

5
S
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NOS. 370 AND 584 OF 1996
Cuttack, this the 27th day of March, 1997

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

...

In OA 370/96

Parwati Dash, aged about 36 years,
W/o Saktidhar Dash, resident of
Aurangabad, PS-Dharmasala, Dist. Jajpur ... Applicant

Advocate for applicant - Mr. Ramani Kanta Patnaik

-versus-

1. Union of India, represented through the Secretary, Telecommunication and Distant Communication, New Delhi
2. Chief Post Master General, Bhubaneswar, Orissa Circle, Bhubaneswar.
3. Director of Postal Services, Orissa, Bhubaneswar
4. Superintendent of Post Offices, Northern Division, Cantonment Road, Cuttack.
5. Deputy Director, Postal Accounts, Barabati Stadium, Cuttack.
6. Post Master, Jajpur Head Post Office, At/P.O/Dist. Jajpur Respondents

Advocate for respondents - Mr. Ashok Mohanty

In OA 584/96

Santilata Dash, aged 43 years,
W/o late Saktidhar Das
of Vill-Mirjapur Aurangabad,
PS-Dharmasala, Dist. Jajpur, at
present residing at Vill/PO-Bandhadiha,
Vill-Brahmabarada, Dist. Jajpur Applicant

Advocate for applicant - M/s B.B. Patnaik, SK Dey & B.N. Behera.

-versus-

1. Union of India, represented through the Director General (Posts) Dak Bhavan, New Delhi.

2. Chief Post Master General,
Orissa Circle, Bhubaneswar.
3. Superintendent of Post Offices,
Cuttack (N) Division, Cuttack.
4. Sub-Divisional Inspector of Post Offices,
Dharmasala Sub-Division, Dharmasala,
Dist. Jajpur.
5. Parbati Das, alleged wife of late Saktidhar Das,
Vill-Arangabad, P.S-Dharmasala, Dist. Jajpur.
6. Puspala Das, aged 17 years,
alleged daughter of late Saktidhar Das
7. Jitendra Das, aged 15 years,
alleged son of late Saktidhar Das
8. Rajendra Das, aged 13 years,
alleged son of late Saktidhar Das

Sl. Nos. 6 to 8 all are minor represented by
their mother guardian Parbati Das of village-Arangabad
P.S -Dharmasala, Dist. Jajpur

..... Respondents

....

O R D E R

N.SAHU, MEMBER(ADMN.) Common facts and similar issues are involved in both the Applications and therefore, they are disposed of together in a consolidated order. We will first take up the facts of OA No. 584 of 1996. The applicant's husband Saktidhar Das, while working as Sub-Post Master, Chandikhol under Cuttack North Division, died on 10.4.1995 after rendering seventeen years of regular service and some further past service as an Extra Departmental Delivery Agent. Admittedly the applicant was her legally wedded wife. In order to claim her pension, she applied and obtained a legal heir certificate dated 14.8.1995 from the Tahasildar, Dharmasala, which contained the following persons as legal heirs:

- (1) Samtilata Dash - Wife - 42 years
- (2) Parbati Dash - 2nd wife - 38 years
- (3) Puspala Dash - Daughter - 17 years
- (4) Jitendra Dash - Son - 15 years
- (5) Rajendra Dash - Son - 13 years

On an appeal by the applicant, the Sub-Collector, Jajpur, examined the facts and decided that the applicant married late Saktidhar Dash in the year 1972 as per Hindu rites and customs. Due to some differences, the applicant remained with her parents. Saktidhar Dash remarried Parbati Dash (applicant in OA No.370/96) though Santilata Dash was alive. The Sub-Collector perused the Pass Book No.119397 in the name of Santilata Dash, wife of Saktidhar Dash in Mirzapur Post Office (Aurangabad) dated 2.11.74. He gave a finding that there was no divorce between Santilata Dash and Saktidhar Dash. On 10.4.1995 when Saktidhar Dash died, he left behind Santilata Dash (applicant in OA No.584/96) and Parbati Dash (applicant in OA No.370/96) along with three children mentioned above born out of the second marriage. The Tahasildar later on reneged on his certificate which was commented upon by the Sub-Collector. The Sub-Collector's finding is:

"Under the above circumstances, I allow the appeal and hold that the appellant Santilata Dash is the first wife of late Saktidhar Dash of village-Aurangabad, P.O-Mirzapur,PS-Dharmasala,District-Jajpur and she is entitled to get the legal heir certificate of late Saktidhar Dash."

He accordingly set aside the legal heir certificate issued by the Tahasildar on 31.8.1995.

2. The applicant claimed in this O.A. for a direction to the respondents to pay her family pension, DCRG and all other dues and benefits including provident fund payable to the applicant with interest at 17% per annum and also an order of compassionate appointment to her. She claims that Smt. Parbati Dash (respondent no.5) married the applicant's deceased husband during her life-time and during the subsistence of the marriage with her without the same being annulled legally. Such a marriage is stated to be a void marriage contravening Section 5(1) of Hindu Marriage Act. The three children also have no legal status to claim any entitlement. It is also

submitted that under Rule 50(6) of CCS (Pension) Rules, 1972, 'family' in relation to a Government servant means - wife or wives including judicially separated wife or wives in the case of a male Government servant. Under Rule 54(7) of CCS (Pension) Rules it has been clarified by instructions from Ministry of Law that second marriage by a Hindu male after the commencement of the 1955 Act during the life-time of the first wife will be a nullity. Therefore, it is claimed that the second wife is not entitled to the family pension as a legally wedded wife. She also questioned the jurisdiction of the S.D.I.(P) to address a letter to the alleged second wife to submit legal heir certificate.

