

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.79 of 2014

Wednesday, the 09th day of September 2015

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

AND

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

Nanjammal (aged 63 years)
2nd wife & widow of (No.6881825)
Ex Sep Parasuraman
C/o PG Hariappa, No.23,TNHB (LIG)
Bangalore Road, Krishnagiri
Tamil Nadu 635 001.

... Applicant

By Legal Practitioner:
Mr. SP Ilangovan

vs.

1. Union of India
rep. by The Defence Secretary
Ministry of Defence
South Block, New Delhi-110 011.

2. The Chief of the Army Staff
Integrated Head Quarters (Army)
South Block, New Delhi-110 011.

3. O i/C, AOC Records
Pin-900 453, C/o 56 APO.

4. Principal Controller of
Defence Accounts (Pensions)
Draupadi Ghat, Allahabad
UP-211 014.

5. P. Periakka, wife of
Periasamy (60 years)

6. K. Chandrika, wife of Kannu (56 years)

7. P. Raja (54 years)
 5,6 & 7 are children of
 Late Parasuraman and his 1st wife
 Muthalu, residing at MS Nagar
 Mittahalli PO, Kaveripatinam
 Krishnagiri, Tamil Nadu.

8. P. Triveni, wife of Murugesan (32 years)
 D/o Late Parasuraman and his 2nd wife Nanjammal
 C/o PG Hariappa, No.23, TNHB (LIG)
 Bangalore Road, Krishnagiri, Tamil Nadu.

9. O i/C, DSC Records, Pin-901 277
 C/o 56 APO.

.. Respondents

By Mr. V.Balasubramanian, SPC
 For R.1 to R.4 and R.9
 By Ms. Anita P.Jason, for R5 to R.8

ORDER

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

1. The applicant has filed this application for publication of Part-II Order by the 3rd respondent declaring the applicant as legally wedded wife and NoK of Ex Sep Parasuraman (No.6881825) and to order payment of Family Pension in her favour on the death of her husband Ex Sepoy Parasuraman on 10.10.2002 and also to grant other service benefits such as canteen and ECHS facilities, in accordance with law.

2. The factual matrix of the applicant's case would be as follows:

The applicant is a poor, illiterate and rustic woman. She is the second wife and widow of Ex Sep Parasuraman who was enrolled in the

Army on 07.04.1963 and was discharged from service on 30.04.1979 and transferred to pension establishment after 16 years and 23 days of service. He divorced his first wife Ms. Muthalu who was suffering from an incurable disease on 04.05.1979 in the presence of Village Panchayat elders, as per customary rites prevailing in their area. Thereafter, he married the applicant on 25.07.1979 in Karukkansavadi Koil in Kaveripattinam in the presence of relatives and village elders. His divorced first wife Ms. Muthalu died on 05.08.1993. The said Ex Sep Parasuraman, her husband died subsequently on 10.10.2002. Thereafter, the applicant applied for family pension submitting the required original documents such as death certificate of Ex Sep Parasuraman and the decree dated 28.01.2012 in O.S.No.312 of 2011 of DMC, Krishnagiri, to the O i/C, AOC Records, vide in her application dated 21.03.2013. The family pension was not paid to her, but they insisted on the applicant to produce the original divorce dated 04.05.1979 in respect of Ex Sep Parasuraman and Ms.Muthalu. The applicant caused a legal notice dated 26.08.2013 wherein she explained that her husband divorced his first wife Ms.Muthalu in the presence of Village Panchayat elders as per their customary rites and this fact was also admitted and recorded by the DMC,Krishnagiri in O.S.No.312 of 2011. The applicant sent a reminder to the respondents on 28.11.2013, but she did not get any reply from the

respondents. The non-payment of family pension to the applicant by the 3rd respondent is unjust and arbitrary. In view of the marriage of the applicant with her husband Ex Sep Parasuraman, that the DMC, Krishnagiri in O.S.No.312 of 2011 declared the applicant as the legally wedded wife of Ex Sep Parasuraman, and on the basis of the legal provisions of S.219 and 220(b) of the Army Pension Regulations 1961 which provides for payment of family pension to the applicant being the legally wedded wife of the deceased Ex Sep Parasuraman, the applicant prays that this application may be allowed.

