

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: **246/96**

Date of Decision: **29th May, 1997**

Smt. Kasturi Bai Subbarayan P ... Applicant

Mr. S.P. Saxena ... Advocate for
Applicant

-versus-

UOI & Ors. ... Respondent(s)

Mr. R K Shetty ... Advocate for
Respondent(s)

CORAM:

The Hon'ble

M.R. Kolhatkar, Member(A)

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar

M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PREScot ROAD, MUMBAI-1

O.A. No. 246/96

Dated : This 29th day of May, 1997

Coram : Hon'ble Shri M.R. Kolhatkar, Member(A)

Smt. Kasturi Bai Subharayan P
Residing at Room No.1252
Gandhi Nagar
Ambernath, Dist. Thane
(By Adv. Mr. S.P. Saxena)

..Applicant

v/s.

1. Union of India
through the Secretary
Ministry of Defence
DHQ PO, New Delhi 110011

2. The General Manager
Machine Tools Prototype Factory
Ordnance Estate
Ambernath, Dist. Thane
(By Adv. Mr.R.K. Shetty,
Central Govt. Standing Counsel)

..Respondents

ORDER

(Per: M.R. Kolhatkar, Member(A))

In this O.A. the applicant who claims
the
to be/legally wedded wife/widow of Shri P. Subharayan
who was medically incapacitated on 1.6.92 and who died
on 6.6.93 has claimed the relief of payment of family
pension and the arrears thereof, in respect of her
late husband along with interest on the basis of
Succession Certificate issued by the Civil Judge,
Junior Division, Ulhasnagar in Miscellaneous
Application No. 51 of 1993 dated 7.12.1993 read
with subsequent order dated 8.4.1994, pages 18 and 42
respectively of the O.A. According to the applicant

she had applied for the payment of family pension to the Respondents with the Succession Certificate, but the respondents doubted her claim to be the legally wedded wife of the late employee and intimated that the late employee had declared Panneer Selvan as his son not only in the L.T.C. claim but in the records pertaining to the family pension. Panneer Selvan claims that his mother is one Mrs. Shivakkolundu and hence the applicant was asked by the respondents for some additional documents including birth certificate of the applicant, certificate of marriage etc. The applicant however contended that the succession certificate is a judgment in rem and that Panneer Selvan had given No Objection to issue of the Succession Certificate and under the circumstances the applicant again pressed her claim. However, the respondents informed the applicant to obtain a Decree from a Competent Court of Law that Mrs. Kasturi Bai Subharayan is the legally wedded widow/wife of the deceased employee. It is in view of this dispute that this O.A. is filed for claiming the reliefs mentioned above.

2. The Respondents in their written statement have referred to the correspondence from

Panneer Selvan, letter dated 25.7.92 and letter dated 3.8.92 from Smt. Shivakkolundu. In the former letter Panneer Selvan had asked for grant of time to establish the claim of his mother Smt. Shivakkolundu and himself in the latter letter Mrs. Shivakkolundu had and sought time to produce succession certificate claiming that Mrs. Shivakkolundu is the first and the only legally wedded wife of the deceased Government employee and not to entertain any claim of Smt. Kasturibai.

3. Respondents have enclosed following documents which show that the late Government employee AT had declared the applicant to be his wife. /Page 28 is certificate regarding TA & LTC dated 28.2.75; at page 29 is the nomination for the benefits of CGEIS, at page 30 are the particulars of family; at page 31 is the nomination under Central Government Employees Group Insurance Scheme; at page 32 is the nomination for GPF and at page 33 is the nomination for DCRG. In the none of these nominations does name of Smt. Shivakkolundu figure. In the nomination regarding LTC the name of under Panneer Selvan is shown as son and the family particulars does his name/figure. But in all other nomination forms the name of Panneer Selvan does not appear and there are the only the names of children of late Government employee from the applicant the

4. Counsel for the respondents contends that it was clear to the respondents on the basis of the available material that the late Government servant had contracted a second marriage and that in terms of notification made by the Department of Pensioner and Under Rule 54 of Pension Rules Pensioners' Welfare dated 16.2.1987, second the wife will not be entitled to family pension as a legally wedded wife. The relevant portion is reproduced below:

"It is specifically a question arising under the Hindu Marriage Act, 1955, Under Rule 54(7) of the CCS(Pension) Rules, 1972, in case a deceased Government servant leaves behind more than one widow or a widow and eligible offspring from another widow, they are entitled to family pension in respect of that deceased Government servant. Section 11 of the Act provides that any marriage solemnized after the commencement of the Act shall be null and void and can be annulled against the other party by a decree of nullity if the same contravenes any of the conditions specified in clauses (iv), (iv) and (v) of Section 5 of the Act. Section 5(1) stipulates that the marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage. Therefore, any second marriage by a Hindu male after the commencement of 1955 Act during the life time of his

first wife will be a nullity and have no legal effect. Such marriage cannot be valid on the ground of any custom. In fact, a custom opposed to an expressed provision of law is of no legal effect. So under these circumstances, the second wife will not be entitled to the family pension as a legally wedded wife. "

