

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No.156 of 1991
and
Original Application No.586 of 1992.

DATE OF DECISION: JULY 30 ,1993.

In O.A.156/91 Y.V.Kameswaramma and others ... Applicants
Versus
Union of India and others ... Respondents.

In O.A.586/92. Y.S.Bhargavi ... Applicant
Versus
Union of India and others ... Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *AD*
2. Whether it be referred to all the Benches of the *AD*
Central Administrative Tribunals or not ?

30/7/93.
(K. P. ACHARYA)
VICE-CHAIRMAN.

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Original Application No.586 of 1992.

DATE OF DECISION: JULY 30, 1993.

In O.A.156 of 1991 Y.V.Kameswaramma and others ... Applicants.

Versus

Union of India and others ... Respondents.

For the applicants ... Mr.C.A.Rao, Advocate.

For the respondents ... Mr.P.N.Mohapatra,
Addl. Standing Counsel
(Central)

In O.A.586 of 1992 Y.S.Bhargavi ... Applicant.

Versus

Union of India and others ... Respondents

For the applicant ... M/s.S.S.Rao,
M.Misra,
P.K.Misra, Advocates.

C O R A M:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

J U D G M E N T

K.P.ACHARYA, V.C., In O.A.156 of 1991, the applicants are Y.V.

Kameswaramma alias Ramanujamma, Y.Swarna Bhargavi and Y.Krishnaveni. The said Y.V.Kameswaramma has styled herself as widow of late Y.L.Seetharamaiah . Y.Swarna Bhargavi and Y.Krishnaveni have been styled as daughters of late Y.L.Seetharamaiah. Their prayer in this original application is to issue appropriate direction to the respondents directing them to forthwith release the pensionary and other benefits in favour of the

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applicants as Y.L.Seetaramaiah while serving as S.G.T.A., Gunupur in the Department of Delecommunication met his death and so also to give an appointment to applicant No.2 who is a Graduate in^a/suitable post on compassionate grounds.

2. In O.A.586 of 1992 the only applicant is Y.Swarna Bhargavi, who is applicant No.2 in O.A.156 of 1991. Her prayer in this application (O.A.586 of 1992) is to give all the retiral benefits to her on account of the death of her father Y.L.Seetaramaiah and to give her compassionate appointment.

3. Shortly stated, the case of the applicants in both the applicants is that Y.L.Seetaramaiah died on 13.6.1989 while he was serving as S.G.T.A., in the Department of Telecommunication posted at Gunupur. Hence, the above mentioned prayers have been made in both the applications.

4. In their counter, filed in O.A.156 of 1991 it is maintained by the Respondents that Y.L.Seetaramaiah died on 13.6.1989 while he was serving as a Selection Grade Transmitting Assistant in the Telephone Exchange at Gunupur. Y.Ramanujama, wife of Seetaramaiah died on 31.10.1986. Both husband and wife left behind the only daughter, namely Y.Swarna Bhargavi. The first daughter Y.Devi Bhavani had died before the death of the mother Ramanujama during December, 1984. Y.Swarna Bhargavi is still alive. The applicant No.1 (in O.A. 156 of 1991) namely Y.V.Rameswaramma is not the legally married wife of Seetaramaiah. But she was working as a

maid servant in the house of Seetaramaiah when he was staying at Berhampur. The applicant No.1 belongs to Pallasa in Andhra Pradesh. It is further maintained that Y.L.Seetaramaiah while opening his G.P.F.account has nominated Y.Ramanujama to receive provident fund money and in the event of predeceasing the daughters the provident fund money should be given to Y.Devi Bhabani and Y.Swarna Bhargavi. Therefore, it is maintained by the respondents that the applicants 1 and 3 have no legal right to receive the retiral benefits or provident fund money. No separate counter has been filed by the respondents in O.A.586 of 1992. The respondents in O.A.586 of 1992 are same as that of the respondents in O.A.156 of 1991.

5. In O.A.156 of 1991 there was no appearance on the side of the applicants. I perused the records including the pleadings of the parties and the relevant documents filed in this case with the assistance of Mr.P.N. Mohapatra, learned Additional Standing Counsel(Central) and I heard arguments from Mr.Mohapatra.

In O.A.586 of 1992 I have heard Mr.P.K.Misra, learned counsel for the applicant and Mr.P.N.Mohapatra, learned Addl. Standing Counsel(Central) appearing for the respondents. Both the cases were heard one after the other and since common questions of fact and law are involved in both the cases, it is directed that this common judgment will govern both the cases mentioned above. Incidentally, it may be mentioned that a written argument has been filed by the Advocate which is not signed. Therefore, I refuse to take notice of the

contents of the written arguments.

