

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 517 of 2013

Wednesday, this the 18th day of March, 2015

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

Girija S. Pillai, W/o. Late Sri M.S. Pillai,
 Hindu, aged 57, residing at Blue Mountain,
 Pothujanam Lane, Kumarapuram,
 Trivandrum – 695 011.

..... **Applicant**

(By Advocate – Mr. M. Ramaswamy Pillai)

V e r s u s

1. Union of India,
 represented by its Railway Secretary,
 M/o. Railways, New Delhi – 110 001.
2. The Chief Personal Officer,
 Central Railway,
 Head Quarters Office,
 Personnel Branch, Mumbai, CST,
 Pin code – 400 001.
3. The Assistant Personnel Officer,
 Head Quarters Office (Bills),
 Personnel Branch,
 Mumbai – CST, Pin Code – 400 001.
4. Thai Omana, Ambalavilakathu Veedu,
 Nanniyodu, Anad Muri, Palode Village,
 Nedumangad Taluk, Trivandrum District,
 Pin Code – 690 561.
5. The Branch Manager,
 State Bank of Travancore, P.B. No. 91,
 Anacutcheri, Ground Floor,
 Trivandrum – 695 001. **Respondents**

**[By Advocates – Mrs. Sumathi Dandapani, Sr.
 Ms. P.K. Radhika (R1-3)
 Mr. Rajmohan Pillai (R4)]**



This Original Application having been heard on 11.02.2015, the Tribunal on 18.03.2015 delivered the following:

ORDER

Applicant has been the family pensioner of her deceased husband M. Sivan Pillai who retired on superannuation from the Central Railway as a Motor Driver on 18.8.1978. He died on 16.11.2007. Sivan Pillai married her on 20.8.1976 as his second marriage while she was a resident of the Hindu Mahila Mandiram Orphanage, Poojapura, Trivandrum. According to her Sivan Pillai married her after executing Annexure A1 registered divorce deed-a mutual divorce deed-between him and respondent No.4 who was his first wife. After the death of M. Sivan Pillai the Railway authorities issued family pension to the applicant. The Railway authorities had also issued Annexure A6 identity card under Retired Railway Employees Liberalized Health Scheme, Annexure A7 Family Identity card and Annexure A8 free pass for travel from Trivandrum to Chennai and back. While so, respondent No. 4 approached the Railway authorities claiming that she is the legally wedded wife as it has been declared by the Family Court, Trivandrum in OS No. 336/1999 vide Annexure A9 series judgment and decree. According to applicant the said judgment of the Family Court is not binding on her as she is not a party to that proceedings. The Railway authorities issued Annexure A10 and A11 letters stating that respondent No. 4 is the legally wedded wife of the deceased M. Sivan Pillai and hence the family pension granted to the applicant had to be stopped. Hence she prays for the following reliefs:-

"(a) call for the records relating to the Annexures X and XI and quash the same;



(b) declare that the applicant is the only person legally entitled to get the family pension as she was receiving and appropriate direction be given to continue to pay the family pension;

(c) appropriate direction be given not to disburse any amount to the 4th respondent after declaring that the 4th respondent is not entitled to get the family pension;

(d) grant such other reliefs as deems fit at the time of hearing and just and proper considering the facts and circumstances of the case including cost of this application."

2. A reply statement was filed by the official respondents 1 to 3 contending that they have acted upon the judgment and decree of the Family Court, Trivandrum in OS No. 336 of 1999 which was decreed in favour of respondent NO. 4 declaring her as the legally wedded wife of the deceased M. Sivan Pillai. The Railway also was not a party in that OS. Nevertheless since the decision of the Family Court has become final the Railway has to abide by it.

3. Respondent No. 4 also has filed a reply statement relying on the judgment and decree of the Family Court. According to her the 4th respondent and children being the sole legal heirs of the deceased, applicant cannot be granted family pension.

4. Separate rejoinders have been filed by the applicant to the reply statements filed by both the Railways as well as the respondent No. 4.

5. Heard Mr. M. Ramaswamy Pillai, learned counsel for the applicant, Mrs. Sumathi Dandapani, Senior Advocate, along with Ms. P.K. Radhika, learned counsel for respondents 1-3 and Mr. Martin G. Thottan representing

Mr. Rajmohan Pillai, learned counsel for respondent No. 4, perused the pleadings and records.

6. Mr. Ramaswamy Pillai relied on the decisions in *M. Govindaraju v. K. Munisami Gounder (D) & Ors.*, AIR 1997 SC 10, *Devaki v. Chandrika*, 1997 (2) KLT 746 and *Ali Haji v. Alima*, 1996 (2) KLT 997.

7. Shri Ramaswamy Pillai pointed out that respondent No. 4 had challenged Annexure A1 divorce deed executed by her in OS No. 992 of 1977 before the Munsiff Court, Trivandrum and the same was decreed in her favour vide Annexure A10 judgment and decree and that when the late M. Sivan Pillai challenged the same before the District Court, Trivandrum, the District Court vide Annexure A11 set aside the same holding that Annexure A1 divorce deed executed is valid. Referring to *Devaki*'s case and *Ali Haji*'s case (*supra*) he submitted that Annexure A11 judgment was passed by the District Court before establishing the Family Court and as the same was not challenged anywhere, Annexure A11 judgment had attained finality and hence the marriage between Sivan Pillai and the applicant was valid in the eye of law. Referring to *M. Govindaraju*'s case (*supra*) he further submitted that since the applicant had started living with M. Sivan Pillai and begotten two children from him, it should be deemed that the applicant is the legally wedded wife of M. Sivan Pillai, entitled to his family pension.

