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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No. 2498 of 1997 decided on 18.3.1998.

Name of Applicant : Smt. Bhola Devi

By Advocate : Shri B B Raval

Versus

Name of respondent/s Union of India & Others

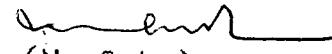
By Advocate : M/s. Sikri & Co.

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/~~N~~

2. Whether to be circulated to the ~~-Yes/No~~  
other Benches of the Tribunal.

  
(N. Sahu)  
Member (Admnv)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2498 of 1997

New Delhi, this the 18<sup>th</sup> day of March, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)

Mrs. Bhola Devi, W/o late Shri Domi Prasad, Aged about 55 years, R/o Quarter No.1670, Type-I, Krishi Kunj, I.A.R.I., Pusa, New Delhi - 110 012 and employed as S.S.Grade-IV (Beldar) in the Indian Agricultural Research Institute, Pusa, New Delhi.

-APPLICANT

(By Advocate Shri B.B. Raval)

Versus

1. Indian Council of Agricultural Research through its Director General, Krishi Bhawan, New Delhi - 110001.
2. The Director, Indian Agricultural Research Institute, Pusa, New Delhi -110012

- RESPONDENTS

(By Advocate V.K. Rao)

O R D E R

By Mr. N. Sahu, Member(Admnv) =

In this Original Application the applicant seeks a direction to the respondents to restore her family pension as per rules from 10.10.1985 and seeks payment of arrears with 18% interest.

2. The facts leading to this claim are briefly as under - The applicant's husband Shri Domi Prasad died in harness on 14.2.1967. The applicant was employed on compassionate grounds as S.S. Grade-IV (Beldar) with effect from August, 1967. She secured family pension on the death of her late husband till November, 1971. She entered into an agreement on 25.11.1971 between one Gurudev Ram S/o Shri Chinta Ram aged about 32 years for marriage.

*Prasaint*

The applicant is a widow having three children from her deceased husband. The averments made in the agreement repeatedly show there was a desire to "marry". It is stated that the widower decided "to marry", and the widow also desired "to marry". They wanted to live "a happy married life faithfully" and desired to have children from the said marriage. Clause 9 of the agreement states as under - "That both the parties have accordingly married legally according to Hindu rites in the presence of the witnesses." Clause 10 states that they will "mutually enjoy the conjugal rights as lawful husband and wife with pleasure." Accordingly, the applicant informed the authorities soon after this agreement for stopping the family pension in her name and for mutating the family pension in the names of her children. The said claim was accepted. On 9.10.1985 there was another agreement to discontinue the relationship as husband and wife. Admittedly, the applicant and Shri Gurdev Ram lived as husband and wife for a period of 14 years and three children were born out of the said relationship. The agreement dated 9.10.1985 states that even though they were living as husband and wife "there was no legal marriage performed between the parties" and they decided to live separately from each other. The living husband Gurdev Ram took care of the children born after the agreement and the applicant took care of the children born out of late Shri Domi Prasad. When she applied for family

pension, the respondents required her to submit the divorce papers and, therefore, this O.A. has been filed.

3. After notice the respondents state that merely because a marriage has been dissolved by an agreement would not entitle her to family pension. The purpose of granting family pension is to render financial help. It is also stated that the claim is barred by limitation since it was made in 1985 and rejected. Once the applicant admittedly got married she cannot reclaim the pension which accrued in favour of her family members.

4. The learned counsel for the applicant argued that the 1971 agreement is only a form of "Maitri Karar" or an agreement between a man and a woman to live together and enjoy conjugal bliss for a certain period of time. He submitted that this practice was prevalent in Gujarat during the 1980's. The Gujarat High Court declared that the said Maitri Karar cannot be called a legal marriage. Since the Maitri Karar is not a legal wedlock and since no marriage has been performed in accordance with the Hindu Marriage Act, her right to family pension being a vested property right cannot be denied to her.

5. The learned counsel for the respondents stated that she intimated her office about her remarriage. At her request that family pension earlier granted to her was discontinued and it was

granted to the eldest son till he attained the majority and thereafter to the next son and thus the chain became operative. It is further submitted that family pension is a statutory right and its payment can also be regulated according to the terms of a statute. He vehemently urged that this claim for restoration of family pension is frivolous and mischievous.

