

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No.200/00034/2018

Jabalpur, this Tuesday, the 3rd day of March, 2020



HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Abha Sarvaiya W/o Late Rajeev Sarvaiya, Aged about 40 years, Occupation House Wife R/o 138, Housing Board Colony Parasiya Naka, Chhindwara M.P. PIN 100048 Mbl. No.7000093189
-Applicant
 (By Advocate –**Shri Aditya Ahiwasi**)

V e r s u s

1. Survey of India, Through its Director, M.P. Geo Spatial Data Centre Survey Colony, Vijay Nagar Jabalpur M.P. PIN 482002
2. Establishment and Account Officer, M.P. Geo Spatial Data Centre Survey Colony, Vijay Nagar Jabalpur M.P. PIN 482002
3. Smt. Vinita Sarvaiya w/o Late Rajeev Sarvaiya, Aged about 38 years, R/o H.No.64 Shriram College Road, Chunginaka, Panchmukhi Society Madhotal, Jabalpur M.P. PIN 482002
- Respondents
 (By Advocate –**Shri Surrendra Pratap Singh for respondent No.1 and Shri Vijay Tripathi for respondent No.3**)

(Date of reserving the order:-27.03.2019)

ORDER

By Ramesh Singh Thakur, JM:-

Through this Original Application the applicant is seeking direction to the respondent-department to disburse the amount of GPF, family pension and gratuity in equal share to respondent No.3, being a legally wedded wife of the deceased employee.



2. The applicant has prayed for the following reliefs:-

“8(i) To call the entire relevant records pertaining to the dispute of the Applicant for kind perusal/consideration of this Hon’ble Tribunal.

8(ii) This Hon’ble Tribunal may kindly be pleased to hold the marriage solemnized between the deceased employee late Rajeev Sarvaiya and respondent No.3 as void.

8(iii) To direct the official respondents to pay all the retiral/terminal benefits of the deceased employee to the applicant and her son namely Tarun Sarvaiya declaring the marriage of the deceased employee with respondent No.3 is void and illegal.

8(iv) That Hon’ble Tribunal may be pleased to direct the respondent No.1 and 2 to delete the name of respondent No.3 from the service record of Late Rajeev Sarvaiya as she is no more the legally wedded wife of Late Rajeev Sarvaiya.

8(v) That, any other order/orders, direction/directions that this Hon'ble Tribunal, may deem fit and proper in the facts and circumstances of the case may also be passed in the interest of justice, along with the cost of litigation.”



3. The brief facts of the case are that the applicant is a first wife of Late Rajeev Sarvaiya, who was an employee of the respondent-department and died due to harness in the year 2017. The marriage of applicant was solemnized with Late Rajeev Sarvaiya on 24.04.2000 and out of this wedlock a son namely Tarun Sarvaiya has taken birth. The husband of the applicant filed a suit seeking dissolution of marriage in the Family Court, Sagar registered as Civil Suit No.44-A/2006. The suit was decreed vide judgment and decree dated 01.07.2008 (Annexure A/1). The applicant filed First Appeal No.510/2008 before the Hon'ble High Court which was dismissed for non compliance of the pre-emptory order. The applicant filed MCC No.2832/2017 seeking restoration of F.A. and the same is pending. The husband of applicant married with respondent No.3 on 20.05.2009 whereas the First Appeal was pending before the Hon'ble High Court. After the death of applicant's husband the respondents vide communication dated

09.06.2017 and 22.06.2017 informed that the name of the son of applicant namely Tarun Sarvaiya is recorded in the service record of the deceased employee and accordingly being a guardian of the Master Tarun the applicant was directed to submit the Form No.12 and 14 for the purpose of family pension, gratuity, GPF and employees provident funds. Copy of which are annexed as Annexure A/3 and A/4. The applicant approached the respondent-authority where she came to know that the respondents are going to disburse the said terminal benefits to the respondent No.3 in equal share treating her to be a legally wedded wife of the deceased employee. Vide letter dated 01.08.2017 and 04.09.2017 the respondent No.2 informed the applicant to submit the required form for the purpose of releasing the retiral/terminal benefits as early as possible because due to delay on the part of the applicant for completing the formalities amount cannot be disbursed to other beneficiaries. Copy of said communication is annexed as Annexure A/5 and A/6. The applicant submitted her representation dated 19.06.2017 (Annexure A/7). The respondent No.3 is not the legally wedded wife of the applicant's husband therefore she has no right to



get the retiral/terminal benefits of the deceased employee, but even then the respondents are going to disburse the retiral/terminal benefits to the respondent No.3 in equal share. Hence this Original Application.



