

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/00164/2018****Dated 20th day of January, Two Thousand Twenty****CORAM : HON'BLE MR. T. JACOB, Member(A)**

Mr. S. Pandurangan,
Retired SPM, Postal Pensioner,
No.13, Gowri Nagar,
Ponniammanmedu,
Chennai 600110.

....Applicant

(By Advocate M/s. M. Abdul Razack)

Vs

1.The Post Master General,
Tamil Nadu Circle,
Chennai 600002.

2.The Superintendent of Post Offices,
Thiruvannamalai Division,
Thiruvannamalai 606 601.

....Respondents

(By Advocate Mr. S. Nagarajan)

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"To call for the records pertaining to the impugned order of the 2nd respondent in No.C2/OA 848/2017 dated 16.01.2018 and quash the same and consequently direct the second respondent to authorize nomination of DCRG and family pension to the second wife of the petitioner Mrs. Bharathi Bai and pass such further or other orders as this Hon'ble Tribunal may be pleased to deem fit and proper in the circumstances of the case and thus render justice."

2. The brief facts of the case as stated by the applicant are as follows:

The applicant was initially appointed as Class IV employee and joined duty on 29.11.1962 and retired from service on 30.06.1996 as Sub Post Master at Kalasapakkam Post Office, Thiruvannamalai District. The applicant's first marriage was solemnized in the year 1965 with Mrs. Manonmani. As she was suffering from Tuberculosis disease for long time after her marriage she could not involve in matrimonial life with the applicant. Hence the marriage with his first wife was not consummated and the elders in both families decided to solemnize second marriage to the applicant with the consent of his first wife and, subsequently, both the applicant and his first wife were separated by the local panchayatars and relatives of the families. Subsequently with the consent of his first wife, relatives and elders of the family, the second marriage of the applicant was solemnized with Ms. Bharathi Bai on 01.05.1970 at Perumal

Temple, Sankaramallur Village, Arcot Taluk, Vellore District in the presence of relatives and friends. The said marriage was registered with the Registrar of Marriages, Kalasapakkam on 31.01.2017 in Serial Number 5 of 2017. After the death of his first wife on 11.05.2000, the applicant sent a representation to the second respondent on 28.01.2002 followed by several subsequent letters and finally on 17.02.2017 to authorize the nomination of his second wife, Mrs. Bharathi Bai for receiving the DCRG and family pension after the death of the applicant. But the second respondent till date has not authorized the nomination of his second wife. The applicant also sent a representation to the first respondent on 24.04.2017 by registered post. Since no order was passed on his representation, the applicant moved OA 848/2017 before this Tribunal and this Tribunal directed the respondents to consider his representation and pass appropriate orders. In pursuance thereof, the 2nd respondent had considered and rejected his representation on untenable grounds. Hence this application for a direction to the second respondent to authorize the nomination of his second wife, Mrs. Bharathi Bai for receiving the DCRG and family pension after the death of the applicant, inter-alia, on the following grounds :

- i. The impugned order of the 2nd respondent in No. C2/OA 848/2017 dated 16.01.2018 rejecting the representation dated 24.04.2017 on the ground to produce the legal separation with his first wife, that too 16 years after the death of his first wife for authorizing the nomination for DCRG and family pension to his second

wife is arbitrary, unreasonable, unfair and liable to be rejected.

ii. The second marriage of the applicant was solemnized on 01.05.1970 at Perumal Temple, Sankaramallur Village, Arcot Taluk, Vellore District in the presence of relatives and friends with the consent of first wife during separation. The applicant submits that the said marriage was now registered with the Registrar of Marriages, Kalasapakkam on 31.01.2017 in Serial Number 5 of 2017. The first wife of the applicant also died on 11.05.2000 and hence at present the legal separation between the applicant and his first wife does not arise.

iii. The applicant herein has filed the docket order copy passed in IA No. 60 of 1996 in OP No. 26 of 1971 by the Sub-Judge, Vellore as a proof for his separation with his first wife and payment of maintenance to his first wife. However, the order passed in OP No. 26 of 1971 on 14.02.1972 is not available. The second respondent ought to have considered the said document and passed appropriate orders.

iv. The petitioner herein has also filed the marriage invitation and the latest marriage registration certificate issued by the competent Registrar of Marriages to prove the second marriage with Mrs. Bharathi Bai and ought to have accepted the request of the applicant and passed order authorizing the nomination for DCRG and family pension to his second wife Bharathi Bai.

v. The first and second respondent did not consider the representation dated 24.04.2017 on proper perspective in

the light of the order passed by this Hon'ble Tribunal in OA 848 of 2017 and the law laid down by the Hon'ble High Court and Supreme Court in the above aspect and hence the impugned order of the 2nd respondent is passed with total non application of mind hence untenable in the eyes of law.

vi. The applicant is 81 years old and suffering from various ailments due to age factors. The applicant's efforts to get orders for authorizing the nomination for DCRG and family pension to his second wife Bharathi Bai is rejected by the respondents for untenable reasons has further deteriorated his health.

