

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/01356/2017****Dated Monday, the 27th day of January, 2020****PRESENT****Hon'ble Mr.T.Jacob , Member (A)**

A. Jayapal,
S/o Arumugam,
No.53, Samiyar Gate,
Peramanoor, Maraimalai Nagar,
Kanchipuram District.

....Applicant

By Advocate M/s M.R.Senthil Kumar

Vs

1. Union of India
Rep by the Divisional Manager,
Southern Railway,
Chennai Division,
Chennai – 600 003.
2. The Senior Divisional Personnel Officer,
DRM Office, Works Branch,
Southern Railway,
Park Town,
Chennai – 600 003.

....Respondents

By Advocate Mr P. Srinivasan

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:

"i. To call for the records relating to proceedings No. M/P.353/CC/OA 1555/2013 dated 11.02.2014 issued by the 2nd respondent and to quash the same as illegal and void and consequently direct the 2nd respondent to enter the name of Mrs.Ruby as 2nd wife of the petitioner into his pension records.

ii. And pass such further or other orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case and thus render justice."

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

The applicant was an employee of the 2nd respondent office and he retired on superannuation with effect from 30.09.2008. The applicant married one Muniyammal in the year 1974 and there were 3 children born between them. In the year 1988, the said Muniyammal abandoned the applicant and her 3 children and left out from her matrimonial house with someone. The applicant lodged complaint in this regard, but he did not know whereabouts of his wife for more than 6 years. Hence, the applicant married J. Ruby in the year 1994 for the future interest of his children. Out of the said wedlock a daughter, namely, J. Poonguzhali was born to them. In the meanwhile, the said Muniyammal died on 29-11-1999. On 22.01.2013 the applicant sent representation to the respondent to include Mrs.Ruby as his wife into the family composition. But the respondents did not take any action based on the representation. Hence, the applicant filed O.A.1555/2013 before this Tribunal and the same was

disposed of with a direction to the respondent to consider the representation of the applicant and pass orders. In pursuance of the said order, the 2nd respondent considered the representation but however, rejected the same. Aggrieved by the above, the applicant has filed the present OA seeking the above reliefs, inter-alia, on the following grounds:-

- i. That the petitioner had put in 29 years of service in Southern Railways without any remarks and retired on superannuation. As such he and his family have the right to receive the pension benefits of Southern Railways. Hence, the rejection order passed by the respondent is liable to be quashed.
- ii. That pension to its employees is a deferred wage, the pension is payable to the employee for his unblemished service during his tenure in the organisation and thereafter to the family. Hence, the petitioner is entitled to receive pension and family pension and the order of the respondent is arbitrary.
- iii. Smt.Muniyammal, the petitioner's first wife had not only eloped with someone but also abandoned the children also. The petitioner has reared them and gave them education. The respondent had not considered this aspect and merely rejected the claim of the petitioner.
- iv. The petitioner being an employee had to attend his office and also to take care of the children left by mother, Muniyammal, which necessitated him to find a mother to the children. The petitioner's first wife's whereabouts were not known for the past 6 years and she had neither taken steps to come and live with him nor bothered about her children. In that circumstances the petitioner had married Mrs. Ruby as his second wife on 26.08.1994.

v. The petitioner's representation to include Mrs. Ruby as wife and Selvi. Poonguzhali as daughter in the petitioner's record at Southern Railways Department was turned down by the authorities with the reason that first wife Muniyammal's name is already in the record.

vi. Smt.Muniammal has expired on 29-11-1999. Mrs.Ruby, petitioner's second wife is alive and looking after the family even after the retirement of the petitioner. Hence the respondent ought to have included Mrs. Ruby as a 2nd wife of the petitioner in his service records. But the respondents without considering this aspect rejected his representation. Hence the act of the respondent is malafide.