4. The respondents Nos.1 and 2 have filed their reply wherein it has been submitted that the applicant was wife of Late Shri Rajeev Sarvaiya Survey Assistant before the decree of the divorce passed by Hon'ble Family Court, Sagar on 01.07.2008 under Civil Suit No.44-A/2006. After decision of divorce decree passed by Hon'ble Family Court Sagar, applicant lost her right to receive the family pension and other benefits as admissible to her as the wife of Late Shri Rajeev Sarvaiya. It is also submitted by the respondents that after acquiring decree from family court, Late Shri Rajeev Sarvaiya, submitted an application dated 28.05.2009 requesting to enter the name of his second wife Smt. Vinita Sarvaiya in place of former wife Smt. Abha Sarvaiya. The deceased employee also requested to do the necessary change in his service book (Annexure R/1) so that family pension will be granted to Smt. Vinita Sarvaiya. As per his request the name of Smt. Abha Sarvaiya was deleted and name of

Smt. Vinita Sarvaiya was recorded in service records. It is further submitted by respondents Nos.1 and 2 that MCC No.2382/2017 seeking restoration of First Appeal is not known to them. Respondents further submitted that as per the service record and due to no nomination for the pensioner dues such as family pension, DCRG, CGEGIS, GPF, DLIS and LE the respondents Nos.1 & 2 decided to pay equal share as per rules to Smt. Vinita Sarvaiya (present wife), Mast. Luv Kumar, Son Mast. Tarun (son of divorced wife) and Smt. Rama Devi, Mother of Late Shri Rajeev Sarvaiya (Annexure R-2 & 3). The applicant's purported representation dated 07.10.2017 was not received by the respondent No.1 & 2 and as per rule and existing service records of the deceased employee Smt. Vinita Sarvaiya is treated as successor of the deceased employee. However, FA 510/2008 stands dismissed by the Hon'ble High Court dated 15.05.2015 (Annexure R-4). As per Govt. of India CCS (Pension) Rules, 1972, the family pension is only allowed to nominated wife/wedded wife and after divorce decree passed by Hon'ble Family Court Sagar, Smt. Abha Sarvaiya was not legal wife



of late Shri Rajeev Sarvaiya. So no family pension is admissible to Smt. Abha Sarvaiya as per Govt. of India existing pension rules.

5. The respondent No.3 has filed reply wherein it has been submitted that the applicant who was allegedly married to the husband of respondent No.3 Late Rajiv Sarvaiya on 24.04.2000. Thereafter a dispute arose between the applicant and the husband of applicant No.3 and since 2004 applicant has left the house of Late Rajiv Sarvaiya and started living with her parents at Chhindwara. When the late husband of respondent No.3 asked the applicant to restitute his marriage she refused. Thereafter application under Section 13 of Hindu Marriage Act was filed by Late Rajiv Sarvaiya before the family Court Sagar. After hearing both the parties and full-fledged trial the family court granted decree of divorce to Rajiv Sarvaiya. Thereafter Rajiv Sarvaiya married to the respondent No.3 on 20.05.2009. Though the appeal was filed by the applicant before the Hon'ble High Court as no notice was served on Late Rajiv Sarvaiya, therefore treating the decree as final Late Rajiv Sarvaiya married to the respondent No.3. Therefore, the contention of applicant that the marriage of respondent No.3 solemnized with Late





Rajiv Sarvaiya is not tenable and void is pre se illegal. And as per CCA pension rules as the marriage of application is already dissolved by the order of the court then she has lost all rights to claim pension and retiral benefits. It has been submitted by respondent No.3 that the applicant was well aware about the address of Late Rajiv Sarvaiya because Late Rajiv Sarvaiya filed a Criminal Revision No.1674/2014 before the Hon'ble High Court for challenging the order of family court Chindwara dated 15.05.2014 whereby the maintenance under Section 125 of Cr. P.C. was awarded. In the said revision petition address of Rajiv Sarvaiya is mentioned and on that address the applicant could have served the notice of appeal filed before Hon'ble High Court but she knowingly never amended the address of Late Rajiv Sarvaiya mentioned in the First Appeal 510/2008 and continue to sent notices on the address where late Rajiv Sarvaiya was not residing. It is submitted by the respondent No.3 that on the date of marriage applicant was present in the house of respondent No.3 and she was well aware about the fact that marriage is being performed by Late Rajiv Sarvaiya, the applicant never filed any application in court of law for dissolving