3. In the counter it is submitted that as per the nominations available on record "Smt. Parbati Dash has been nominated by the deceased employee for family pension and DCRG. The documents are annexed under R/5 and R/6. But no nomination exists in respect of G.P.F. Account and therefore, the claim is to be dealt under the provisions of sub-rule 33(i) of GPF (Central Service) Rules, 1960 annexed as R-7 after establishment of legal members of the family of the deceased employee". This nomination has been challenged in the rejoinder by the applicant as invalid and has been done after exerting undue influence on the deceased.

4. In OA No. 370/96 Smt. Parbati Dash sought the direction for payment of accumulations in the provident fund account, gratuity and family pension to her as a rightful claimant. She filed a photocopy of the identity card issued by the Election Commission to establish that she is the wife of late Saktidhar Das along with a certificate issued by the Headmaster, Syamsundar High School, Mirzapur.

5. It is necessary to make one fact clear. The averment in OA No.370/96 is that in the provident fund account of late Saktidhar Dash, Smt. Parbati Dash was made nominee by her husband. This was directly denied in the counter-affidavit and mere identity card issued by the Election Commission has no decisive bearing on the claim.

6. In the above background, let us examine some decisions on the subject, though no decision has been cited during arguments at the Bar. The one relevant decision is *Muni Devi and others v. Union of India and others*, 1995(4)SLR 502 (CAT, Chandigarh Bench). The facts in that case were that deceased had a wife living when he entered into wedlock with the applicant. This marriage held to be customary was declared illegal by the Bench. Therefore, the applicant in that case was not held entitled to share in the post-retiral benefits of the deceased or family pension. With regard to the children of the void marriage, the Bench held that illegitimate children are entitled to post-retiral benefits. For this purpose, the Bench referred to Section 16 of the Hindu Marriage Act as amended by Act 68 of 1976. This provision removes the disability of such children as far as the property of their parents is concerned and treats them as if they would have been legitimate if the marriage had been valid. The Chandigarh Bench cited the decision of Ernakulam Bench reported in 1994(1) SLJ (CAT) 206 (*V. Vijayan v. Union of India*) to the effect that illegitimate children of the deceased can claim family pension. The Ernakulam Bench relied on a decision of the Apex Court in *Maharani Kusum Kumari v. Smt. Kusum Kumari Jadeja* wherein it was held that the amended Section 16 of the Hindu Marriage Act has enlarged the applicability of the beneficial provision to illegitimate children so as not to deny the same to the children.

who are placed in circumstances similar to those of legitimate children. There is also another decision reported in (1991) 15 ATC 311 (Smt. Gauridam v. Union of India).

In 1993(7) SLR 640 (N.Ramaswamy Naidu v. Government of Tamil Nadu and others) the Madras High Court dealt with the case of a second marriage on the death of the first wife after 23 years of his retirement and held that the applicant's wife was entitled to pensionary benefits. This case, however, has no application as far as Smt. Parbati Dash is concerned.

Another decision of the Hyderabad Bench is reported in 1993(2) SLR 220 (C.Kamalakumari and others v. The Collector, Customs and Central Excise and others). That was a case in which as per the Service Book the deceased employee had one wife and two daughters and the respondents stated that there is no evidence of the second wife. There the first wife claimed that her marriage was performed according to Hindu rites. The Hyderabad Bench referred to Andhra Pradesh High Court decision AIR 1992 AP 234 (Smt.C.Jaya). According to Hindu Marriage Act even illegitimate sons are entitled to equal share with natural sons and they can be treated as coparceners. As far as family pension rules are concerned, Government of India decision No.13 specifically stated that the second wife is not entitled to the family pension under the Hindu Marriage Act.

Though under Rule 54(7)(a)(i) of CCS(Pension)Rules, family pension should be divided among two widows, the Hyderabad Bench held that the family pension is to be paid only to the legally wedded wife. Under Rule 51 of the CCS(Pension) Rules if there is no nomination, gratuity shall be paid equally among the wife and the unmarried daughters. The Hyderabad Bench held that the gratuity should be divided between the first legal wife, her two daughters

if they are unmarried, and two minor children (illegitimate) to be paid to the guardian of the minor. With regard to GPF it is governed by Rule 33(1)(b). This amount was also directed to be distributed equally among the legal wife and her children and the illegitimate children.

7. Applying the above ratio in decided cases, I hold as under:

Smt. Santilata Dash is the legally wedded wife. Smt. Parbati Dash is not. The three children of Smt. Parbati Dash and Smt. Santilata Das are entitled to an equal share of the G.P.F. and D.C.R.G. As far as the shares of the three children are concerned, it appears to me that Puspalata Dash has attained majority by now. Therefore, she, if unmarried, is entitled to take her share on her own right. With regard to the other two minors their shares will be payable to the mother guardian, namely, Smt. Parbati Dash. With regard to family pension, the said family pension will be only payable to the legally wedded wife (Smt. Santilata Dash). With regard to compassionate appointment, respondent No. 4, Superintendent of Post Offices, Cuttack North Division shall obtain the basic particulars about qualification and such other details with regard to eligibility criteria from the major daughter of Smt. Parbati Dash and also from the legally wedded wife Smt. Santilata Dash and consider their claims for a suitable job either regular or E.D. after obtaining the opinion of the Circle Relaxation Committee, a high power committee set up for this purpose. This shall be finalised within a period of three months from the date of receipt of copy of this order.

The Original Applications are disposed of as above.

Sd/-
(N. SAHU)
MEMBER (ADMINISTRATIVE)