 1st respondent also passed a one line order dated

19.10.2009 confirming the order of the Records Signal dated 27.1.2009. No valid reason has been given in the order and the grievance and representation of the applicant were not considered by the respondents. For the representation dated 7.4.2011, there was no response from the respondents. Hence the application has been filed by the applicant seeking for setting aside the orders passed by the respondents in rejecting the Family Pension in favour of the applicant and to direct the respondents to grant Family Pension in favour of the applicant on the death of her husband Havildar Muthu Kamatchi, with costs.

3. The objections raised by the respondents would be as follows :-

The applicant's husband, namely Muthu Kamatchi, to whom the applicant was married second time, was enrolled in the Army (Corps of Signals) on 16.4.1942 and was discharged from service with effect from 12.7.1969 (A.N.) under Army Rule 13 (3) III (i) on fulfilling the conditions of enrolment. Thus he rendered 27 years 88 days service in the army for which he was granted Service Pension vide PCDA (P), Allahabad PPO No.S/18909/69 dated 18.6.1969. The applicant claimed to have been the widow of the deceased Havildar Muthu Kamatchi, who died on 22.5.2007 and was claiming Family Pension from Signals Records in her petition dated 23.7.2007. As per service records, the name of the wife of the deceased soldier was recorded as Smt. Bagawathiammal. Therefore, Army Recruiting

Office, Coimbatore, was asked to verify the fact and also to produce marriage affidavit along with verification/recommendation report in its letter No P/6254251/FP-2/NER dated 23.8.2007 and No.P/6254251/FP-2/NER dated 24.9.2007. Accordingly a verification report with supporting documents were received from Army Recruiting Office, Coimbatore, on 29.1.2008. As per the marriage certificate, the marriage of the applicant with Late Havildar Muthu Kamatchi took place on 21.1.1961 was in accordance with Hindu Rites. Therefore, the Family Pension claim in respect of the applicant was processed to PCDA (P), Allahabad, for consideration. The Family Pension claim of the applicant was rejected by the PCDA (P), Allahabad, vide Signals Records letter No.P/6254251/FP-2/NER dated 21.11.2008 for the reason that Smt. Bagawathiammal, first wife, got married on 10.2.1947, whereas the applicant got married with Havildar Muthu Kamatchi on 21.1.1961 during the life time of the first wife. The petitioner is, therefore, not eligible for Family Pension as per Hindu Marriage Act. The marriage of the applicant with Havildar Muthu Kamatchi was without obtaining any dissolution of first marriage with the said Bagawathi Ammal. Therefore, the petitioner was not eligible for the grant of Family Pension. According to the provisions of Hindu Marriage Act, the marriage which took place in between the applicant and Havildar Muthu Kamatchi on 21.1.1961, became null and void since it was during the subsistence of the first marriage of Havildar Muthu Kamatchi with Bagawathi Ammal. Therefore, the applicant cannot ask for Family Pension as the wife of Late

Havildar Muthu Kamatchi. The application is, therefore, liable to be dismissed being devoid of merit.

4. On the above pleadings, we find the following points emerged for consideration :-

- 1) Whether the applicant is the lawful wife of the deceased Havildar Muthu Kamatchi ?
- 2) Whether the long cohabitation of the applicant with Late Havildar Muthu Kamatchi even during the life time of the first wife Bagawathi Ammal and after the death of the said Bagawathi Ammal till the date of death of Havildar Muthu Kamatchi would give rise to a presumption of a legal marriage as per law ?
- 3) Whether the applicant is entitled for Family Pension as asked for by her ?
- 4) To what relief the applicant is entitled for ?

5. Heard Mrs. Vijayakumari Natarajan, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Mr. M. Dennison, representative of Legal Cell, ATNK & K Area, Chennai, appearing for the respondents.

6. The Learned Counsel for the applicant would submit in her argument that the respondents 1 and 2 have rejected the claim of the applicant for Family Pension without any basis and the order was not a speaking one. She would further submit that the only reason put forward by the respondents was that the marriage took place in between the applicant and Havildar Muthu Kamatchi was a void marriage irrespective of the fact that she lived with Havildar Muthu Kamatchi at Jabalpur and Ambala while he was serving in those centres. She would also submit that the first wife Bagawathi Ammal had renounced the world and the applicant alone was living with Havildar Muthu Kamatchi as his wife from the date of her marriage on 21.1.1961, to the knowledge of the relatives and other members of the society and procured children. The said relationship also continued even after the death of the first wife Bagawathi Ammal in the year 2005. She would also quote the Death Certificate of Bagawathi Ammal, evidencing the death of Bagawathi Ammal on 24.5.2005. She would also submit that the continuous joint living of the applicant with Havildar Muthu Kamatchi even after the death of first wife Bagawathi Ammal would make her as a legal wedded wife of Havildar Muthu Kamatchi and give her legal status and the said factual aspect was not considered by the respondents 1 and 2 for the grant of Family Pension to the applicant. She would also submit that the long cohabitation had by the applicant with Havildar Muthu Kamatchi could be evidenced by various marriage invitations of the children born out of the wedlock of the applicant with Muthu Kamatchi produced in

