

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 867/96

Date of Decision: 12-6-1997

1. Smt. Manjula Magaraj Dolas

2. Shivkumar Ramavtar Singh

.. Applicant

Shri R.C.Ravalani

.. Advocate for
Applicant

-versus-

U.O.I.

.. Respondent(s)

Shri R.K.Shetty

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri 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.R.KOLHATKAR)
Member(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.867/96

pronounced this the 12th day of June 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

1. Smt. Manjula Magaraj Dolas
2. Shivkumar Ramavtar Singh

Both residing at:

H.No.1/8, F/L
NDA Khadakwasala,
Pune - 411 023.
By Advocate Shri R.C.Ravlani .. Applicants
-versus-

1. Union of India
through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 011.
2. The Deputy Director General,
Military Farms,
AHQ.QMG's Branch,
West Block No.III
R.K.Puram,
New Delhi - 110 066.
3. The Director,
Military Farms,
HQ, Southern Command,
Khadki, Pune - 411 003.
4. The Officer-Incharge,
Military Farm,
Secunderabad - 11 .. Respondents.

By Counsel Shri R.K.Shetty

- : O R D E R : -

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

This is an OA by alleged daughter and son of the deceased Govt. servant Ramavtar Singh Ex.Farm Hand, Military Farm, Secunderabad. The contention of the applicants is that Ramavtar Singh expired on 23-7-84 and thereafter his widow and the mother of the applicants Jayamma had been given compassionate appointment. She died on 21-4-87. After the death of the widow the daughter, ~~the~~ the first applicant was given compassionate

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appointment. She had taken up the question of grant of pensionary benefits including family pension of the late Ramavtar Singh with the department. The department by their impugned letter dt. 10-4-1993 at Annexure A-1 intimated that the second wife is not entitled to the family pension as a legally wedded wife and therefore the question of eligibility for grant of family pension or other benefits to the son/daughter of the second wife would not arise. The contention of the applicants is that the late Ramavtar Singh had married their mother on 18-1-1970 and he had three issues, one daughter and two sons viz. Imanchala -Daughter, Jangh Bahadur -son and Shiv Kumar -son. The applicants rely on the affidavit dt. 13-9-1985 which was sworn by widow of Ramavtar Singh before special Metropolitan Magistrate, Secunderabad. The applicants contend that the first applicant was pursuing her case for regular appointment and in her representation dt. 19-4-1993 she was compelled to state that she would not press for the subject matter till judicial orders are received and in the meantime her case for MRP/regular appointment on the basis of seniority should be considered. Later on she made a representation dt. 28-3-1994 (page 13). The applicants have filed a petition for condonation of delay stating that they were under coercion/influence of the authority vide letter dt. 19-4-1993 and the appeal dt. 28-3-94 was filed to which there was no reply, and accordingly the OA ought to have been filed within 18 months, However, due to adverse circumstances and due to the transfer of applicant No.1 from Secunderabad to NDA vide movement order dt. 11-3-95 the applicant could not

file the OA promptly and therefore delay in filing the OA on 23-8-1996 is sought to be condoned.

2. According to counsel for the applicant the applicant's mother was legally wedded wife and even assuming that she was the second wife and is therefore the marriage held to be bigamous and as such void, all the same the children of the void marriage cannot be denied the benefit of the rightful claim of the estate of the deceased father. In this connection the applicant relies on the O.M.No.1/16/96 P&PW(E) dt. 2-12-96 from the Department of Pension and Pension Welfare on the Pensionary benefits to children from the void or voidable marriages reported at Swamys News, February '97 and reproduced below :

Pensionary benefits to children from the void or voidable marriages.

Attention is invited to provisions contained in Rule 54(8) of CCS (Pension) Rules, 1972 and decisions thereunder on regulation of amount of family pension payable. This Department has been receiving references from Ministries/ Departments seeking advice on the question of admissibility of family pension to children of a deceased Govt. servant/ pensioner from a wife whose marriage with the said Government servant/pensioner would be voidable or held void under the provisions of Hindu Marriage Act.

2. The matter regarding grant of pensionary benefits to such children has been examined in consultation with the Ministry of Law.

3. In view of the fact that Section 16 of the Hindu Marriage Act, 1955 as amended by Hindu Marriage Laws (Amendment) Act states "Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate

whether such child is born before or after the commencement of Marriage Law (Amendment)Act,1976 and whether or not a decree of nullity is granted in respect of that marriage under this act, and, whether or not the marriage is held to be void otherwise than on a petition under this act."

4. The rights of such children require to be protected and will accrue accordingly. It is, therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rule 54(8). It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same."

3. Applicant also relies on the following case law :

In Smt.Gauri Dam and another vs. U.O.I. O.A.No.115/89 decided on 30-8-1990 by the Patna Bench of the CAT,(1991)15 ATC 311, the Tribunal considered Section 16(1) of the Hindu Marriage Act which is reproduced below :

16. Legitimacy of children of void and voidable marriages -

(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such a child is born before or after the commencement of the Marriage Laws(Amendment)Act,1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act. "

On a consideration of the section which was inserted

Amendment Act
by the Marriage Laws of 1976 the Tribunal held
that the applicant No.2 therein would be entitled
to all the rights and benefits like other legitimate
children and directed the respondents to decide the
claim of pension etc. of the legal heirs including
applicant No.2.