6. A suit was filed in the Court of the Munsif, Gunupur by applicant No.1, Smt. Y.V.Kameswaramma claiming herself to be the legally married wife of late Y.L. Seetaramaiah and hence she further claimed that pensionary benefits of late Y.L.Seetaramaiah should be disbursed in her favour. This formed subject matter of T.S.4 of 1989 and it was disposed of by the learned Munsif on 30.4.1990, as it appears from Annexure-3. The applicant No.1 has filed this original application perhaps because of the order passed in Annexure-4 in connection with Execution Petition No.10 of 1990. The execution proceeding was ordered to be dropped by the learned Munsif on the ground that since the suit was a declaratory one, there is no scope for execution of the same and moreover for payment of pensionary benefit etc. appropriate forum namely Tribunal should be approached. There is least iota of doubt that a decree passed by a Civil Court has to be respected provided that the decree is not ab initio void due to want of jurisdiction. In this case, the Bench is called upon to address itself as to whether after 1.11.1985 the Civil Court has jurisdiction to entertain a suit of this nature particularly when the relief claimed by the plaintiff is for disbursement of the pension on the basis of declaratory suit that she is the legally married wife of Y.L.Seetaramaiah. Disbursement of pensionary benefits comes within the purview of Section 14 of the Administrative Tribunals Act, 1985 which provides as follows: *ln*

" 14. Jurisdiction, powers and authority of the Central Administrative Tribunal -(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts(except the Supreme Court in relation to -

(a) recruitment, and matters concerning recruitment, to any All India Service or to any Civil service of the Union or a civil post under the Union or to a post connected with defence or in the Defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning -

(i) a member of any All India Service; or

(ii) a person (not being a member of an All-India Service or a person referred to in clause(c)) appointed to any civil service of Union or any civilpost under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause(c) appointed to any defence services or a post connected with defence

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause(ii) or sub-clause(iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment. "

There cannot be any doubt that pensionary benefits come within the service benefits of Central Government employee and therefore, Tribunal is the only forum which could

suitably adjudicate issues of this nature. Therefore, the moot question that needs determination is as to whether a suit claiming relief for disbursement of pensionary benefits was maintainable before the Civil Court.

Section 29 of the Administrative Tribunals Act, 1985 provides as follows:

" 29. Transfer of Pending cases:-(1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action wherein it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court

(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation (or society), being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court. "

From the above quoted provisions it is crystal clear that all suits pending in all Courts before the establishment of the Tribunal (Except Supreme Court of India) shall stand transferred on that date namely the date on which the Act came into force i.e. 1.11.1985. In other words, by the words, 'shall stand transferred' mean it is deemed to have been transferred. Therefore, in my opinion, any suit filed pertaining to service matters after 1.11.1985, before the Civil Court is not maintainable and therefore, any decree passed in this regard is

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without jurisdiction being ab initio void. Therefore, I am of further opinion, that the decree passed by the Civil Court in T.S.4 of 1989 has no binding effect. The issue relating to the legal heirs left behind by Y.L. Seetaramaiah has to be reconsidered afresh.

7. At the cost of repetition it may be stated that the case of the applicant Y.V.Kameswaramma and Y.Krishnaveni is that they are the wife and daughter respectively of Y.L.Seetaramaiah. Before I discuss the question of fact relating to this issue, ^{it may be noted that} Section 32(5) of the Indian Evidence Act provides as follows:

" 32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant.- Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases :-

- | | | | | |
|-----|----|----|----|----|
| (1) | xx | xx | xx | xx |
| (2) | xx | xx | xx | xx |
| (3) | xx | xx | xx | xx |
| (4) | xx | xx | xx | xx |

(5) Or relates to existence of relationship.-When the statement relates to the existence of any relationship (by blood, marriage or adoption) between persons as to whose relationship (by blood, marriage or adoption) the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised. "

In order to attract the provisions contained in Section 32(5) of the Indian Evidence Act, the Supreme Court in the case of *Dolgovinda Paricha vrs. Nimai* reported in AIR 1959 SC 914 held that the statements verbal or written, of relevant

