

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.168 of 2013

Tuesday, the 25th day of November, 2014

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

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

Smt. Gnanasundari,
W/o (Late) Maria Dass,
Ottapanavilai, Reethapuram P.O.,
Kanyakumari District, Tamilnadu,
Pin: 629159.

... Applicant

By Legal Practitioners:
M/s. T.N. Sugesh & S. Shinu

Vs.

1. The Record Officer,
EME Records,
C/o 56 APO, Pin: 900453.

*2. The Record Officer,
EME Records,
Secunderabad-21.

3. Mrs. Maria Pushpa Leela,
W/o Arulldhas,
Railway Quarters,
Nagercoil, Kanyakumari District.

4. Mr. Christhu Raj,
Res: Ottapana Vilai,
Reethapuram P.O.,
Kanyakumari District.

*5. The Union of India,
Rep by the Secretary,
Ministry of Defence (Army),
South Block, New Delhi-110 011.

*6. The Chief of Army Staff,
Headquarters, DHQ Post,
New Delhi-110 011.

...Respondents

(*R.2 is given up as per Order
in M.P.No.24 of 2014 dt.24.02.2014;
**R5 and R.6 impleaded as per
Order in M.P.No.24 of 2014,
Dt. 24.02.2014)

Mr. B. Shanthakumar, SPC

ORDER

[Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah, Member-Judicial]

1. This application is filed by the applicant seeking for the grant of family pension and other attendant benefits on the service of her husband Mr. Maria Dass, Nb/Subedar after setting aside the impugned order passed by the first respondent dated 24.08.2012 in rejecting the claim of the applicant and for costs.

2. The brief facts of the applicant's case stated in the application would be as follows:

The applicant's husband Mr. Maria Dass was enrolled in the Indian Army and after his service for more than 15 years, he was discharged on 12.04.1967. The applicant's husband served in the Indian Army, he was promoted to the rank of Nb Subedar and was discharged from service on 12.4.1967. The applicant's husband was drawing service pension after his discharge from military service. The

applicant's husband was originally married to one Muthammal, who eloped with one Singarayan in the year 1967 and lived with him permanently and thus deserted the applicant's husband. Thereafter, the applicant's husband married the applicant in the year 1968 and a marriage deed was executed on 11.12.1968 to evidence the said marriage before the Sub-Registrar of Karungal. The applicant was living with her husband Maria Dass throughout till his death on 30.01.2012. The first wife of applicant's husband Muthammal pre-deceased him on 14.09.1997 leaving behind the respondents-3 and 4 as her legal heirs. The applicant was living as wife with Maria Dass even after the death of his first wife and the applicant was considered as the wife of the said Maria Dass by the society till he died on 30.01.2012. The said Maria Dass during his life-time submitted several representations to the authorities requesting them to record the name of the applicant as his nominee to receive the family pension and other benefits likely to be given on the event of his death. He had furnished all records including the Marriage Deed dated 11.12.1968 before the respondents, but the said representations made by the applicant's husband were not responded by the respondents. Even after his death, the applicant submitted representations for the grant of family pension, but the applicant was not granted with family pension despite she was granted ID Card as

widow of ex-serviceman, viz., Maria Dass. Therefore, the rejection of family pension as issued in the order dated 24.08.2012 is devoid of merits. The long cohabitation of the applicant with the said Maria Dass could be presumed as a valid marriage in view of the judgment of the Hon'ble Apex Court and the High Court of Madras and this Tribunal. Therefore, the applicant sought for the grant of family pension from the date of death of her husband on 30.01.2012 with all attendant benefits including the payment of arrears with interest and costs.

3. The objections raised in the reply statement filed by the respondents would be as follows:

The deceased soldier Maria Dass was enrolled in the Army on 07 April 1943 and during his life-time, he nominated Muthammal as his Next of Kin to receive all the benefits consequent to his death. The said deceased soldier caused a telegram on 20.03.1967 stating that his wife Muthammal was missing and his neighbour one Narayanan was also missing. He had also requested EME Records to cause an enquiry into the matter and take action against the elopement of Narayanan with his wife. However, he was discharged from service with effect from 12.04.1967, on completion of his service, under Rule 13 (3) of Army Rules 1954. The deceased soldier had submitted Appendix-I dated 09.11.2001 for revision of his service pension with a