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

The respondents submit that Ex Sep Parasuraman was enrolled in the Army Ordnance Corps on 07.04.1963 and discharged on 30.04.1979 (AN) under Army Rule 13(3) III (i) on fulfilling the conditions of his enrolment. At the time of enrolment, he was married to Ms.Muthalu and her date of birth is 01.07.1944. A daughter by name Rajamman was born on 01.07.1961 out of their wedlock. Ex Sep Parasuraman was granted service pension vide PPO No.S/17172/79, dated 23.03.1979 and thereafter, he got re-enrolled in DSC on 18.05.1984 vide Daily Part-II order No.T/115/218/84/201 dated 11.07.1984. After joining in DSC also, the individual declared Ms.Muthalu as his wife and thus nominated for the receipt of AGI Fund,

Special Family Pension, Will bequeathing all his properties, DCRG etc. The nomination forms were signed by two witnesses and countersigned by an officer. The applicant submitted death certificate of Ex Sep Parasuraman issued by Registrar, original order copy passed by DMC, Krishnagiri in O.S.No.312 of 2011, dated 28.01.2012 and marriage certificate in respect of the marriage between the applicant and Ex Sep Parasuraman duly sworn before First Class Magistrate. However, the applicant could not produce the order copy of divorce dissolving the marriage between Ms. Muthalu (first wife) and Ex Sep Parasuraman passed by a competent Court of law. Though the marriage between Ms. Muthalu and Ex Sep Parasuraman stated to have been dissolved on 04.05.1979 as per customary rites, it is not understood as to how the deceased individual mentioned the name of Ms. Muthalu as his nominee at the time of his re-enrolment in DSC, i.e, 18.05.1984. The applicant has approached the AOC Records through her petition on 28.11.2012, viz., after a lapse of more than ten years. Divorce order dissolving the marriage between the first wife Ms. Muthalu and the deceased individual is necessary for publication of DO Part-II order. In the circumstances, the applicant is not entitled for family pension. Therefore, the respondents pray that this application may be dismissed.

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

1. Whether the applicant's name be entered in Part-II Order in the records of Late Ex Sepoy Parasuraman, as prayed for?

2. Whether the applicant is entitled to Family Pension payable on the death of Late Ex Sep Parasuraman (No.6881825) with effect from 10.10.2002, the date of death of Ex Sep Parasuraman?

3. To what relief the applicant is entitled for ?

5. We heard the arguments of Mr. B.A. Thayalan, representing Mr. SP Ilangovan, learned counsel for the applicant and by Mr. V.Balasubramanian, learned SPC assisted by Major Suchithra Chellappan, learned JAG Officer appearing for R.1 to 4 and 9. Though the respondents-5 to 9 were served, they did not appear before this Court at the time of final hearing.

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

7. **Point Nos.1 Nos.2:** The facts that Ex Sep Parasuraman enrolled himself in the Army on 07.04.1963 and served the nation for 16 years and 23 days and he was discharged from service on 30.04.1979 on fulfilling the conditions of his enrolment are admitted. The fact that Sepoy Parasuraman married one Ms. Muthalu and got

children through her is also admitted. The said Sepoy Parasuraman was granted with service pension and thereafter he enrolled in DSC on 18.05.1984 and gave Ms. Muthalu's name to be entered in Part-II order and thereafter he was discharged from service have also not been disputed.

8. The case of the applicant would be that the said Ex Sep Parasuraman divorced his first wife Ms. Muthalu on 04.05.1979 in the presence of Village Panchayat elders as per customary rites and thereafter, he married the applicant on 25.07.1979 in Karukkansavadi Koil in Kaveripattinam in the presence of relative and village elders and therefore, the applicant's name should be entered in Part-II Order both in Army and DSC and the applicant be given with all benefits including family pension. It is also the case of the applicant that the first wife Ms.Muthalu died on 05.08.1993 and thereafter also, the applicant lived with Ex Sepoy Parasuraman as his wife till his death on 10.10.2002. According to the applicant, the 8th respondent, daughter was born to the applicant through Ex Sepoy Parasuraman. It is also admitted by the applicant that the respondents-5 to 7 were the children of the said Ms.Muthalu, the first wife through Ex Sep Parasuraman.

9. However, the said submission made by the applicant was resisted by the respondents-1 to 4 by stating that there was no valid divorce taken place between Ex Sep Parasuraman and Ms.Muthalu and if really

the divorce had taken place, the said divorce is not valid in law and the marriage of Ex Sep Parasuraman with the applicant is a plural marriage and therefore, the applicant's name cannot be entered in Part-II Order in the records of Ex Sep Parasuraman. Furthermore, it is contended by the respondents-1 to 4 that if really the divorce between the first wife Ms.Muthalu and Ex Sep Parasuraman had happened in 1979, how Late Sep Parasuraman had given the name of Ms.Muthalu in Part-II order when he re-enrolled in DSC in the year 1984 and therefore, the theory of divorce of the first wife and thereafter his marriage with the applicant validly in the year 1979 could not be true and the marriage with applicant would be null and void.