6. I have carefully considered the submissions. Earlier I have made a reference to the terms of the first agreement dated 25.11.1971. At several places the parties have conveyed their intention to marry and live the life of a legal wedlock. Para 9 of the agreement stated that they got legally married according to Hindu rites in the presence of witnesses. In para 7 they stated that the children born to the wedlock would inherit their properties equally with the children born earlier to the widow from her previous husband. They also stated that they would enjoy conjugal rights as lawful husband and wife. In a declaration to the Director, IARI, respondent no.2, the applicant stated as under:-

I beg to inform you that I have married Shri Gurdev Ram Fieldman in the Agronomy Division on 25.11.71. The marriage has been solemnised in the court and an attested copy of the marriage document is enclosed. Sir, I have been getting family pension of Rs.42/- since the death of my late husband Shri Domi Prashad who was working in the Agricultural Engineering Division. I have three children (2 sons and 1 daughter) from my previous husband. Although in accordance with the marriage agreement my new husband Shri Gurdev Ram has taken the responsibility to look

after the children jointly, I request that the pension which I have been getting as the wife of my late husband, Shri Domi Prasad may please be continued to the name of all the three children and the amount of the pension be deposited in any Govt. Bank/Post office till they become adult. It is also requested that hence forth I may be known as Mrs. Bhola Devi W/o Shri Gurdev Ram Adami, Fieldman in the Agronomy Division and necessary entries be made on service record.

7. She enclosed the agreement itself which was sworn before the Sub Divisional Magistrate and this agreement was acted upon after making a reference to the Accountant General. Accordingly, under the rules governing new Family Pension Scheme, 1964 in the event of remarriage of the widow, payment of family pension has to be made to the eldest minor son till he attained the age of 18. On his attaining this age the next minor son will be eligible for pension. The unmarried daughter will become eligible only after the turn of the sons is exhausted. It is important to note that the chain has started operating in this case. As the applicant had voluntarily renounced her rights to the family pension, it was granted to her son Shri Gopal and after Gopal attained the age of 18 years family pension was granted to her second son Shri Sunil. After Shri Sunil attained the age of 18, the pension would now be paid to the daughter. The applicant wants to interpose at this distance of time disturbing the chain and seeks a restoration of the claim on her behalf.

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8. In my view, we have to interpret the terms of the first agreement and the conduct of the parties. I have noted earlier that the agreement is not a mere agreement to live together. It is a marriage under the Hindu Law as per clause 7 and though this marriage was not registered as per the procedure laid down under the Hindu Marriage Act, yet it was a marriage by operation of custom, conduct and consent. The customary Hindu rites having been gone through, and as admittedly for 14 years they lived as husband and wife and they got three children and as they intimated their respective offices of their marriage with each other, and as the legal consequences of such intimation has been accepted by both of them, they cannot claim to be divorced again by an agreement. Because after 14 years of conjugal relationship on some ground or the other they wanted to live separately, they cannot nullify the effect of a valid marriage which was entered into by them. That apart family pension confers certain statutory benefits. The benefits are due to the fact that the husband died in harness and the surviving members of the family are to be shown a source of livelihood. The family pension scheme as well as rules clearly stipulate a chain of succession to the said family pension. The succession operates inexorably after the happening of an event. Admittedly, the first right is that of the widow and there is no right to any child as long as the widow lives and does not renounce because the widow is the natural guardian of her children. But if either the widow dies or

she remarries then the statute and the rules have laid down a definite procedure under which claim to family pension will be determined. As mentioned above under this line of succession after the widow's remarriage, both the sons have enjoyed and have attained majority and now when the turn of the minor daughter is current, the widow comes and claims to the family pension because she says she dissolved the second marriage. Very rightly respondents insisted that there should be an evidence of divorce, because now divorce can be recognized only by operation of law. It is only in that event that she can make a claim for restoration of the family pension to her; otherwise after the chain gets exhausted completely as far as this family unit is concerned, the family pension will lapse.

9. In view of the above discussion, there is no merit in this Original Application and it is accordingly dismissed. No costs.

N. Sahu  
(N. Sahu) 18/3/98  
Member (Admnv)

rkv.