request to include the name of the applicant as his wife instead of Muthammal. The deceased soldier had also filed a petition dated 04.02.2002 with the clarification that his wife Muthammal eloped with one Singarayan, got married to him and lived with him till her death on 14.09.1997 and after his first wife married Singarayan, the deceased soldier married the applicant and therefore, he requested for endorsement of family pension in the name of applicant. On submission of the requisite documents for family pension it was observed that the deceased soldier Maria Dass had contracted plural marriage and as per rules, the children of the first wife are eligible for family pension. He was also advised to forward family details duly affixed with attested joint photographs with the second wife and the necessary certificates. After submission of all those required documents and affidavit, they were returned to the deceased soldier with certain observations, since re-submission should be made with certain rectifications. The rectified documents were received from the deceased soldier on 02.03.2011 and accordingly the death of his first wife Muthammal and his remarriage with Gnanasoundari was published in his service records. The requisite documents with LPC for revision of service pension and for endorsement of family pension in the PPO in favour of his second wife, the applicant herein were processed to PCDA (P) Allahabad and that was returned by PCDA with

its letter dated 13.09.2011 stating that the deceased soldier had contracted plural marriage with the consent of his first wife who was alive at the time of re-marriage. Hence, the marriage was not valid as per Para 333 (B) sub Para (a) and (b) of Regulations for the Army, 1987 and under Hindu Marriage Act 1955 and therefore, she was not entitled for any family pension. The said fact was communicated to the deceased soldier on 14.11.2011 by EME Records. The claim of the applicant filed thereafter was also found not eligible for the grant of family pension. The necessary documents produced by her along with the requisition were asked for verification, but those documents were not submitted even after a lapse of more than 202 days. The applicant had earlier filed O.A.No.46 of 2013 instead of submitting the required records and the said O.A. was dismissed as withdrawn with liberty to file a fresh application after impleading necessary parties and curing other defects. The applicant being married during the life-time of the first wife, cannot get the family pension and therefore, the application may be dismissed.

4. On the above pleadings, the following points were framed for consideration.

(1) Whether the impugned order passed by the respondents on 24.08.2012 rejecting family pension payable to the applicant is liable to be set aside ?

(2) Whether the applicant be considered as the lawfully wedded wife of the deceased soldier Maria Dass for the grant of family pension as sought for by her?

(3) To what relief the applicant is entitled for?

5. Heard the learned counsel for the applicant Mr. S. Shinu and Mr. B. Shanthakumar, learned Senior Panel Counsel assisted by Col S.K. Varshney, Additional Legal Officer (Army) for the respondents. We also perused the documents produced on either side and the written arguments filed by both sides.

6. The learned counsel for the applicant would submit in his argument that the applicant is now aged 66 years and was leading a miserable life without any financial support after the death of her husband. Maria Dass was serving in the army and was discharged from service on 12.04.1967. He would further submit that the first wife of Maria Dass, Muthammal eloped with some other person in the year 1967 and the same was perfectly informed by the deceased soldier Maria Dass to the authorities and sought for enquiry, but in the meantime, he was discharged from service on 12.04.1967. He would also submit that Maria Dass was receiving service pension from the date of his discharge from service till he expired on 30.01.2012 and was living with the applicant as husband and wife from the date of his marriage, viz., 11.12.1968. The learned counsel for the applicant

would further submit in his argument that the repeated representations made by the deceased Maria Dass for changing the nominee for receiving family pension by deleting the name of the first wife Muthammal and to add the applicant's name in her place, was not immediately done. He would also submit that the said inclusion of the name of the applicant even though was done in the service pension records, the applicant was not granted with family pension by the PCDA stating that the deceased Maria Dass had contracted plural marriage as per Para 333 (B) of Regulations for the Army 1987 (Revised) which is not applicable to the case of the applicant. He would also submit that the children of Muthammal were also impleaded as respondents-3 and 4 in order to avoid technical objections and they are also not eligible for receiving the family pension since they crossed the age of 25 and not remaining unmarried. He would insist in his argument that the applicant was issued with the ID Card in which she was referred to as the widow of late Maria Dass and the PCDA instead of granting family pension to the applicant had wrongly rejected by quoting the rule which is inapplicable to the applicant or to her husband. Even otherwise, the long cohabitation of the applicant had with soldier Maria Dass from 1968 to 30.01.2012, i.e., till the death of her husband on 30.01.2012 would make her legally wedded wife of the deceased soldier Maria