3. The respondents have filed a detailed reply statement stating that Sri S. Pandurangan, SPM, who retired on superannuation on 30.06.1996 has filed this case for the inclusion of the name of the second wife in the PPO for authorisation of family pension. The retired official was directed vide letter dated 25.06.2010 to produce Court order for legally divorcing his first wife which is yet to be received. The applicant vide letter dated 17.02.2017 had submitted an extract of Certificate of Marriage registered at Registrar Office, Kalasapakkam on 31.01.2017 to the effect that the marriage between him and second wife, Smt. Bharathibai was solemnized on 01.05.1970. In all the above records, the applicant / pensioner could not produce any of the documents as proof for the legal separation of his first wife either at the time of his retirement or till date. The second marriage took place when his first wife was alive. In this regard GID 13 below Rule 54 of CCS (Pension) Rules reads as follows:

"...that the marriage cannot be legally solemnized when

either party has a spouse living at the time of such marriage. Therefore, any second marriage by a Hindu Male after the commencement of 1955 Act during the lifetime of his first wife will be a nullity and have no legal effect. Such marriage cannot be valid on the ground of custom. In fact, a custom opposed to an expressed provision of law is of no legal effect. So under these circumstances, the second wife will not be entitled to the family pension as a legally wedded wife."

So far, the retired official has produced the following documents:

- (i) Death certificate of Smt.Manonmani dated 11.05.2000;
- (ii) Marriage invitation for his marriage with Smt.Bharathibai on 01.05.1970;
- (iii) A copy of Registration of the above second marriage on 31.01.2017;
- (iv) Xerox copy of Court Judgement in IA No.60 of 1996 in OP 26 of 1971, which was only a petition filed by Smt. Manonmaniammal for maintenance.

As the retired official has not produced any document as a proof for the legality of his second marriage, in this office letter dated 14.06.2017, the Certificate of Marriage registered at Registrar Office, Kalasapakkam on 31.01.2017 for the marriage between him and second wife, Smt. Bharathi Bai solemnized on 01.05.1970 was sent for verification to Inspector Posts, Polur Sub Division, endorsing a copy to the retired official and requested him once again to submit document in proof of his legal separation with his first wife. Even during the enquiry by the Inspector posts, Polur on 14.8.2017, the retired official vide his statement dated 14.8.2017, had not brought any proof of his legal separation with his first wife, but stated that he had kept the documents at Chennai. Vide this office letter dated 21.08.2017, the retired official was finally informed that

unless he produces a record of legal separation of his first wife before the second marriage with Smt. Bharathi bai, his claim for inclusion of the name of the second wife in the list of family members eligible for the Family Pension will not be entertained. The above retired official vide his representation dated 03.08.2017, received at this office on 04.08.2017 has sent a copy of the order of this Tribunal dated 14.06.2017 and requested to nominate his wife, Mrs. P. Bharathi bai for family pension as soon as possible since he is sick and not well.

4. The applicant's earlier OA No.848/2017 filed in this Tribunal on the same ground was disposed of at the admission stage. In the order dated 14.06.2017, this Tribunal directed to consider and dispose of the representation dated 24.04.2017 of the applicant in accordance with rules and as per law. As directed, his representation dated 24.04.2017 has been disposed of with a speaking order of DPS, CCR vide this office letter no. C2/OA 848/2017 dated 16.01.2018. Even after filing of OA and receipt of the order of this Tribunal, the applicant has not produced any document as a proof for the legality of his second marriage. Since the applicant has not produced any proof for having divorced his first wife, the marriage with Smt. Bharathi bai could not be legally solemnized as per GID 13 below Rule 54 of CCS (Pension) Rules 1972 also, according to which, the marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage. Hence the respondents pray for dismissal of the OA.

5. Heard the learned counsel for the respective parties and perused the

pleadings and documents on record.

6. At the outset, the respondents have raised preliminary objection on the ground that when the first marriage was in subsistence, the second wife cannot be recognised as the legally wedded wife of the employee. Hence the applicant's second wife is not entitled to any benefits as per Section 5 and 15 of the Hindu Marriage Act.

7. Admittedly, this is the second round of litigation before this Tribunal. The applicant's earlier OA No.848/2017 filed before this Tribunal on the same ground was disposed of at the admission stage. In the order dated 14.06.20.17, this Tribunal directed the respondents to consider and dispose of the representation dated 24.04.2017 of the applicant in accordance with the rules and as per law. As directed, his representation dated 24.04.2017 has been considered but however, rejected by a speaking order of DPS, CCR vide this office letter No. C2/OA 848/2017 dated 16.1.18. Even after filing of the OA and receipt of the order of this Tribunal, the applicant has not produced any document as a proof for the legality of his second marriage. Since the applicant has not produced any proof for having divorced his first wife, the marriage with Smt. Bharathi bai could not be legally solemnized as per GID 13 below Rule 54 of CCS (Pension) Rules 1972 also, according to which, the marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage.