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facts must have been made by person who is dead etc. (2) They must relate to the existence of any relation by blood, marriage or adoption. (3) The person making the statement must have special means of knowledge as to the relationship in question, and (4) the statement must have been made before the question in dispute was raised. Once again before I discuss the evidence on record, relating to the relationship of husband and wife between Y.V. Kameswaramma and Y.L. Seetaramaiah, it may also be noted that the case of Y. Swarna Bhargavi, the applicant No. 2 in O.A. 156 of 1991 and applicant in O.A. 536 of 1992 is that Y.V. Kameswaramma was a maid servant working in her house when her father was alive. Taking advantage of the death of her father, Y.V. Kameswaramma is making illegal attempts to get a declaration that she is the legally married wife of Y. L. Seetaramaiah which in fact is not so and therefore, Y. Swarna Bhargavi has also filed a suit in the court of Munsif, Gunupur forming subject matter of T.S. 28 of 1991 for a declaration that the decree passed in T.S. 4 of 1989 be declared as illegal, void and inoperative. The present dispute has arisen much after the death of Y.L. Seetaramaiah who died on 13.6.1989. From the different documents annexed to the record it is found that Y. Ramanujama is the wife of Y.L. Seetaramaiah who ^{had} died on 31.10.1986 namely three years prior to the death of Y.L. Seetaramaiah as would be borne out from Annexure-R/1. On 5.3.1987 vide Annexure-R/9 Y.L. Seetha Ramaiah addressed a letter to the

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General Manager, Telecommunications in which it is stated his elder daughter who had been employed expired in the year 1984 and his mother died in October, 1985 and his wife expired in the month of October, 1986. The only child he has on 5.3.1987 is a daughter who stands as an embodiment of agony and sorrow because she lost her mother and sister. In the said letter Seetha Ramaiah puts forth his grievances relating to his transfer to Koraput. He urged upon his authorities that in the interest of his only child i.e. daughter he should be allowed to continue at Berhampur and should not be transferred to Koraput, which may ultimately become dangerous to his own life and to the life of his daughter. In another telegram contained in Annexure-R/7 Seetha Ramaiah maintains that his wife has expired leaving behind the only helpless daughter. Annexure-R/6 which is subscriber's nomination for G.P.F. executed by Y.L. Seetha Ramaiah dated 26.11.1965 wherein it is stated against column, name and address of nominee' in the event of subscriber's death' - Smt. Y. Ramanujama - wife - 28 years. Against the column, styled as name, address and relationship of person, if any, to whom the right of the nominee shall pass, in the event of his predeceasing the subscriber- it is mentioned Kumari Y. Devi Bhavani and (2) Kumari Y. Swarna Bhargavi, both daughters. Under Annexure-R/5 family particulars are furnished. Therein Y.L. Seetha Ramaiah mentions on 15.10.1985 as follows:

* Y.L. Seetha Ramaiah - Self

ii) Smt. Y. Ramanujamma - Wife

iii) Y.Swarna Bhargavi - Daughter. "

By that date the eldest daughter is dead. The only representative living as on the said date has been mentioned. In none of these unimpeachable documents the name of Y.V.Kameswaramma and Y.Krishnaveni has been mentioned. Therefore, taking into consideration the aforesaid facts and circumstances of the case, and unimpeachable documentary evidence mentioned above, one cannot but draw the only irresistible conclusion that Y.V.Kameswaramma is not the wife of Y.L.Seetha Ramaiah and Y.Krishnaveni is not the daughter of Y.L.Seetharamaiah. The only legal representative left behind by Y.L.Seetharamaiah is his daughter, Y.Swarna Bhargavi who is entitled to the pensionary benefits.

8. As regards the prayer of the applicant, Y.Swarna Bhargavi for giving her an appointment on compassionate grounds, from the records it is found that she has been forced and compelled to lead a hazardous life because of undue influence, coercion, exercised by Y.V.Kameswaramma. She is a Graduate, unable to maintain herself and sustain her livelihood. Therefore, I would strongly recommend to the Chief General Manager, Telecommunications, Orissa Circle to give her an appointment on compassionate grounds as soon as possible preferably within 90 days from the date of receipt of a copy of this judgment.

9. It is, therefore, further held that Y.Swarna Bhargavi is entitled to the pensionary benefits etc. of Y.L.Seetharamaiah and all the amount due to her be calculated and paid to her within 90 days from the date of receipt of a copy of this judgment and the aforesaid

amount be given to the applicant, Y. Swarna Bhargavi within the period mentioned above.

10. Thus, these two applications are disposed of accordingly. No costs.

30.7.93.
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VICE-CHAIRMAN.

Central Admn. Tribunal
Cuttack Bench, Cuttack.
July 30, 1993/Saranghi.