the marriage of respondent No.3. The appeal was filed by the applicant within 30 days from the date of judgment. But no interim order or any stay order was issued by Hon'ble High Court for restraining Late Rajiv Sarvaiya from performing marriage. Merely filing of first appeal within 30 days from the date of judgment of family court Act does not create any bar for re-marriage. If the notice of appeal is not served since 2008 till 2017 and at the same time the applicant was well aware about the address of Rajiv Sarvaiya but she never made any endeavor to serve the notices of appeal on Rajiv Sarvaiya knowing well the fact that Rajiv Sarvaiya was solemnized another marriage with respondent No.3 way back in year 2009. Therefore marriage of respondent No.3 is valid marriage and her son is entitled for pension and all benefits and dues available with Respondent-department. It is submitted by respondents that it is settled in law that merely filing of appeal will not create any bar for second marriage.

6. Heard the learned counsel for both the parties and perused the pleadings and documents on record.



7. From the pleadings itself it is admitted fact that the applicant was first wife of Late Rajeev Sarvaiya, who was an employee of the respondent-department and died due to harness in the year 2017. It is also admitted by both the parties that the marriage of applicant was solemnized with Late Rajeev Sarvaiya on 24.04.2000 and out of this wedlock a son namely Tarun Sarvaiya has taken birth. It is also admitted fact that the husband of the applicant has filed a suit seeking dissolution of marriage in the Family Court, Sagar registered as Civil Suit No.44-A/2006 and the suit was decreed vide judgment and decree dated 01.07.2008 (Annexure A/1). It is also admitted fact that the applicant had filed First Appeal No.510/2008 before the Hon'ble High Court which was dismissed for non compliance of the pre-emptory order and the applicant filed MCC No.2832/2017 seeking restoration of F.A. and the same is pending.

8. From the pleadings it is also very clear that the husband of applicant married with respondent No.3 on 20.05.2009 meaning thereby after the decree of divorce i.e. 01.07.2008. In the instant case the applicant is seeking from the respondents to pay all the

retiral/terminal benefits of deceased employee and her son namely Tarun Sarvaiya.

9. The contention of the applicant is that the first appeal was pending before the Hon'ble High Court. After the death of applicant's husband, the respondents vide communication dated 09.06.2017 and 22.06.2017 informed that the name of the son of applicant namely Tarun Sarvaiya is recorded in the service record of the deceased employee and accordingly being a guardian of the Master Tarun the applicant was directed to submit the Form No.12 and 14 for the purpose of family pension, gratuity, GPF and employees provident funds. Copy of which are annexed as Annexure A/3 and A/4. Though, the applicant has approached the respondent-authority where the applicant came to know that the respondents are going to disburse the said terminal benefits to the respondent No.3 in equal share treating her to be a legally wedded wife of the deceased employee. The applicant submitted her representation dated 19.06.2017 (Annexure A/7). Further the contention of the applicant is that the respondent No.3 is not the legally wedded wife of the applicant's husband. Therefore, she has



no right to get the retiral/terminal benefits of the deceased employee.

10. On the other side, the respondents have specifically submitted in their reply that the applicant was a wife of Late Shri Rajeev Sarvaiya, Survey Assistant, before the decree of the divorce passed by learned Family Court, Sagar on 01.07.2008 under Civil Suit No.44-A/2006. After decision of divorce decree passed by Hon'ble Family Court Sagar, applicant has lost her right to receive the family pension and other benefits as admissible to her as the wife of Late Shri Rajeev Sarvaiya. It is also specifically submitted by the respondents in their reply that after acquiring decree from family court, Late Shri Rajeev Sarvaiya, submitted an application dated 28.05.2009 requesting to enter the name of his second wife Smt. Vinita Sarvaiya in place of former wife Smt. Abha Sarvaiya. The deceased employee also requested to do the necessary change in his service book (Annexure R/1) so that family pension will be granted to Smt. Vinita Sarvaiya. As per his request the name of Smt. Abha Sarvaiya was deleted and name of Smt. Vinita Sarvaiya was recorded in service records and regarding MCC No.2382/2017