Annexure-A1 series. She would further submit that the respondents themselves accepted the joint living of the applicant with Havildar Muthu Kamatchi and on that basis only the applicant was granted with ID card, Grocery card and Liquor card in the name of the applicant as the widow of the Ex-Serviceman. She had also quoted the issuance of Family card by the State Government which would also show the applicant as the wife of Havildar Muthu Kamatchi. She would also submit that the long cohabitation of the applicant with Havildar Muthu Kamatchi as husband and wife supported by the evidence produced by her would lead to a presumption of legal marriage of the applicant with Havildar Muthu Kamatchi. She would also submit that the same was also confirmed by the continuance of cohabitation of the applicant with Havildar Muthu Kamatchi after the death of first wife Bagawathi Ammal in the year 2005. She would also refer to the presumption of legal marriage by quoting two Judgements of Hon'ble Apex Court reported in **(2000) 2 SCC 431**, and **(2008) 4 SCC 520** in support of her case. She would also rely upon a Judgement of Hon'ble High Court, Madras, reported in **2008 (5) CTC 294**, and would argue that the facts discussed in the said case are squarely applicable to the facts of the present case. Relying upon the said Judgements of Hon'ble Apex Court and High Court of Madras, she would submit that the applicant should have been presumed as the wife of Havildar Muthu Kamatchi as per law and the Family Pension payable to the Next of Kin (NOK) of Havildar Muthu Kamatchi should have been granted to the applicant, as his widow. She would also submit

that the respondents are estopped from denying the grant of Family Pension since they themselves granted the issuance of ID card, Grocery card and Liquor card to the applicant recognising her as the widow of Late Havildar Muthu Kamatchi. Therefore, she would request us to set aside the rejection order passed by the respondents 1 and 2 towards the grant of Family Pension to the applicant and to direct the respondents to pay Family Pension from the date of death of her husband with interest and costs.

7. The Learned Senior Panel Counsel would submit in his argument that the factual aspects that Late Havildar Muthu Kamatchi was married already with one Bagawathi Ammal and during the subsistence of the said marriage, the applicant got married with Havildar Muthu Kamatchi on 21.1.1961 as per Hindu Rites are not disputed. He would submit that as per Sections-5 and 11 of Hindu Marriage Act, 1955, the marriage in between the applicant and Late Havildar Muthu Kamatchi was null and void since it was done during the subsistence of first marriage with one Bagawathi Ammal. He would also submit that the applicant could not claim the status of legal wedded wife since the marriage held in between the applicant and Late Havildar Muthu Kamatchi was a void marriage. The said legal impediment continued even after the death of the first wife Bagawathi Ammal as the applicant remained in the same status till the date of death of Havildar Muthu Kamatchi on 22.5.2007. He would also submit that the legal presumption of marriage could be inferred on a long cohabitation of a man with a woman provided

they are not in a prohibited relationship. He would also submit that the claim of Family Pension was rightly rejected by the 2nd respondent and the 1st respondent since the marriage in between the applicant and Late Havildar Muthu Kamatchi was a void one. The children born out of the relationship of the applicant with Havildar Muthu Kamatchi may be an evidence for joint living and it would not bring any lawful presumption of marriage. He would further submit that the grant of ID card, Grocery card and Liquor card in favour of the applicant as the widow of Late Havildar Muthu Kamatchi would be a sheer mistake and such a mistake cannot be taken advantage by the applicant. He would, therefore, submit that the application filed to set aside the orders passed by the respondents 1 and 2 is devoid of merits. Therefore, it has to be dismissed.

8. We have given anxious thoughts to the arguments advanced on either side. We have also perused the documents produced.

9. **Points No.1 to 3:** The facts put forth by the applicant that Havildar Muthu Kamatchi was married first to one Bagawathi Ammal and during her life time, the applicant married him on 21.1.1961 as per Hindu Rites, owing to the fact that there was no issue born to him through the first wife. Apart from that, the joint living of the applicant with Havildar Muthu Kamatchi was not denied by the respondents. Similarly, the cohabitation of the applicant with Havildar Muthu Kamatchi at Jabalpur and Ambala during the service of

Havildar Muthu Kamatchi was also not denied. The marriage invitations produced by the applicant in Annexure-A1 series are for the marriages of the children, namely Amul Rani alias Rohini, Sindhu alias Manikandayini, Saravanan and Kamatchi alias Kanjirani, who born to Havildar Muthu Kamatchi and the applicant. The respondents had also issued ID card, Grocery card and Liquor card in favour of the applicant as the widow of Late Havildar Muthu Kamatchi.

