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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH.
AT HYDERABAD

D.A.No. 342/91.

I.A.No.

Dt. of Decision: 5.2.93.

C.Kamalakumari & 2 others

Petitioner

Smt. N.K.Annapurna Devi

Advocate for
the Petitioner
(s)

Versus

The Collector, Customs & Central Excise,
Hqrs. Office Fateh Maidan, L.B.Stadium Road, Respondent.
Hyderabad & 3 others

Shri Rajeswara Rao for Shri N.V.Ramana, Addl.CGSC Advocate for
(for R1 to R3) the Respondent
Shri G.Prabhanjan Reddy (for R4) (s)

CORAM:

THE HON'BLE MR. R.Balasubramanian : Member(A)

THE HON'BLE MR. T.Chandrasekhara Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? *Ans*
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice-Chairman on Columns 1,2,4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

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HRBS
M(A).

HTCR
M(J).

(79)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.342/91.

Date of Judgement 5-2-1993

1. C.Kamalakumari
2. C.Jalaja
3. C.Vinaya .. Applicants

Vs.

1. The Collector,
Customs & Central Excise,
Hqrs. Office, Fateh Maidan,
L.B.Stadium Road,
Hyderabad.
2. Addl. Collector (P&E),
Central Excise,
Hyderabad Collectorate,
Fateh Maidan,
L.B.Stadium Road,
Hyderabad.
3. Union of India, Rep. by
its Secretary,
Min. of Central Excise,
Secretariat,
New Delhi.
4. C.Jaya,
H.No.7-1-282/B/20,
Sanjeeva Reddy Nagar,
Hyderabad. .. Respondents
(Added as 4th respondent
as per Court direction).

Counsel for the Applicants : Smt. N.K.Annapurna Devi

Counsel for the Respondents : Shri Rajeswara Rao for
Shri N.V.Ramana, Addl. CGSC
(for R1 to R3) &
Shri G.Prabhanjan Reddy
(for R4)

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J Judgement as per Hon'ble Shri R.Balasubramanian, Member(A) X

This application is filed by Smt. C.Kamalakumari & 2 others
against the Collector, Customs & Central Excise, Hqrs. Office,
Fateh Maidan, L.B.Stadium Road, Hyderabad & 3 others under
section 19 of the Administrative Tribunals Act, 1985. Responden

No.4 is a private respondent. The prayer herein is to direct the respondents to pay the applicants all the benefits like (1) Family Pension (2) Death Gratuity (3) Central Government Insurance amount (4) Balance in General Provident Fund account (5) Payment of life time arrears and other dues. The application also prays for providing employment to the 2nd applicant on compassionate grounds.

2. While the payment of dues consequent to the death of Shri C.Suryanarayana, husband of Applicant No.1 constitutes one set of relief, employment on compassionate grounds is a different relief. The two reliefs cannot be combined in one O.A. according to the Central Administrative Tribunal (Procedure Rules, 1987. Confronted with this question, the learned counsel for the applicants chose to restrict the application only to payment of dues to the applicants. Hence the O.A. with regard to the prayer for compassionate appointment is liable to be rejected. We shall, therefore, not consider the question of compassionate grounds appointment in this application.

3. The applicants are stated to be legal heirs of the deceased Shri C.Suryanarayana. Applicant No.1 is the wife of the deceased Shri C.Suryanarayana and Applicants No.2 and 3 are children born to them. When Shri C.Suryanarayana died, the applicants filed applications for payment of family pension, death gratuity and other dues. The respondents have not so far paid them the dues claimed. Aggrieved, the applicants have filed this O.A.

4. The official respondents have filed a counter opposing the application. It is stated that as per the Service Book entries the late Shri C.Suryanarayana had furnished details of family members on 9.10.90 indicating that his wife was Smt. C.Jaya (R4) and that on that date he had two daughters namely Jayasree and Sree Lakshmi aged 7 years and 1 year 2 months respectively. It is stated that he had also given nomination under the C.G.E.G.I.S. Scheme nominating his wife Smt. C.Jaya. According to them, there is no evidence in the Government records

that the late Shri C.Suryanarayana had the permission of the Department to have two wives. Under these circumstances, they were not able to make the payments to any one of the parties and have preferred to wait for the decision of this Tribunal.

5. The private respondent (R4) Smt. C.Jaya has also filed a counter affidavit. It is stated that she has no knowledge of the first marriage of the late Shri C.Suryanarayana. It is stated that her marriage with the late Shri C.Suryanarayana was performed according to Hindu rites. When Shri C.Suryanarayana died, she had preferred her claims for the dues to him and ~~she~~ is aggrieved that the Department is not paying her the dues, ~~applied for~~.

6. We have heard Smt. N.K.Annapurna Devi, learned counsel for the applicants, Shri Rajeswara Rao on behalf of Shri N.V.Ramana for the official respondents (R1 to R3) and Shri G.Prabhanjan Reddy for the private respondent (R4). When the case was heard, we directed the official respondents to produce the records. In that we could not find any valid nominations.