10. There is no dispute that the respondents-5 to 7 were the children born to Ex Sep Parasuraman and his first wife Ms.Muthalu. At the same time, the status of 8th respondent that she was born to the applicant and Ex Sep Parasuraman has also not been denied by the respondents-5 to 7. Actually the respondents-5 to 7 being the children of first wife Ms.Muthalu have given consent for the grant of family pension in favour of the applicant, as prayed for by her. Therefore, we could understand that the applicant was also married to Ex Sep Parasuraman when the first wife Ms.Muthalu was alive and was living a family life with Ex Sep Parasuraman. The said fact was not

informed by Ex Sep Parasuraman to the Army authorities in order to amend the Part-II Order, nor had he informed the DSC about his second marriage with the applicant while the first wife was alive. Simply he had given the name of first wife Ms.Muthalu to be entered in Part-II Order in his records. Therefore, the factum of customary divorce as pleaded by the applicant cannot be true. Consequently, it can be inferred that the marriage of the applicant with Ex Sep Parasuraman was nothing but a plural marriage. However, the applicant had lived with Ex Sep Parasuraman and begot a child, namely, the 8th respondent. Furthermore, it was pleaded by her that she lived with Ex Sep Parasuraman from the date of her marriage till his death on 10.10.2002. Admittedly, the first wife Ms.Muthalu died on 05.08.1993 and thereafter also the applicant continued her cohabitation as wife with Ex Sep Parasuraman till the end of his life time. The death certificate of wife Ms.Muthalu was produced as Annexure-2 which would conclusively prove that the first wife of Ex Sep Parasuraman died on 05.08.1993. This would go to show that the applicant was living with Ex Sep Parasuraman as a single wife after death of first wife till the date of death of Ex Sep Parasuraman on 10.10.2002. Whether this cohabitation would improve the case of the applicant is the present question. No doubt the 8th respondent was born on the cohabitation of the applicant had with Ex Sep

Parasuraman. Therefore, we could safely come to the conclusion that the applicant was legally and continuously living with Ex Sep Parasuraman atleast from the date of death of first wife Ms.Muthalu, i.e., 05.08.1993.

11. The learned counsel for the applicant would submit in his argument that such a cohabitation of the applicant with Late Sep Parasuraman would give rise to a presumption of valid marriage which would in turn change the character of the plural marriage of Ex Sep Parasuraman with the applicant. The said argument advanced by the learned counsel should be answered in the light of the settled principles of Hon'ble Apex Court and High Court of Madras in respect of presumption of marriage on the basis of long cohabitation had by a man with a woman in the knowledge of the society. According to the judgment of the Hon'ble Apex Court reported in **AIR 1992 SC 756** between **S.P.S. Balasubramanyam vs. Suruttayan**, we find the following mandate which runs as follows:

" The appellate court however, held to the contrary. It held that since Chinnathambi and Pavayee No.2 continuously lived under the same roof and cohabited for a number of years the law would raise presumption that they lived as husband and wife. There was no other evidence to destroy that presumption. So

stating plaintiff's suit was decreed. In the second appeal the High Court took a different view. It was held that presumption available in favour of Pavayee No.2 by her continuous living with Chinnathambi has been destroyed by other circumstances in the case. The High Court relied upon three circumstances to rebut the presumption, (i) non-mentioning the name of Pavayee No.2 in the will Ex.B-1; (ii) not referring the names of Pavayee No.2 and her children by Chinnathambi in the compromise Ex.B-32; and (iii) the evidence of PW 6 and DW 4. We do not think that the circumstances relied upon by the High Court are relevant to destroy the presumption which is otherwise available to recognize Pavayee No.2 as the wife of Chinnathambi. The first two circumstances relied upon by the High Court are indeed neutral. The absence of any reference to Pavayee No.2 in Ex.B-1 or in Ex.B-32 cannot be held against the legitimacy of the children of Pavayee No.2 born to Chinnathambi. Equally, we do not find anything from the evidence of PW 6 or DW 4. Both these witnesses did not deny that Chinnathambi and Pavayee No.2 were living together. It is not in dispute that children including Ramaswamy were born to Chinnathambi. In our opinion, the circumstances and the evidence relied upon by the High Court are not relevant to destroy the presumption that Chinnathambi and Pavayee No.2 lived together as husband and wife. "

12. In yet another judgment of the Hon'ble Apex Court cited by the learned counsel for the applicant reported in **(2008) 4 SCC 520** between **Tulsa & Ors.** and **Durghatiya & Ors.**, it has been laid down 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 yet another judgment of the Hon'ble Apex Court reported in **(2009) 9 SCC 299** in the case of **Challamma vs. Tilaga**, it has been laid down as follows:

" 12. *It is also well-settled that a presumption of a valid marriage although is a rebuttable one, it is for the other party to establish the same. (See Ranganath Parmeshwar Panditrao Moli v. Eknath Gajanan Kulkarni and Sobha Hymavathi Devi v. Setti Gangadhara Swamy). Such a presumption can be validly raised having regard to Section 50 of the Evidence Act. (See Tulsa). A heavy burden, thus, lies on the person who seeks to prove that no marriage has taken place. "*

14. The principles laid down by the aforesaid judgments of the Hon'ble Apex Court would categorically guide us to presume a lawful marriage on a long cohabitation of a man and woman living as husband and wife where their marriage has not been proved by other circumstances.