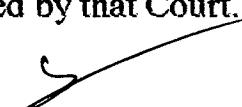
8. Smt. Sumathi Dandapani, Senior Advocate submitted that the Railway is bound by Annexure A4 decision of the Family Court which has attained

finality and thus the OA is liable to be dismissed. According to the learned senior counsel, Railway has acted on Annexure A9 judgment of the Family Court as the same is declaration made by a duly constituted court of law to deal with family disputes .

9. Shri Martin G. Thottan appearing for respondent No. 4 submitted that Annexure A11 judgment of the District Court has been considered by the Family Court in Annexure A9 judgment and the Family Court being competent for declaring the matrimonial status of the parties before it, the declaration made in Annexure A9 is binding on the Railways and all concerned.

10. Mr. M. Ramaswamy Pillai, learned counsel for the applicant pointed out that the applicant is not a party in the proceedings before the Family Court.

11. It is true that applicant is not a party to Annexure A9 judgement of the Family Court. But as it appears that Annexure A9 has not been challenged before any higher forum the same has attained finality. Nevertheless on a perusal of Annexure A9 judgement it is clear that the pleadings of the parties in that case had made obvious mention of the applicant as the woman married by Sivan Pillai in his 2nd marriage. The Family Court came to a conclusion that as per the provisions of the Hindu Marriages Act there is a valid and binding marriage between M. Sivan Pillai and 4th respondent and accordingly a declaratory decree was ranted by that Court.



12. Mr. M. Ramaswamy Pillai, learned counsel for the applicant submitted that the documents produced along with the OA strongly indicate that Railway had in all respects treated applicant as the wife of M. Sivan Pillai. He further submitted that the Railway had been paying the family pension to her till the impugned orders have been issued by the Railways stopping the family pension to her.

13. The documents produced in this case by the applicant show that she has been living with M. Sivan Pillai and had begotten two children out of that relationship. Her case is that she got married to M. Sivan Pillai bona fide believing that Annexure A1 divorce deed was valid and acceptable in law.

14. The rival contentions of the applicant and the 4th respondent show that both them have had legally valid marital relationship with deceased M. Sivan Pillai. Railway has treated the applicant as legally wedded wife entitled to family pension on the basis of the data relating to the family furnished by Sivan Pillai. Railway had also given certain benefits suiting to her status as the widow of M. Sivan Pillai. But when respondent No. 4 claimed benefits on the strength of Annexure A9 judgment and decree of the Family Court the railway had to treat Respondent No.4 as the widow of Sivan Pillai.. As mentioned earlier Annexure A9 judgment and decree had attained finality as no one had challenged the same before any higher forum. Applicant points out that at the time when Annexure A9 proceedings were going on in the

Family Court M. Sivan Pillai was about 80 years old. It appears from Annexure A9 that respondent NO. 4 had approached the Family Court for a declaration claiming matrimonial relationship with Sivan Pillai along with an allegation that he is not acting responsibly for conducting the marriage of her 5th daughter. It was also alleged by the 4th respondent that M. Sivan Pillai is not honouring the maintenance ordered by the Judicial 1st Class Magistrate Court, Nedumangad for paying Rs. 280/- per month to the daughters.

15. From the above facts and circumstances it appears to this Tribunal that both the applicant and respondent No. 4 had martial relationship with M. Sivan Pillai and had enjoyed the status of his wives. Applicant's marriage with Sivan Pillai was valid in law in view of Annexure A11 judgment of the District court. It was only subsequently, after a considerable period, respondent No.4 obtained Annexre- A9 declaratory decree that she is lawfully married to Sivan Pillai. In the mean time applicant have had a long cohabitation with Sivan Pillai as his wife and two children also were born out of that relationship.

16. The Family Pension Scheme for Railway Servants, 1964, which has later been incorporated as Rule 75 in the Railway Services Pension Rules, 1993, contemplates situations where family pension is payable to more widows than one. Sub Rule (7) of Rule 75 of Railway Services (Pension) Rules, 1993 reads:-

"(7)(i)(a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension, shall



become payable to her eligible child.

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.

(ii)

17. It can be seen that the aforesaid provision has been made in the rules when there is more than one widow. In this case, initially the applicant was treated by the Railways as the widow of M. Sivan Pillai. It was only later by the strength of Annexure A9 judgement and decree of the Family Court the Railway started reckoning respondent No. 4 as the wife of late M. Sivan Pillai. It is worth mentioning that respondent No. 4 lodged the claim for the benefits due to M. Sivan Pillai much after the death of M. Sivan Pillai. It can be seen from the records that both the applicant and respondent No. 4 have children borne out of the relationship they had with M. Sivan Pillai. Except by the judgements and decrees passed by the different Courts, nothing is perceivable to come to a conclusion that both the applicant and 4th respondent were not having the status of the wives of late M. Sivan Pillai.

18. Therefore, this Tribunal is of the view that both applicant and respondent No. 4 have to be treated as the wives of late M. Sivan Pillai and that respondents Nos. 1-3 are obliged to act in accordance with Sub Rule (7) of Rule 75 by paying the family pension in equal shares to both of them. Ordered accordingly.



19. The Original Application is disposed of as above. Accordingly, MA No. 180/334/2014 filed by the official respondents is dismissed. No order as to costs.


(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”