vii. That the railway authorities had conducted an enquiry to add the names of the Mrs.Ruby and her daughter Poonguzhali but turned down the request that Poonguzhali's date of birth was mentioned in Transfer Certificate as 21.05.1995 but in the Birth Certificate as 20.05.1995. The petitioner in his letter to Southern Railway authorities dated 24.09.2014 has explained that his daughter was born in the past midnight on 20.05.1995 and as such it was recorded in the hospital, Chengelpet. Since the birth time of the child was 1.30 am early morning of 21.05.1999 and accordingly Municipal Authorities had recorded the birth as 21.05.1999 which was carried by the school authorities. This simple logic had not been understood by the Railway Authorities.

viii. The respondents did not consider the representation on merits and ground reality for recording the Petitioner's present wife, Mrs. Ruby and daughter, Poonguzhali in the family composition. Moreover, the respondent had not called for any clarification from the petitioner. Hence the act of the respondent is violation of the principles of natural justice.

3. The respondents have filed a detailed reply statement stating that the applicant in his representation dated 22.11.2013 had requested the respondents to include the name of his second wife, Smt.J.Ruby and daughter, Selvi.poonguzhali in the personal records of the Railways. The applicant had not produced the marriage certificate of himself with Smt.J.Ruby or birth certificate of Selvi. Poonguzhali for considering the representation despite advice from these respondents. Thereafter the representation was disposed by rejecting the request mainly on the ground that the applicant has not proved the fact of the marriage with Smt.J.Ruby. Further the birth certificate subsequently produced by the applicant discloses that Selvi.poonguzhali was born on 20.05.1995 when the first marriage was subsisting. Further, it was clear that Shri.A.Jayapal did not get the permission from the Railways and married Smt.J.Ruby which amounts to misconduct and was in violation of Rule 21 Railway Service Conduct Rule which prevents bigamy. Further the marriage certificate discloses that the second marriage was performed on 26.08.1994 when the first marriage was subsisting even by his own admission and Smt.Muniyammal, the wife of the applicant, died only in the year 1999. The applicant is a Hindu Adidravidar and therefore, his marriage with Smt.J.Ruby, a Christian, cannot take place in the church and such marriage is a void one. The respondent cannot act upon the marriage certificate dated 26.08.1994. Even in the transfer certificate of Selvi Poonguzhali, the applicant is described as Hindu and therefore his marriage in a Church cannot be recognized as a valid one in the absence of any declaration from the competent civil court. The applicant vide this office letter dated 06.01.2014 was directed to submit

the original documents along with two attested photo copies of documents in proof of marriage with J. Ruby and birth certificate of her daughter J.Poonguzhali to examine the representation. In response to this letter the applicant submitted only the marriage certificate issued by one Pithasudhan Church at Arakkonam and a transfer certificate of J. Poonguzhali bearing admission No.12946. From the family composition available in the year 1994, it is seen that the applicant had declared one Smt. Muniammal as his wife, Kayalvizhi and Pavazham were shown as daughters and one Lenin was shown as son in the year 1991 and 1994 respectively. The applicant retired on superannuation on 30.09.2008 and in the pension papers he had not declared anyone as his wife. Smt. Muniammal died in the year 1999. The name of Smt J. Ruby cannot be included as his second wife, as the same is against the provisions of the Bigamy Act, 1949. Even under Christianity, bigamy is prohibited. Therefore, the applicant's marriage with Smt. J. Ruby is null and void. Now in the present OA only a copy of the certificate dated 10/03/2014 was produced. The Respondents submit that when he retired in 2008 he failed to include her name and these documents were available then also. No permission was granted by the Railways to marry Smt. J.Ruby while the first marriage was subsisting. Since the documents produced by the applicant do not conclusively prove that Smt. J.Ruby was his wife and in the absence of birth certificate of J.Poonguzhali, their names could not be included in the Family composition as requested by the applicant. Hence the respondents pray for dismissal of the OA.

4. Learned counsel for the applicant has relied upon the following judgments in support of his submissions:

- i. Judgment dt. 10.02.2010 of the Hon'ble Calcutta High Court in WP. CT No. 20 of 2009 in the case of Namita Goldar & Another Vs. Union of India & Ors.
- ii. Order dt. 13.04.2018 of the CAT-Madras Bench in OA 1765/2016 in the case of D. Kumari Vs. Union of India & anr.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on records.