Section 11 of Hindu Marriage Act, 1955 states that any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in Cls.(i), (iv) and (v) of Sec.5. Section 5(i) reads as under:

"Neither party has a spouse living at the time of the marriage;"

5. Counsel for the respondents also submits that after the applicant had filed the Succession Certificate, they had entered into correspondence with Respondent No.4 and they received letter dated 22.12.94 from Respondent 4 saying that her name is entered in the voter list, she and submitted documents such as voter list, Certificate issued by Spl. Tahsildar Vridhachlam, and Certificate issued from VAO Pennadam, Certificate issued by Shri Puratchimani MLA. There is also a notice of the Advocate of the Respondent 4 in which it is stated that the alleged succession

certificate is not legally valid and that Respondent 4 is a legally wedded wife of the deceased Government employee and that the family pension should not be given to the Applicant. The Respondents further obtained the advise of the Ministry of Law and [redacted] in terms of the advice, the Respondents have asked the applicant to obtain a Decree of a competent court of law that she is legally wedded wife of the deceased Government employee.

6. Counsel for the applicant submits that the Succession Certificate is conclusive as to the claim of the applicant to the family pension of the deceased government employee. Counsel states that the applicant had initially applied for succession certificate without giving notice to Panneer Selvan and after correspondence with the official respondents she had given notice to Panneer Selvan and the Learned Civil Judge confirmed the earlier succession certificate.

Respondent No.4
It is open to [redacted] to approach the competent authority to set it aside and to get a succession certificate in her favour. He points out that succession certificate has been issued to her in terms of Sections 370 to 374 of Indian Succession Act 1925. He points out that under Section 381 of the

Indian Succession Act the

certificate is conclusive as against the persons
owing such debts or liable on such securities,
and shall, notwithstanding any contravention
of section 370, or other defect, afford full
indemnity to all such persons as regards all
payments made, or dealings had, in good faith
in respect of such debts or securities to or with
the person to whom the certificate was granted.

Under the circumstances it was not correct
on the part of the official respondents to ask
the applicant to produce a Decree from a
Competent Court of Law.

7. The Learned Counsel for the
official respondents pointed out that the
succession certificate appears to be defective
in as much as in the schedule) to the succession
certificate dated 7.12.93 there is a specific
reference to total three months' pension amount
and the subsequent orders at page 42 have rejected
the fresh application and therefore the succe-
ssion certificate is not/valid one.

8. This Tribunal is to consider the
matter from the point of view of service rules
which in this particular case are 'Central Civil
1972
Services(Pension)Rules/. No doubt the instructions
under the Pension Rules state that the second

wife will not be entitled to family pension as a legally wedded wife. However, there has to be some material to arrive at conclusion that there was a first legally wedded wife and that the applicant being the second wife is disentitled from claiming family pension. Apart from the letters from Respondent 4 there is nothing on record to show that Respondent 4 was a legally wedded wife of the applicant. So far as the official record is concerned the name of the respondent no.4 nowhere figures in the nomination forms or declarations made by the deceased Government employee. and In all the nominations/all the declarations the deceased government employee has consistently mentioned the applicant's name as his wife. Therefore if there is a burden of proof that she was not/legally wedded wife that burden is not on the applicant, but on the respondent 4 to show that she is the first legally wedded wife. consider the argument that Next, I l the marriage of the applicant allegedly as second wife is void in terms of Hindu Marriage Act. However, legal relationship between the deceased Government employee and the applicant does not become void by merely referring to the

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relevant section of the Hindu Marriage Act.

There has to be a declaration of the competent court ~~of~~ law under section 11. In my view the respondent No. 4 has not discharged this burden. Counsel for applicant has pointed out to me that the notice of the Lawyer annexed with the letter of Respondent No. 4 does not give any particulars for the purpose of correspondence which would prima facie show that it was not a bonafide notice. Further, he has stated that he will produce "legal ^a heirship" certificate from Tahsildar but such certificate is only an administrative certificate unlike succession certificate which is a statutory one for which jurisdiction is vested in ^{the} District Judge within whose jurisdiction the deceased ordinarily resided at the time of ~~his~~ death vide S.371 of Indian Succession Act. It is not disputed that the deceased Govt. employee resided at Ambernath in Thane District in Maharashtra and therefore legal heirship certificate from a Tahsildar in Tamilnadu has no probative value whatsoever. Moreover, he has also pointed out that this Tribunal had decided on 14.2.97 to join Smt. Shivakkolundu as Respondent 4 and accordingly a notice was issued and though the notice was served, still she did not choose to appear before the Tribunal. This Tribunal has already on 17.4.97 noted that the Respondent No. 4 has been served and the Tribunal has decided to proceed on the basis of presumed service. Therefore, the adverse inference is required to be drawn against Respondent 4 for not taking legal action legitimately open to her and standing in the way of grant of reliefs to the applicant by entering into vexatious correspondence with the official respondents.