8. I have anxiously considered the contentions raised on behalf of both the parties. As far as the factual aspect of the matter is concerned, it is an admitted position of this case that the applicant got married first with Mrs. Manonmani in the year 1965 and subsequently, second marriage of the applicant was solemnized with Mrs. Bharthi Bai on 01.05.1970. According to the applicant, he filed O.P. No.26 of 1971 before the Sub Court Vellore for judicial separation with his first wife and the same was allowed on 14.02.1972 and in his representaiton dated 24.4.2017, the applicant has stated that the Superintendent of Posts has directed him to produce Court Legal seperation order of his first wife, Mrs. Manonmani which is not possible now. There was no divorce between his first wife and the applicant and that the marriage subsisted at the time of second marriage. According to the applicant, he has given the name of his first wife as nominee in the service book to recieve the DCRG and family pension after the death of the applicant and subsequently after the death of his first wife in 11.5.2000, his second wife's name was given.

9. The family pension is a right of a widow and not the estate of a Government servant and is, therefore, not subject to testamentary deposition. In other words, even the Government servant has no control over the family pension since the exclusive right of the family pension is that of a widow alone due to her widowhood. The family pension is payable to a legally wedded wife alone. In this view of the matter, the family pension cannot be divided or distributed on the strength of any agreement.

10. The Government servant had contracted a second marriage and in terms of notification made by the Department of Pension and Pensioner's Welfare dated 16.2.1987 under Rule 54 of Pension Rules, the second wife will not be entitled to family pension as a legally wedded wife. The relevant portion of the said notification under Rule 54 is reproduced below:

" It is specifically a question arising under the [Hindu Marriage Act](#), 1955. Under Rule 54(7) of the CCS (Pension) Rules, 1972, in case a deceased Government servant leaves behind more than one widow or a widow and eligible offspring from another widow, they are entitled to family pension in respect of that deceased Government servant. [Section 11](#) of the Act provides that any marriage solemnized after the commencement of the Act shall be null and void and can be annulled against the other party by a decree of nullity if the same contravenes any of the conditions specified in Clauses (iv), (iv) and (v) of [Section 5](#) of the Act. [Section 5\(1\)](#) stipulates that the marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage. Therefore, any second marriage by a Hindu Male after the commencement of 1955 Act during the life time of his first wife will be a nullity and have no legal effect. Such marriage cannot be valid on the ground of any custom. In fact, a custom opposed to an expressed provision of law is of no legal effect. So under these circumstances, the second wife will not be entitled to the family pension as a legally wedded wife."

11. Furthermore, the CCS (Conduct) Rules prohibits Government servants from performing second marriage during the life time of their spouse living, without obtaining permission from the Government. The said prohibition is absolute and unconditional and even if the personal law of the employee permits second marriage, then also, it is prohibited unless done with the leave of the

Government. In other words, the applicable statutory rule will prevail over the personal law applicable to the Government servant concerned.

12. It may not be out of place to mention that it is mandatory for every Government employee to declare the members of his/her family in the Family Composition Register for the purpose of extension of benefits every year. This has not been done by the applicant. It is also pertinent to note that no orders from any Competent Court of law has been produced declaring Mrs. Bharati Bai as the second wife of the employee.

13. Hon'ble High Court of Madras in case of T. Stella Vs. Metropolitan Transport Corporation Limited represented by its Chairman and Managing Director, Chennai and another has held as under :

"16. Though on the face of it, this argument looks attractive, but when seen in depth, it has no legs to stand. The reading of [Hindu Marriage Act](#) shows, that the second marriage, while first spouse is living, is not voidable, but is void, therefore, mere death of first wife cannot result in legalizing the second marriage or give the second wife the status of wife.

17. Furthermore, it may be noticed, that family pension is available to the widow of a person during her lifetime, therefore widow will always be the first wife, as there cannot be two widows for a person, as law does not recognize two wives after coming into force of [Hindu Marriage Act](#). "

14. Applying the aforesaid rules / instructions to the facts of the present case, I find that the applicant's second wife cannot be said to be the legally wedded wife and thus would not be entitled for the family pension as a legally wedded wife. Perhaps, the applicant is fully aware that his second wife cannot get the

family pension as such. The misplaced sympathy can never take stride over the legislative enactments. Therefore, I am not impressed with the contention of learned counsel for the applicant that applicant's second wife is entitled to the family pension on any count. No fault can be fastened with the action of the official respondents and the impugned order is unimpeachable.

15. In the result, this Original Application is found devoid of any merit or substance and the same is hereby dismissed but with no order as to costs.

(T.JACOB)
MEMBER(A)
-01-2020

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