

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 235 / 2009

Thursday, this the 26th day of November, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. K NOORJEHAN, ADMINISTRATIVE MEMBER

V.K.Radhamani Amma,
W/o S Balakrishnan Nair,
Behind SBT, Nadakkavu,
Udayamperoor.P.O.
Kanayannur Taluk,
Ernakulam District.Applicant

(By Advocate Dr V.N.Sankarjee)

v.

1. The Commissioner of Customs,
Custom House, Kochi-682 009.
2. The Joint Commissioner of Customs,
Custom House, Kochi-682 009.
3. The Assistant Commissioner of Customs(ESTT),
Custom House, Kochi-682 009.
4. The Pay and Accounts Officer,
Customs & central excise Office,
Custom House, Kochi-682 009.
5. Subadra Amma,
W/o Sreedhren Nair,
Sreevilas, Avanancherry Village,
Near Water Work, Attingal Taluk,
Thiruvananthapuram.
6. Jayasree,
D/o Raveedran,
Teacher, R.R.V.H.S.S.,
Kilimanoor, Thiruvananthapuram.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC R.1 to 4)

(By Advocate Mr C.K.Jayakumar for R.5

This application having been finally heard on 4.11.2009, the Tribunal on 26.11.09



delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is against the denial of disbursement of terminal benefits and family pension by the respondents after the death of her husband on the ground taken that she was not a legally wedded wife of the diseased Government servant.

2. Shri S.Balakrishnan Nair, a Preventive Officer, Office of the Commissioner of Customs, Customs House, Kochi died while in service on 11.2.2008. His first marriage was with respondent No.6, namely, Smt Jayasree, D/o Raveendran, presently working as Teacher in R.R.V.H.S.S., Kilimanoor, Thiruvananthapuram. The said marriage was dissolved by a registered instrument in terms of Section 4 of Travancore Nair Act, 1100 according to which a marriage may be dissolved in one of the following ways,

- i) by the death of either party; or
- ii) by mutual consent evidenced by a registered instrument; or
- iii) by a formal order of dissolution.

Thereafter, Smt Jayasree married another person and Shri Balakrishnan Nair married the applicant. Their marriage was solemnised on 18.11.1997 as per religious rights. Applicant has produced the AnnexureA-11 certificate issued by the Devaswom Officer, Ernakulam Devaswom stating that the marriage between Shri Balakrishnan Nair and Smt Radhamani Amma was solemnized at Ernakulam Temple as per the Vazhipadu Receipt No.075678 dated 18.11.1997.

3. After their marriage, they have been living together as husband and wife mutually recognising and believing that the marriage was absolutely valid and all



their relatives also recognised as such. While Shri Balakrishnan Nair was alive, he had submitted the nomination for DCRG in the name of the applicant. Similarly, he has nominated her for receiving the amount that may be sanctioned by the Central Government under the Central Government Employees Group Insurance Scheme, 1980 in the event of his death while in service. Again the applicant was made the nominee to receive the P.F amount that may stand in the credit of Shri Balakrishnan Nair in the event of his death before the amount has become payable. The Assistant Commissioner, Customs vide his Annexure A-6 letter dated 26.3.2008 has also asked the applicant to submit her claim for the DCRG in the prescribed Form No.12 and Form No.14 for the grant of family pension along with original death certificate. Accordingly, the applicant has applied for the grant of the above terminal benefits.

4. Later on, the respondents vide Annexure A-9 letter dated 3.10.2008, informed the applicant that she was not eligible for the terminal benefits/family pension since she was only the 2nd wife of late Shri Balakrishnan Nair as per the marriage certificate produced by her. They have also stated that the dissolution of the marriage of Shri Balakrishnan Nair with his 1st wife Smt Jayasree was by way of an agreement but as per the prevailing Hindu Marriage Act, the 2nd marriage cannot be said to be legally valid unless the first marriage was dissolved by a judgment and decree passed by a competent court of law. Again, vide Annexure A-16 dated 3.12.2008, the respondents informed the applicant that she was not legally entitled to the terminal benefits of late Shri Balakrishnan Nair as his first marriage was not dissolved legally. The applicant has, therefore, submitted a legal heir certificate from the Tahsildar, Kanayannur Taluk (Annexure A-2) dated 19.9.2008 showing that Smt Subadramma, 71 years (respondent No.5) as mother of late Shri Balakrishnan Nair and the applicant



(V.K.Radhamani Amma, 55 years) as his wife. The respondents, vide Annexure A-18 letter dated 20.3.2009, stated that the said legal heir certificate cannot be accepted as a valid document for the grant of terminal benefits as a person can be a legal heir of another person only through blood relationship or adoption or through marriage. Further, it has been stated under Rule 53(1)(i) of the CCS (Pension) Rules, 1972, that if the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family.

5. The 5th respondent has also filed a reply stating that the entire terminal benefits cannot be granted to the applicant.

6. We have heard the learned counsel for the parties. There is no dispute that the applicant was married to late Shri Balakrishnan Nair after the dissolution of his marriage with his first wife Smt Jayasree. The only objection raised by the respondents is that the marriage between the applicant and late Shri Balakrishnan Nair was not a valid marriage and therefore, the applicant could not be included as part of the family of the deceased Government servant. In our considered opinion, respondents are not the authority to proclaim the legality or otherwise of the marriage of a Government servant. They should have left it to the civil court to adjudicate the matter if there were any dispute. Instead, they stepped into the shoes of a civil court and rendered a verdict that the marriage between the applicant and late Shri Balakrishnan Nair solemnised on 18.11.1997 is not a valid one. In this case, nobody has raised any dispute regarding the marriage of the applicant with late Shri Balakrishnan Nair. His mother herself is a respondent in this O.A. Due notice was also issued to Smt Jayasree, the 1st wife of late Shri Balakrishnan Nair. She has also not raised any dispute or made any claim for the terminal benefits. The husband of the



applicant while he was alive has nominated the applicant as the beneficiary of the terminal benefits in view of the relationship between them as husband and wife.

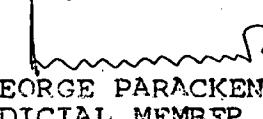
7. The Apex Court in the case of **Badri Prasad v. Dy. Director of Consolidation and others** [(1978) 3 SCC 527] held that there is a strong presumption of marriage between a man and a woman who live together for long years. The aforesaid short judgment is reproduced below:

"For around 50 years, a man and a woman, as the facts in this case unfold, lived as husband and wife. An adventurist challenge to the factum of marriage between the two, by the petitioner in this special leave petition, has been negated by the High Court. A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. In this view, the contention of Shri Garg, for the petitioner, that long after the alleged marriage, evidence has not been produced to sustain its ceremonial process by examining the priest or other witnesses, deserves no consideration. If man and woman who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married, few will succeed. The contention deserves to be negated and we do so without hesitation. The special leave petitions are dismissed."

8. We, therefore, allow this O.A. and declare that the applicant is entitled for gratuity, family pension General Provident fund etc. as requested by her vide her Annexur A-7 and A-8 representation. The respondents shall also consider the claim of Smt Subadramma, mother of the late Shri Balakrishnan Nair for the terminal benefits strictly in accordance with the rules. The respondents shall disburse the admissible DCRG and other terminal benefits of the applicant's husband to the applicant within a period of two months from the date of receipt of copy of this order. There shall be no order as to costs.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

trs


GEORGE PARACKEN
JUDICIAL MEMBER