7. Before going into the ~~question~~, we will have a look at the legal status of the children born to the second wife Smt. C.Jaya (R4). It is seen from the counter that as on 9.10.90 the late Shri C.Suryanarayana while furnishing the details of family members had indicated that he had two daughters Jayasree, 7 years old and Sree Lakshmi, 1 year 2 month old through Smt. C.Jaya (R4). In its decision reported in AIR 1992 ANDHRA PRADESH 234, the High Court of Andhra Pradesh had held that according to Hindu Marriage Act even illegitimate sons are entitled to equal share with natural sons and they can ~~not~~ be treated as coparceners. Such being the case, the two children through the second marriage, irrespective of ~~whether~~ the marriage ~~is~~ ^{being} valid or not, are also entitled to equal shares along with the other children through the first wife.

8. It is necessary to see what the rules have to say about the various items of money due to the dependents of the late Shri C.Suryanarayana.

(1) Family Pension:- The learned counsel for Respondent No.4 relied on Rule 54(7)(a)(i) of the C.C.S.(Pension) Rules, 1972 and said that the family pension should be divided among the two widows. On the other hand, the learned counsel for the applicants took us to the Govt. of India's Decision No.(13) under the same rule wherein it has been specifically stated that the second wife is not entitled to the family pension under the Hindu Marriage Act. This decision having the effect of modifying the rule is issued in the light of Section 5 of the Hindu Marriage Act, 1955. This being the position, it is clear that the family pension is payable only to the legally wedded wife and that is Applicant No.1.

(2) DCRG:- According to Rule 51(1)(b)(i) of the C.C.S.(Pension) Rules, 1972 when there is no nomination or if the nomination made does not subsist, the gratuity shall be paid equally among the wife and unmarried daughters. Applying this rule, the DCRG shall be distributed equally among the first wife, her two daughters if they are unmarried and also the two minor children born to the late Shri C.Suryanarayana through Respondent No.4. In the case of minor children the payment is governed by Rule 51(4) of the C.C.S.(Pension) Rules, 1972 which states that it shall be payable to the guardian on behalf of the minor.

(3) GPF:- The payment of this item is to be governed by Rule 33(1)(b) of G.P.F.(Central Services) Rules, 1960. Hence like the DCRG, the amount of GPF at the credit of late Shri C.Suryanarayana shall also be distributed equally amongst the first wife and that is Applicant No.1, her two children if they are unmarried and also the two minor children of Respondent No.4.

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Copy to:-

1. The Collector, Customs & Central Excise, HQRS. Office
Fateh Maidan, L.B.Stadium road, Hyd.
2. Additional Collector (P&E)? Central Excise, Hyderabad
Collectorate, Fateh Maidan, L.B.Stadium road, Hyd.
3. Secretary, Ministry of Central Excise, Union of India,
Secretariat, New Delhi.
4. ~~SxxxxQxJxxMxNx~~ One copy to Smt. N.K.Annapurna
Devi, advocate, 5-9-30/1/9/Basheerbagh, road No.2, Hyd.
5. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
6. One copy to Sri. G.Prabhanjan Reddy, advocate, (R-4),
CAT, Hyd.
7. One copy to Deputy Registrar(Judl.), CAT, Hyd.
8. Copy to Reporters as per standard list of CAT, Hyd.
9. One spare copy.

6th Oct 1980
Rsm/-

(83)

9. As for the other benefits, across the bar it was stated by both the counsels for the applicants and for Respondent No.4 that they are agreeable for equal distribution among the five members viz: Applicant No.1 Smt. Kamal kumari, her two daughters and the two minor daughters of Respondent No.4. This would be in accordance with Sections 8 and 10 of the Hindu Succession Act.

10. Summing up, we direct the respondents:

- (a) To pay the family pension to Applicant No.1 Smt. Kamal kumari in accordance with the C.C.S. (Pension) Rules, 1972.
- (b) To distribute the DCRG equally among the five children of Respondent No.4, her two daughters if they are unmarried and the two minor children of Respondent No.4.
- (c) To disburse the GPF balance in the same manner as the DCRG.
- (d) The other items of dues be divided equally among the five claimants in the same manner as DCRG and GPF.

11. The official respondents are directed to comply with the above directions within a period of three months from the date of receipt of this order. The relief with regard to the prayer for compassionate appointment is hereby rejected but we permit the applicants to file a fresh O.A. with regard to the prayer for compassionate appointment on the same causes of action if the applicants choose to do so. The application is disposed of thus with no order as to costs.

R.Balasubramanian

(R.Balasubramanian)
Member (A).

T.C.A. S. A. S. I. B. I. B.
(T.Chandrasekhara Reddy)
Member (J).

Dated: 5th February, 1993.

S. S. T. G. R.
Dy. Registrar (Jd)

contd. --- 61 -

Rn 6
21930.A.342/91

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. V. NEELADRI RAO : V.C.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. CHANDRA SEKHAR REDDY
: MEMBER (J)

AND

THE HON'BLE MR.

DATED: 5/2/1993

ORDER/JUDGMENT:

for Typing

R.P./C.P./M.A. No.

M.A. No.

in
342/91.

T.A. No.

(W.S.P. No.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs.

pvm