4. In Muni Devi and Others vs. U.O.I. (1995)31 ATC 581 the Tribunal considered the judgment of the Ernakulam Bench of the Tribunal V.Vijayan vs. UOI, 1994(1)SLJ(CAT)206. That judgment in turn relied on the observation of the Supreme Court in the case of Maharani Musum Kumari vs. Kusum Kumari Jadeja, (1991)1 SCC 582 wherein it was held that the amended Section 16 of the Hindu Marriage Act has enlarged the applicability of beneficial provision to illegitimate children so as not to deny the same to the children who are placed in circumstances similar to those of the respondents before the Apex Court.

5. Respondents have opposed the O.A. They have contended that neither the mother of the applicant Smt.Jayamma nor the applicant No.1, Smt.Manjula ^{was} given compassionate appointment in consideration of the employment of the alleged father Ramavtar Singh. According to the record of the respondents the name of one Jayamala has been mentioned as the wife of the Ramavtar Singh and another person by name Shri Gayabari Singh aged 30 years and Kour Bahadur Singh, aged 22 years has been mentioned as nominee. According to respondents the applicants have not produced any succession certificate to prove their heirship and since Mrs.Jayamma who is reported to be the

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mother of the applicants herein was the second wife and ~~was~~ not entitled to family pension and other benefits they rightly rejected the claim of the children of the second wife. According to respondents late Shri Ramavtar Singh never informed the respondents about his second marriage. Respondents have relied on Govt. of India decision No.12 of CCS Pension Rules, 1954 according to which the second married wife and her children are not entitled to family pension.

6. I have considered the matter. I have perused the original service record of late Ramavtar Singh. It is true that the name of Jayamma does not figure in the service book. The feeble attempt ~~was made by the counsel for applicants to suggest~~ that Jayamma and Jayamala are the same does not stand scrutiny. Evidently Jayamala was the first legally wedded wife of late Ramavtar Singh who was from Raibareli in UP. It is also true that under Govt. of India decision No.14 under Rule 54 communicated under memorandum dt. 4-3-87 second wife is not entitled to family pension as legally wedded wife under Hindu Marriage Act. However, ^{appear to} respondents do not ~~not~~ have considered subsequent memorandum dt. 2-12-96 which is relied upon by the counsel for the applicant and which is reproduced by me. It takes into account Section 16(1) of the Hindu Marriage Act as amended and emphasises the need to protect the rights of children of the second wife even if the marriage is void.

7. I note that in Muni Devi's case which is the latest judgment cited by the counsel for the

applicant no relief was granted but the respondents were directed to process and consider the claim of applicants 2 and 3, both minor children of deceased employee to the post retiral benefits and family pension as per rules. I have also considered the case of V.Vijayan vs. U.O.I.,1994(1)CAT)SLJ 206 on which Munidevi's case is based. In that case also the Tribunal had not taken a final decision but directed that second respondent should consider all the available documents and take a final decision on the issue as to whether the applicant is the only son. The documents, the Tribunal wanted to be considered included ~~was~~ the legal heirship certificate signed by the Tehsildar.

8. In the present case, the applicants have not produced any material establishing their relationship with late Govt. employee excepting the copy of the affidavit dt. 13-9-1985 and the legal heirship certificate by Rangareddy Municipality. I am required to consider as to what type of record are the applicants required to produce to establish the relationship with the late Govt. employee. In my view the only credible document which can be relied upon is the succession certificate which is a statutory certificate issued under Indian Succession Act,1925 and in particular under Part-X, Section 370 to 390 of Indian Succession Act. The succession certificate can be issued by the District Judge within whose jurisdiction the deceased ordinarily resided at the time of death (Section 371). Section 381 of the Indian Succession Act establishes the legal authority of the certificate and lays down that the succession certificate with respect to the debts and securities specified therein would be 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. It is therefore clear ^{that} only the legal heirship certificate in terms of Section 381 of Indian Succession Act is conclusive as to ~~debts~~ and would protect the Govt. department as to the payments made.

9. I also consider that the claim to pensionary benefits including family pension gives ^a ~~the~~ recurring cause of action and therefore this OA is not liable to be dismissed as being time barred. I also note that it is not the contention of the respondents that the ~~nominees~~ mentioned in the service book of the ~~deceased~~ employee have approached the respondents with a claim as to payment of pensionary benefits including family pension. I therefore dispose of this OA by passing the following order :-

OA is allowed to the extent of following directions:

Applicants are at liberty within six months of the communication of the order to approach the respondents after obtaining succession certificate under the relevant section in respect of not only themselves but also the second son of late Govt. employee viz. Jang Bahadur who has not been made a party to this OA. On receipt of such application with valid succession certificate, respondents are directed to grant family pension and other pensionary benefits in favour of

the applicants, in terms of circular No.1/16/96-P & PW(E) dt. 2-12-1996 within three months from the date of receipt of the application.

There will be no order as to costs.

M.R.Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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