submitted by respondents Nos.1 and 2 the applicant seeking restoration of First Appeal is not known to them. So, as per the service record and due to no nomination for the pensioner dues such as family pension, DCRG, CGEGIS, GPF, DLIS and LE, the respondents Nos.1 & 2 decided to pay equal share as per rules to Smt. Vinita Sarvaiya (present wife), Mast. Luv Kumar, Son Mast. Tarun (son of divorced wife) and Smt. Rama Devi, Mother of Late Shri Rajeev Sarvaiya (Annexure R-2 & 3). It has been specifically submitted that the applicant's purported representation dated 07.10.2017 was not received by the respondents Nos.1 & 2 and as per rule and existing service records of the deceased employee, Smt. Vinita Sarvaiya is treated as successor of the deceased employee. Though the respondent No.3 has filed reply and has submitted that the applicant was allegedly married to the husband of respondent No.3 Late Rajiv Sarvaiya on 24.04.2000. The applicant had left the house of Late Rajiv Sarvaiya. Thereafter late husband of respondent No.3 asked the applicant to restitute his marriage she refused. Thereafter application under Section 13 of Hindu Marriage Act was filed by Late Rajiv Sarvaiya before the Family Court Sagar. After



hearing both the parties and full-fledged trial the family court granted decree of divorce to Rajiv Sarvaiya. Thereafter Rajiv Sarvaiya married to the respondent No.3 on 20.05.2009. Though the appeal was filed by the applicant before the Hon'ble High Court, as no notice was served on Late Rajiv Sarvaiya, therefore treating the decree as final Late Rajiv Sarvaiya married to the respondent No.3. The applicant was well aware of the fact that the address of Late Rajiv Sarvaiya because Late Rajiv Sarvaiya filed a Criminal Revision No.1674/2014 before the Hon'ble High Court for challenging the order of family court Chhindwara dated 15.05.2014 whereby the maintenance under Section 125 of Cr. P.C. was awarded. In the said revision petition address of Rajiv Sarvaiya is mentioned and on that address the applicant could have served the notice of appeal filed before Hon'ble High Court but she knowingly never amended the address of Late Rajiv Sarvaiya mentioned in the First Appeal 510/2008 and continue to sent notices on the address where late Rajiv Sarvaiya was not residing. Merely filing of first appeal within 30 days from the date of judgment of family court Act does not create any bar for re-marriage. So from the pleadings it is



clear that the decree for divorce was granted to Late Rajeev Sarvaiya as per judgment and decree dated 01.07.2008 (Annexure A/1). The first appeal was filed by the applicant before the Hon'ble High Court which was dismissed for non compliance of the pre-emptory order. Respondent No.3 got married with late Rajeev Sarvaiya on 20.05.2009. Late Shri Rajeev Sarvaiya has submitted an application dated 28.05.2009 requesting to enter the name of his second wife Smt. Vinita Sarvaiya in place of former wife Smt. Abha Sarvaiya and requested to do necessary change in his service book (Annexure R/1). So as per request the name of Smt. Abha Sarvaiya was deleted and name of Smt. Vinita Sarvaiya was recorded in service records. So from the facts itself clear that the respondent No.3 i.e. Smt. Vinita Sarvaiya had married to Late Shri Rajeev Sarvaiya on 20.05.2009 much after the decree of divorce which was passed by the family court on 01.07.2008.

11. In our view there is no force in the argument put forth by the counsel for the applicant to the fact that the respondent No.3 is not a legally wedded wife of Late Shri Rajeev Sarvaiya. However, it is otherwise that the decree of divorce was granted to Late Shri Rajeev

Sarvaiya on 01.07.2008 and respondent No.3 had married to Late Shri Rajeev Sarvaiya on 20.05.2009. Furthermore Late Shri Rajeev Sarvaiya has moved an application dated 28.05.2009 for entering the name of his second wife Smt. Vinita Sarvaiya (respondent No.3) in place of former wife Smt. Abha Sarvaiya and the respondent department has deleted the name of the applicant and name of Smt. Vinita Sarvaiya was recorded in the service records. So, the action of the respondent-department is legal and there is no ambiguity in the said action of the respondent-department.

12. In view of the above, this Original Application is dismissed.
No costs.

(Ramesh Singh Thakur)
Judicial Member

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(Navin Tandon)
Administrative Member