Dass. He would also rely upon the judgments of the Hon'ble Apex Court reported in **2008 (4) SCC 520** between **Tulsa & Ors and Durghatiya & Ors; 2009 (9) SCC 209** between **Challamma & Ors. and Tilaga & Ors.** Relying upon the said decisions, he would argue that the Hon'ble Apex Court has laid down the principle that long cohabitation as husband and wife for so many decades in the eyes of the society would lead to presumption of a lawful marriage between the said two people. He would also submit that the long cohabitation of a woman with a man even during the lifetime of the first wife of that man which continued after the death of the first wife till the death of that man would entail the said woman to be presumed as the legally wedded wife of that man. The said principle has been enunciated in a judgment of the Hon'ble High Court of Madras reported in **2008 (5) CTC 294** between **Sivasamy & Ors and Poomalai & Ors.** All these principles enunciated by the Hon'ble Apex Court and the Hon'ble High Court of Madras were not considered by the PCDA, but relied upon a rule not applicable to the case of the applicant and rejected the claim of the applicant and therefore, the said rejection order passed against the applicant in not granting family pension has to be set aside and the applicant may be granted with family pension from the date of death of her husband with attendant benefits.

7. The learned Senior Panel Counsel would submit in his argument that the deceased soldier Maria Dass had promptly reported the elopement of his first wife during his service and before any action is taken by the respondents, he was discharged from service. He would also submit that the request of the deceased soldier to change the name of his first wife Muthammal and to add the name of his 2nd wife Gnanasundari was however done, but family pension was not granted to the applicant since the deceased soldier contracted plural marriage during the lifetime of his first wife and therefore, the PCDA has rejected the same. He would also submit that as per Para 333 (B) sub Para (a) and (b) of Regulations for the Army, 1987, the deceased soldier Maria Dass was not entitled to contract plural marriage which was done without the permission of the respondents as enumerated in the said regulations. The said rejection order passed by the PCDA was a valid one and the applicant is not entitled for family pension even though any ID has been given to her as widow of the deceased soldier Maria Dass. He would also submit that the respondents are to follow the rules guided by them for grant of family pension and as per Para 333 (B), Sub Para (a) (b) of Regulations for the Army, 1987, the applicant is not entitled for any family pension. Therefore, he would request the Court to dismiss the application.

8. We have given our anxious considerations to the arguments advanced on either side. We have also considered the arguments and the written arguments submitted on either side.

9. **Point Nos.1 and 2:** The indisputable facts in this case would be that the deceased soldier Maria Dass married one Muthammal and had given her name as nominee in his service pension records for the grant of retirement benefits and the family pension. The soldier had also reported to the respondents that his wife Muthammal had eloped with some other person during early 1967 and requested the respondents to conduct enquiry on that issue. However, he was discharged from service on 12.04.1967 before the enquiry had been initiated. After he was discharged from service, he contracted second marriage with the applicant and entered into a marriage deed on 11.12.1968. The said marriage was sought to be recognized by the respondents through various representations sent by the deceased soldier Maria Dass, from 2001 onwards. After various requisitions and submissions regarding required documents, the entry of the applicant's name was done in the service documents of the deceased soldier and the applicant was also granted with ID Card as widow of the deceased soldier. However, the PCDA has rejected the claim of the applicant for family pension by quoting the Rule in Para 333 (B) of Regulations for the Army, 1987.

10. According to the provisions of the said Rule, the marriage of the deceased soldier Maria Dass with the applicant was held to be a plural marriage since the deceased soldier was not permitted to have the second marriage as per the provisions of the said Rule. The PCDA had further stated that the applicant being the second wife of the deceased soldier under the plural marriage, she is not entitled to the grant of family pension. For better appreciation, the said provisions are extracted hereunder and it reads as below:

" 333. *Plural Marriages:-*

(A)

(B) *Plural Marriage by persons in whose case is permissible:-*

(a) *No person subject to the Army Act except Gorkha personnel of Nepalese domicile can marry again within the life time of his wife without prior sanction of the Government.*

(b) *An individual may, during the life time of his wife apply for sanction to contract a plural marriage on any one or more of the following grounds:-*

(i) *his wife has deserted him and there is sufficient proof of such desertion;*

(ii) *his wife has been medically certified as being insane;*

(iii) *infidelity of the wife has been proved before a court of law;*

and

(iv) any other special circumstances which in the opinion of the brigade or equivalent commander would justify contracting a plural marriage. "

11. On a careful understanding of the said provisions, a person subject to Army Act should get prior sanction of the Government for getting married for a second time except Gorkha personnel of Nepalese domicile. Sub-section (b) deals with the reasons for seeking for permission for the plural marriage. As far as Para-333 (B)(a) of Regulations for the Army 1987, the provisions would apply to all the persons subject to Army Act to seek the permission of the Government to have a second marriage for the reasons mentioned in Sub Para(b). The definition of subject to the Army Act is defined in Section 2 of the Army Act 1950 is therefore to be understood. It runs as follows:

" 2. Persons subject to this Act: (1) The following persons shall be subject to this Act wherever they may be, namely:-

(a) officers, junior commissioned officers and warrant officers of the regular Army;

(b) persons enrolled under this Act;

.....