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9. I am of the view that so far as the Department is concerned, it has to go on the basis of service record in which the name of the applicant and nominee appears as the wife/of the deceased Government employee. The applicant has also produced the succession certificate as desired by the official respondents. It is, therefore, not proper for the official respondents to drag on the matter and to enter into correspondence with Respondent No. 4 inviting objections. It is contended by the counsel for the applicant that this would show that the respondents are deliberately delaying the grant of legal entitlements/dues and reliefs to the applicant. The fact that the son of the alleged first wife has given no objection certificate at the stage of grant of succession certificate also would appear to be material.

10. Counsel for the official respondents would then submit that at the stage of issue of succession certificate the advertisement was published in 'Dainik Ambarnath' which is a purely local daily and the advertisement ought to have been given in a widely circulated reputable daily. This amounts to going behind the succession certificate issued by competent court and it appears to me that it is not open to the respondents to raise this issue.

11. I have already observed that the applicant has produced a succession certificate though not in a perfect form and the nominations are in her favour. On this point, I refer to Government of India instructions on the point of importance of the nominations and the weightage to be attached to the nomination

vis-a-vis other documents. Rule 53 of C.C.S. (Pension)

Rules deals with Nominations. Government of India decision on this point dated 22.1.1975 is relevant in this connection and is reproduced in full :-

" The need for observance of the above instructions cannot, perhaps, be overemphasized. The need for nomination arises consequent upon the death of a Government servant while in service or after retirement before receipt of the death/retirement gratuity. In those cases, where valid nominations already exist, the claims of the nominees are likely to be settled expeditiously as provided in sub-rule(1)(a) of Rule 51 of CCS(Pension) Rules, 1972. But in those cases, where no nominations have been filed or even if filed by the Government servant but for loss in office due to lack of proper care, the gratuity is payable to the members of the family in the manner prescribed in sub-rule(1)(b) ibid. A number of cases have also come to notice of Government where Government servants having died without making any valid nominations, the surviving members of their families approach courts for grant of succession certificates in order to entitle them to their share of the gratuity. It may be clarified in this regard that payment of death/retirement gratuity to the members of family of a deceased Government servant is normally to be made according to the relevant service rules. While payment on the basis of a succession certificate would discharge Government's liability, a succession certificate does not necessarily create an obligation on the part of the Government to pay the amount. Such a claim can be resisted if it is otherwise not in order. Therefore, in order to save the families of the Government servants from the expenditure involved on the court fees for obtaining succession certificates and the inevitable delay which this process entails, the Government servants may be advised to file their nominations in the prescribed forms without fail.

The Ministries/Departments and offices concerned are also requested to review the service records of all their employees and ensure that nominations have been obtained from all the Government servants, necessary entries made in their service books as laid down in the orders referred to above and the relevant records preserved properly to avoid such situations.

(G.I., M.F., O.M. No. 7(5)-E.V(8)/74,
dated the 22nd January, 1975.)

There is also a clarification of Ministry of Law below that and the same is reproduced below :-

" Clarification by Ministry of Law

The intention in calling upon the claimants to obtain succession certificate is to get a legal document from the competent court so that the claims of the rival parties can be settled once for all. This is a document which will enable the Department to pay the dues, etc., to the rightful claimant. If the Department is not satisfied with the legal right of the claimant they have got every right to approach the competent court to decide the claims in accordance with the law. In other words, if the Department feels that the succession certificate has not been issued as per law then they have every right to follow up the procedure after reconsidering the nature."

12. From the above, which observations would apply mutatis mutandis to pension primarily on the basis of valid nomination that the pension and family pension and other claims are required to be settled. The Government of India decision states clearly that payment of death/retirement gratuity to the members of family of a deceased Government servant is normally to be made according to the relevant service rules, and while payment on the basis of a succession certificate would discharge Government's liability, a succession certificate does not necessarily create an obligation on the part of the Government to pay the amount. The Law Ministry has stated that in case of doubt, the department has to approach competent court. In this connection, so far as the pension and other retiral benefits are concerned, there is no doubt that the Central Administrative Tribunal is competent court in relation to Central Government employees. Of course, the department can certainly entertain legitimate doubt a governed by personal regarding validity of relationship like marriage but in law

such a case the department should be very clear regarding the person on whom the burden lies. I have already observed that valid nomination being in favour of the applicant, when the Respondent No. 4 sets of a claim to the family pension, the burden of proof is on the Respondent No. 4 to produce a declaration of the competent court that she is the legally wedded wife of the late Government employee. The burden is not on the applicant in whose favour the nomination exists to show that she is the legally wedded wife of the late Government employee.

13. This being the position, I am of the view that the defects pointed out by the respondents in the succession certificate do not invalidate the succession certificate because the succession certificate is to be read along with the application made. The claim of the applicant basically rests on the strength of valid nomination made in her name in the service record.

14. I, therefore, allow the OA. and dispose of the same by directing the respondents to pay the pensionary benefits to the applicant along with the arrears of family pension from the time of death of late Government employee, namely, 6.6.1993. Action in this regard may be taken in three months. In the facts and circumstances of the case, I am not inclined to grant interest. However, if the respondents do not pay arrears within three months, the arrears will be payable with interest at the rate of 12% for the period beyond three months.

15. OA. is accordingly disposed of with no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)