10. Therefore, we could assume that from the date of marriage on 21.1.1961 of the applicant with Havildar Muthu Kamatchi till his death on 22.5.2007, the applicant was jointly living with him and thereafter too she was treated as the wife of Late Havildar Muthu Kamatchi. The rejection of the request for the grant of Family Pension to the applicant was solely on the ground that the marriage of the applicant with Havildar Muthu Kamatchi was a plural marriage which took place during the subsistence of the first marriage. According to the respondents, it was a void marriage and it cannot be relied on for any purpose. No doubt it is true that the marriage of the applicant with Havildar Muthu Kamatchi took place during the subsistence of first marriage with Bagawathi Ammal. Therefore, it was not a valid marriage at the time of its solemnisation. The reason put forth by the applicant for the contracting of second marriage of the applicant with Havildar Muthu Kamatchi was that he had no issue out of the wedlock with Bagawathi Ammal. Despite the said marriage of the applicant with Havildar

Muthu Kamatchi was a void marriage, she lived together with Havildar Muthu Kamatchi and procured four children out of the wedlock. The wedding invitations produced in vernacular language (Annexure A-1 series) would go to show that the marriage of the children took place from 1986 to 2004 in a span of approximately 18 years under the care and custody of the applicant and her husband. Even during the period prior to 1986, the applicant and Late Havildar Muthu Kamatchi lived together in order to bring up their children. The Family Card issued by the State Government in Annexure A-2 would show that the applicant was living with Havildar Muthu Kamatchi throughout till his death. Therefore, we can understand that from the date of her marriage with Havildar Muthu Kamatchi on 21.1.1961 till his death on 22.5.2007, the applicant was living as a life partner with Havildar Muthu Kamatchi to lead a family life. The said relationship, if considered as legal, she would attain the status of wife and if considered as illegal or void, she would get the status of 'Kept Mistress'.

11. According to the submission of Learned Counsel for the applicant, the long cohabitation even though illegal till 24.5.2005, the date of death of first wife, it would be legal after the life time of the first wife till the date of death of Havildar Muthu Kamatchi on 22.5.2007. Whether such treatment as a wife could enure a presumption of legal status to the applicant and could she been considered as a widow of Late Havildar Muthu Kamatchi ? The Judgement cited by the Learned Counsel for the applicant reported in

(2000) 2 SCC 431 between **Rameshwari Devi Vs. State of Bihar and others**, would go to show the principle as laid down below. The relevant paragraph would run as follows :-

"13. The result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that the marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnisation of the second marriage with due observance of rituals and ceremonies has been insisted upon."

12. In **(2008) 4 SCC 520** between **Tulsa and others Vs. Durghatiya and others**, it has been laid down by Hon'ble Apex Court as follows :-

"Section 114 of the Evidence Act refers to common course of natural events, human conduct and private business. The court may presume the existence of any fact which it thinks likely to have occurred. Reading the provisions of Sections 50 and 114 of the Evidence Act together, it is clear that the act of

marriage can be presumed from the common course of natural events and the conduct of parties as they are borne out by the facts of a particular case.

Where the partners lived together for long spell as husband and wife there would be presumption in favour of wedlock. The presumption was rebuttable, but a heavy burden lies on the person who seeks to deprive the relationship of legal origin to prove that no marriage took place. Law leans in favour of legitimacy and frowns upon bastardy."

13. In the aforesaid Judgement, the Hon'ble Apex Court had come to the conclusion that the finding of the first appellate court that spouses of one of the partners was alive and the presumption regarding marriage cannot be was found not established, was found by Hon'ble Apex Court as not correct. It is held that after the death of the spouse of one of the partners, if they lived together, the presumption can be drawn towards the favour of legitimacy of such a marriage.