(2) Every person subject to this Act under clauses (a) to (g) of sub-section (1) shall remain so subject until duly retired,

discharged, released, removed, dismissed or cashiered from the service. "

12. As per the provisions, the officers and other personnel enumerated in Section 2(1) who are serving in the army alone are the subjects of Army Act. In Section 2(2), we could see that those officers and personnel will remain as subject until they retired, discharged, released, removed, dismissed or cashiered from service. Therefore, it is very clear that a personnel would be deemed as subject to Army Act till he retires or while serving in the army. When we apply the principle to the present case, the deceased soldier Maria Dass was discharged from army on 12.04.1967, but he contracted second marriage with the applicant on 11.12.1968 long after his retirement. Therefore, the provisions of Para 333 (B) of Regulations for the Army, 1987 is not applicable to the applicant's case. The only objection raised by the respondents is found as not sustainable. For the said reasons only, the name of the applicant would have been changed in the service records as Next of Kin towards the grant of benefits and the applicant was issued with the ID Card as widow of Ex-Serviceman. In the said circumstances, the applicant's marriage with the deceased soldier on 11.12.1968 cannot be attracted by the provisions of Para 333 (B) of Regulations for the Army, 1987 and the reason given for rejection of family pension by PCDA in the impugned order is not in accordance with law.

13. In the said backdrop of the case, it has to be seen as to whether the marriage of the applicant with the deceased soldier Maria Dass is to be considered as a valid marriage in view of the general law is the present question. No doubt the deceased soldier Maria Dass married the applicant for the second time on 11.12.1968 after his first wife Muthammal eloped with a man in the year 1967. The said marriage of the applicant with the deceased soldier Maria Dass is no doubt a second marriage prohibited by marriage laws. However, it was argued that the applicant lived with the deceased soldier from the date of marriage till his death 30.01.2012, i.e., for 44 years as wife. The same was not disputed. Furthermore, the deceased soldier Maria Dass claimed to include the name of the applicant in Part-II Records for the grant of family pension and after a prolonged correspondences and submissions of necessary documents, the same is entered by the respondents. I.D. card was also issued in favour of the applicant as widow of the deceased soldier Maria Dass. It is also argued that such a long cohabitation had by the applicant with the deceased soldier Maria Dass for over several decades and within the knowledge of the society would lead to a presumption of a legally sustainable marriage. The judgment cited by the learned counsel for the applicant reported in **2008 (4) SCC 520** between **Tulsa & Ors. and Durghatiya & Ors.** would be helpful to sustain this point. The relevant passages would run thus:

" 11. At this juncture reference may be made to Section 114 of the Evidence Act, 1872 (in short "the Evidence Act"). The provision 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."

12. A number of judicial pronouncements have been made on this aspect of the matter. The Privy Council, on two occasions, considered the scope of the presumption that could be drawn as to the relationship of marriage between two persons living together. In first of them, i.e., *Andrahennedige Dinohamy v Wijetunge Liyanapatabendige Balahamy* Their Lordships of the Privy Council laid down the general proposition that : (AIR p. 187)

"...where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they are living together in consequence of a valid marriage and not in a state of concubinage."

13. In *Mohabbat Ali Khan v Mohd.Ibrahim Khan* Their Lordships of the Privy Council once again laid down that: (AIR p.138)

"The law presumes in favour of marriage and against concubinage, when a man and a woman have cohabited continuously for a number of years."

14. *It was held that such a presumption could be drawn under Section 114 of the Evidence Act.*

15. *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. (See Badri Prasad v. Dy Director of Consolidation). "*

14. The aforesaid principle of the Hon'ble Apex Court was followed in a judgment of the Hon'ble Apex Court reported in **2009 (9) SCC 209** between **Challamma and Tilaga & Ors.** The relevant passage would run thus:

" 10. It is beyond any cavil of doubt that in determining the question of valid marriage, the conduct of the deceased in a case of this nature would be of some relevance. If on the aforementioned premise, the learned trial Judge has arrived at a finding that the deceased Subramanya had married the first respondent, no exception thereto can be taken. A long cohabitation and acceptance of the society of a man and woman as husband and wife goes a long way in establishing a valid marriage."

15. On a careful reading of those principles, we could understand that long cohabitation of a man and woman living as husband and wife to the knowledge of the society could be presumed as a lawful marriage when the marriage has not been proved by other circumstances.