6. Admittedly, this is the second round of litigation before this Tribunal. Earlier, the applicant had filed OA.1555/2013 seeking similar relief and this Tribunal by order dated 12-11-2013 disposed of the OA directing the respondents to pass a reasoned and speaking order on her representation whereafter on rejection of her representation by the respondent No.2 the applicant has filed this OA seeking the above reliefs.

7. It is mandatory for every Railway employee to declare the members of his/her family in the Family Composition Register for the purpose of availing Privilege passes and extend other benefits every year. On Perusal of the Service Register and other records, it is seen that the retired Railway employee has not declared anyone as his "wife". Due to the reasons stated, no one is included as Family Pension beneficiary in his Pension Payment Order. It is also pertinent to note that no orders from any Competent Court of law has been produced declaring Mrs.J.Ruby as the second wife of the retired Railway employee. Therefore respondents could not

recognise the alleged second marriage on 26.08.1994 as valid.

8. In terms of Rule 21(2) of Railway Service (Conduct) Rules 1966, no Railway Servant having a spouse shall enter into or contract a marriage with any person. 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 a Government servant concerned. Further the applicant have not taken action to obtain divorce from Muniyammal, his first wife, before entering into a second marriage. He has also not filed a police report stating that the whereabouts of first wife were not known. In the instant case, according to the respondents, the retired Government employee had contracted second marriage when the first marriage was subsisting which amounts to violation of Railway Service (Conduct) Rules, 1966 and the said marriage becomes void.

9. The family pension is a welfare measure of the Union of India and, therefore, the same will be granted to the rightful claimant after thorough investigation of the factual details. The applicant has not taken any steps to report to the Government the abandonment of his first wife and had contracted second marriage when the first marriage was subsisting. He has also not obtained any decree from the competent court of law divorcing his first wife. He has thus not so far established that Smt.Ruby is the wife whereas the documents and railway records prove that Smt.Muniammal is the wife. He has however, produced the death certificate of his first wife before this

Tribunal. In the absence of the a decree of divorce of his first wife and the marriage certificate evidencing the marriage of the applicant with Smt.Ruby, the applicant's prayer cannot be accepted. The applicant ought to prove the status of Smt. J. Ruby only in a civil court as there are many contradictory factual details and documents.

10. The Hon'ble High Court of Madras in the 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. "

11. The Hon'ble Supreme Court in the case of *Maharani Musum Kumari v. Kusum Kumari Jadeja* held that the amended [Section 16](#) of the Hindu Marriage Act has enlarged the applicability of beneficial provision to illegitimate children. I also take judicial notice of the fact that in terms of the Supreme Court judgment the Department of Personnel has issued instructions on the point by its O.M. No 1/16/96-P & PW(E) dated 2.12.1996. Certain right of family pension is also envisaged for the illegitimate children of the Government servant. The relevant paragraph of the above Memorandum lays down as below:

4. The rights of such children requires to be protected and will accrue accordingly. It is, therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rule 54(8). It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same.

5. The legally wedded wife i.e. respondent No.5 is recipient of family pension at the present and first son born to the applicant have crossed the age of 25 years by now, hence, there would be no question for any of family pension to him on any count. The right of second son, would survive till 10.03.2007 subject to, of course, other contingencies.

In the instant case, the applicant's daughter born to the second wife will be crossing 25 years of age on 20.05.1995.

12. Contracting the second marriage during the life time of the first wife coupled with the fact of absence of due intimation of the second marriage to update the records of the office of the respondents disentitle the applicant from seeking any relief as sought for. Further, the facts of the cases cited by the applicant are distinguishable from the facts of the present case.

13. Applying the aforesaid rules/instructions to the facts of the present case and the Judgement of the Hon'ble Supreme Court and High Court (supra), I find that 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. The misplaced sympathy can never take stride over the legislative enactments. Therefore, I am not impressed with the contention of the 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.

14. In the conspectus of the above facts and circumstances of the case, the OA is liable to be dismissed and is accordingly dismissed with no order as to costs.

(T.JACOB)

Member(A)

27-01-2020

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