15. The said principle has been followed by the Hon'ble High Court of Madras in a Judgment 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."

(Emphasis supplied by us)

16. The said principle laid down by the Hon'ble High Court of Madras would be squarely applicable to the present case as the applicant lived in a long cohabitation with Late Ex Sepoy Parasuraman under one roof even during the life time of the first wife Ms. Muthalu and continued after the death of first wife in the year 1993 with Late Ex Sep Parasuraman as wife till his death on 10.10.2002. All these facts would go a long way to show that the applicant lived with Late Ex Sep Parasuraman from the year 1979 till the date of his death as wife and

begot a girl child (8th respondent herein) out of the said relationship. In such circumstances, the long cohabitation of the applicant with Late Ex Sep Parasuraman could be presumed to be a lawful marriage as they were living as husband and wife and the applicant could be treated as legally wedded wife of Ex Sep Parasuraman, at least from the date of death of his first wife Ms.Muthalu. Therefore, the denial of status as widow in favour of the applicant for the grant of family pension, even though their marriage was originally a void marriage, cannot be justified. The refusal to grant family pension in favour of the applicant by the respondents after the emergence of a valid marriage through presumption would certainly amount to denial of justice.

17. The grant or receipt of any pension is an earned or accrued right and it cannot be considered as a bounty or charity. Such principle was laid down by the Hon'ble Apex Court in several judgments. Therefore the denial of family pension to the applicant after the death of her husband, by the respondents, would amount to denial of her right conferred upon her, as the next of kin of the pensioner, viz., Late Ex Sep Parasuraman. Therefore, the claim of the applicant for the grant of family pension is necessarily to be accepted by the respondents. But it was not done so by the respondents. The orders passed by the 3rd respondent refusing to include the name of

the applicant in Part-II Order by quoting the reason of plural marriage was certainly not in consonance with the principles laid down by Hon'ble Apex Court. The respondents-5 to 7, viz., the children born to first wife Ms.Muthalu have also given consent along with 8th respondent to the applicant for the grant of family pension on the death of their father Late Ex Sep Parasuraman. For those reasons, the impugned order passed by the 3rd respondent and the earlier communications refusing the claim of the applicant for family pension are liable to be set aside and the applicant is found entitled for her name being endorsed in Part-II Order in the records of Late Ex Sep Parasuraman towards the grant of family pension. Accordingly, both the points are decided in favour of the applicant.

18. **Point No.3:** In view of our discussion held above, we find that the application filed by the applicant for the grant of Family Pension after her name is included in Part-II Order as wife in the place of Ms.Muthalu is grantable and thus she is entitled for Family Pension. Even though the applicant is entitled to get Family pension from the date of death of her husband, she did not put forth her claim by filing any application within the period of limitation. However, the claim of pension is being a continuous and recurring cause of action, the whole claim cannot be considered as barred by law of limitation and the Family Pension can be granted with effect from three years prior to the

date of filing of this application as per the principle laid down by Hon'ble Apex court in **Tarsem Singh's** case. We find that the application was presented before this Court on 10.03.2014 and the date prior to three years from the date of filing of the application would be 10.03.2011. Therefore, the applicant is entitled for the grant of Family Pension with effect from 10.03.2011 only.

19. In fine, the application filed by the applicant seeking for grant of Family Pension is ordered with effect from 10.03.2011. The applicant is also eligible for all consequential benefits such as widow of Ex-Serviceman including canteen facilities, ECHS etc. The arrears of Family Pension and the PPO to that effect shall be ordered in favour of the applicant and be issued within a period of three months from the date of receipt of this order. In default, the respondents-1 to 4 are directed to pay the said arrears with interest at 9% per annum till it is fully paid. The application is allowed to that extent indicated above. No order as to costs.

20. The learned counsel for the applicant Mr. SP. Ilangoan being appointed by the High Court Legal Services Committee, High Court Campus, Chennai-104, he is entitled to the fees, as per rules.

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

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

09.09.2015
(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

vs

To:

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10. Mr. S.P. Ilangovan, Counsel for applicant.
11. Mr. V.Balasubramanian, SPC
Counsel for respondents-1 to 4 and 9.
12. Ms. Anita P.Jason, Counsel for R.5 to R.8
13. The Secretary, High Court Legal Services Committee
Satta Udhavi Maiyam Bldgs., North Fort Road, High Court Campus
Chennai-600 104.
14. OIC, Legal Cell, DAKSHIN BHARAT AREA, Chennai.
15. Library, AFT, Chennai.

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