16. It has also been insisted in the arguments of the learned counsel for the applicant that such presumption can be inferred in a case of a woman who was married for the second time during the first wife's lifetime when her cohabitation has continued even after the death of first wife. For that he relied upon the judgment of the Hon'ble High Court reported in **2008 (5) CTC 294** between **Sivasamy & Ors** and **Poomalai & Ors**. The relevant para would be as follows:

" 16. In this case, the fifth defendant claimed that she got married to Masi Ambalam in 1946. It is true that she has not referred to any form of ceremony of marriage, nor she has examined anyone, who had attended the marriage. But it may be well nigh impossible for her to examine a witness on the date of Suit that a marriage took place in 1946. But we have two documents of the year 1955, in which she has been referred to as the wife of Masi Ambalam. Till the date of the Suit 1988, and till Masi Ambalam died in 1987, evidently there has been cohabitation between her and Masi Ambalam i.e., over 30 years. So, the judgment, which referred to mere ten years of cohabitation, will not come to the aid of the respondents, nor the judgment, which holds there is no presumption regarding a second

marriage. In fact, in that judgment, there was no evidence that the community treated them as husband and wife. But in this case, the community had treated Lakshmi as Masi Ambalam's wife. 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. On the materials before me and the following AIR 1978 SC 1557 and 1987 (1) MLJ 149, I find that the construction placed on the evidence by the Courts below is erroneous and the second substantial question of law must be answered in favour of the appellants."

17. The aforesaid decision laid down by the Hon'ble High Court of Madras would squarely apply to the present case as the applicant lived in long

cohabitation with the deceased soldier Maria Dass under one roof even during the lifetime of his first wife Muthammal and continued the same even after her death taken place on 14.09.1997. Therefore, the applicant ought to have been recognized as a legally wedded wife of the deceased soldier Maria Dass applying the principles laid down by the Hon'ble Apex Court and the Hon'ble High Court of Madras as referred above.

18. Per contra, the respondents have rejected the family pension of the applicant on the ground of plural marriage under Rule 333 (B) of Regulations for the Army 1987 (Revised) which is found not applicable to the present case.

19. Viewed from any angle, the order passed by the respondents in rejecting the claim of family pension to the applicant from the date of her husband Maria Dass on 30.01.2012 is not sustainable in view of the principles laid down by the Courts as well as Rules. Therefore, we are of the considered opinion that the applicant is entitled for the grant of family pension as the Next of Kin of the deceased soldier Maria Dass as entered in the service records of the deceased soldier. Consequently, the impugned order is liable to be set aside. Both the points are decided in favour of the applicant.

20. **Point No.3:** In the aforesaid points, we have found that the applicant is entitled for family pension from the date of death of her husband

Maria Dass, i.e., 30.01.2012 and the impugned order dated 24.08.2012 rejecting the claim of the applicant is liable to be quashed. Therefore, the application filed by the applicant seeking for grant of family pension from the date of death of her husband on 30.01.2012 with all attendant benefits arising therefrom deserves to be allowed.

21. In the result, the application is allowed. The respondents are directed to grant family pension as per rules in favour of the applicant as Next of Kin of the deceased Maria Dass with effect from 30.01.2012 and to issue PPO to that effect and also to pay the arrears payable till this date within a period of three months from today. Failing to comply, the applicant is entitled for the payment of the arrears with interest at 9% p.a. from this date till the date of realization. The applicant is also eligible for all consequential benefits that accrue to her as widow of an Ex-Serviceman including canteen facilities, ECHS etc. With the aforesaid directions, the application is allowed. No order as to costs.

Sd/
LT GEN K. SURENDRA NATH
(MEMBER-ADMINISTRATIVE)

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

25.11.2014

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No
Vs

Internet : Yes/No
Internet : Yes/No

To,

1. The Record Officer,
EME Records,
C/o 56 APO, Pin: 900453.
2. The Record Officer,
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Secunderabad-21.
(Given up)
3. Mrs. Maria Pushpa Leela,
W/o Aruldhass,
Railway Quarters,
Nagercoil, Kanyakumari District.
4. Mr. Christhu Raj,
Res: Ottapana Vilai,
Reethapuram P.O.,
Kanyakumari District.
5. The Secretary,
Ministry of Defence (Army),
South Block, New Delhi-110 011.
6. The Chief of Army Staff,
Headquarters, DHQ Post,
New Delhi-110 011.
7. M/s. T.N. Sugesh & S. Shinu,
Counsel for applicant.
8. Mr. B. Shanthakumar, SPC
For respondents.
9. OIC, Legal Cell,
ATNK & K Area HQ,
Chennai.
10. Library, AFT, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

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