14. The said principle has been followed by the Hon'ble High Court of Madras in a Judgement reported in **2008 (5) CTC 294** in between **Sivasamy and 2 others Vs. Poomalai and 2 others**. The relevant passage would be as follows :-

"16..... *In the Judgment of the Division Bench referred to above, wherein Paragraph-22 has been extracted, it was held that even if the association had commenced during the life time of the first wife, but the relationship continued after the death of the first wife for long number of years and the second wife had borne children, then the presumption of marriage can definitely be taken. Here in this case, even if the marriage of the fifth defendant with Masi Ambalam was in 1946 during the lifetime of the plaintiff's mother, it continued after the first wife's death till Masi Ambalam died in 1987. All gender based discriminations, all practices which affect the dignity of women are contrary to the Constitution & Convention on Elimination of All Forms of Discrimination against Women. The status of a woman who claims she is the wife and had lived as such for 40 years cannot be reduced to a mere "association" at the instance of the plaintiff merely because she wants the property especially when the world had labelled the fifth defendant as the wife of Masi Ambalam. To deny her status would rob her of the dignity to which she is entitled to."*

15. The said decision reached by Hon'ble High Court of Madras was in a similar background and facts of the present case and the said principle would be squarely applicable to this case. The applicant lived with Havildar Muthu

Kamatchi in a relationship during the life time of the first wife Bagawathi Ammal for number of years and had borne children and the said relationship continued even after the death of first wife Bagawathi Ammal. In such circumstances also, the presumption of marriage could be taken in favour of the applicant. The denial of the applicant's status as the widow of Havildar Muthu Kamatchi would certainly rob her the dignity as well as the benefits payable to her. The respondents had rightly issued the ID card, Grocery card and Liquor card in her favour as the widow of Late Havildar Muthu Kamatchi. Having done so, the refusal on the part of respondents 1 and 2 to grant Family Pension payable to her would be amounting to denial of justice. The applicant ought to have been granted Family Pension considering the legal principles laid down by Hon'ble Apex Court and the High Court of Madras. The denial of Family Pension to the applicant would amount to denial of her right to the benefits conferred upon the NOK of the pensioner. Therefore, the claim of the applicant for the grant of Family Pension is necessarily to be acceded to. The orders passed by the respondents 1 and 2 dated 19.10.2009 and 29.12.2008 in rejecting the claim of the applicant for Family Pension are, therefore, liable to be set aside. Accordingly all the three points are decided in favour of the applicant.

16. **Point No.4:** In the earlier paragraphs, we have decided that the applicant is entitled to Family Pension and the impugned orders passed by the respondents 1 and 2 dated 19.10.2009 and 29.12.2008, are liable to be

set aside. The applicant has laid his claim on 2.2.2012 for the grant of Family Pension. The delay caused in filing the claim was condoned in M.A.No.14 of 2012 and it was ordered on 1.7.2013. Even though the impugned orders are dated 19.10.2009 and 29.12.2008, the application was filed only on 2.2.2012. Since it was not filed in time within six months from the date of the impugned order, the delay was condoned by this Tribunal. In backdrop of circumstances, it was ordered by this Tribunal that the claim of the applicant being a pension matter and is recurring/continuous cause of action and in view of the principles laid down by Hon'ble Apex Court in the case of **Union of India and others Vs. Tarsem Singh** reported in **(2008) 8 SCC 648**, the delay can be condoned in such matters without attaching much significance to limitation, and while doing so, the relief should be restricted to a period of three years prior to the date of filing of the Original Application. As the Order of condonation of delay was conditional one, we are also inclined to grant Family Pension payable to the applicant, and the payment shall commence from three years prior to the date of filing of the application, namely 2.2.2009 onwards, despite the applicant was found entitled to Family Pension from the date of death of her husband i.e. 22.5.2007. Accordingly, this point is also decided in favour of the applicant.

17. In fine, the application is allowed, however, the claim of the applicant for the grant of Family Pension is restricted, payable from 2.2.2009 onwards and the respondents are directed to issue Pension Payment Order in favour

of the applicant and the arrears payable till this date within a period of three months from today. Failing to comply, the respondents are liable to pay the said arrears of pension with interest at the rate of 12% p.a. from this date till the date of payment in full. There shall be no order as to costs.

Sd/-
LT GEN ANAND MOHAN VERMA
(MEMBER-ADMINISTRATIVE)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
(MEMBER-JUDICIAL)

06.11.2013
(True Copy)

Member (J) – Index : Yes / No

Internet : Yes / No

Member (A) – Index : Yes / No

Internet : Yes / No

NCS

To,

1. The Adjutant General,
Integrated HQ of MoD (Army),
Adjutant General Branch,
Additional Dte General Personal Service,
New Delhi-110105.
2. PCDA (P),
Draupadighat, Allahabad.
3. Chief Record Officer for OIC Records,
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PIN-908770, C/o 56 APO.
4. Mrs. Vijayakumari Natarajan,
Counsel for applicant.
5. Mr. B. Shanthakumar, SPC
For respondents.
6. OIC, Legal Cell (Army),
ATNK& K Area HQ,
Chennai-9.
7. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

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