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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA. 350/00120/2016

Date of Order: 12.5.16.

Present

:Hon'ble Ms. Bidisha Banerjee, Judicial Member

Joydev Ghosh, son of Late Debashis Ghosh,
residing at Uttar Ghoshpara (Near Sweet
Point Mishtir Dokan), P.O. and P.S. –
Chakdaha, District- Nadia, Pin- 741222.

.....Applicant.

-versus-

1. Principal Chief Commissioner of Income Tax, Kolkata-1, Sikkim and West Bengal Kolkata, P-7, Chowringee Square, Kolkata- 700069.
2. Principal Commissioner of Income Tax- 13, Kolkata, 3 Government Place, Kolkata- 700001.
3. Joint Commissioner of Income Tax- 37, 3 Government Place, Kolkata- 700001.
4. Additional Commissioner of Income Tax Circle- 37, 3 Government Place, Kolkata- 700001.

.....Respondents.

For the Applicant : Ms. S. Saha, Counsel

For the Respondents : Mr. A. Mondal, Counsel

ORDERPer Ms. Bidisha Banerjee, JM:-

This matter is taken up in Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard both.

3. The applicant Shri Joydev Ghosh, claiming to be the son of the employee Debashis Ghosh, who died while in harness on 09.01.2009, has sought for employment assistance on compassionate ground.

4. Learned counsel for respondents dispelling the claim of the applicant, submitted that in the recorded service file of the ex-employee one Smt. Uma Ghosh was nominated for the purpose of family pension and DCRG and she was granted appointment on compassionate ground against the vacancies of recruitment year 2010-2011. On 08.09.2015 while responding to the representation of the applicant the said fact was duly informed to him as follows:

".....consequent on death of Late Debashis Ghosh, Ex-TA, Smt. Uma Ghosh, the wife of Late Debashis Ghosh, Ex-TA as per office record, was selected and appointed to a post of Multi Tasking Staff on compassionate ground against the vacancies for the recruitment year 2010-11.

Since the claim for compassionate appointment against the death of Late Debashis Ghosh, Ex-TA was already met by appointment of Smt. Uma Ghosh in the year 2011, your claim for compassionate appointment for death of Late Debashis Ghosh, Ex-TA cannot be entertained."

Further, on 20.10.2015 through an RTI reply the applicant was informed that Smt. Uma Ghosh was employed on the basis of Provident Fund nomination executed by late Debashis Ghosh.

5. During the course of hearing learned counsel for applicant invited my attention to Provident Fund nomination executed by the employee, Debashis Ghosh on 30.08.1988 where the name of nominee as shown as his mother Kalyani Ghosh, as wife. Learned counsel for applicant also submitted that as per Electoral Roll, Smt. Kalyani Ghosh was the wife of Sri Debashis Ghosh (Annexure A-8). Further, a certificate of registration of marriage depicting the date of marriage as 21.05.1988, was brought to the notice of this Bench in substantiation of relationship of Debashis Ghosh with Kalyani Ghosh.

On the basis of such documents, learned counsel for applicant submitted that Joydev Ghosh being the son of Kalyani Ghosh would be eminently eligible for employment assistance on compassionate ground.

6. At this juncture, learned counsel for respondents would vociferously submit drawing my attention to the marriage registration certificate that the date of marriage as shown between Debashis Ghosh and Kalyani Ghosh was 21.05.1988, whereas the educational qualification certificate of Joydev Ghosh, claiming himself to be the son of Debashis Ghosh demonstrates his date of birth as 14.05.1987 i.e. prior to the date of marriage between Debashis Ghosh and Kalyani Ghosh. Therefore, admittedly Joydev Ghosh was not the son of Debashis Ghosh.

Learned counsel for respondents further submitted that although in the service documents of the employee, the name of Kalyani Ghosh is mentioned as wife strangely enough

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Learned counsel for respondents further submitted that although in the service documents of the employee, the name of Kalyani Ghosh is mentioned as wife strangely enough that the employee had never nominated Joydev Ghosh to receive any of the benefits as an alternative nominee in case the nomination in favour of Kalyani Ghosh became invalid due to her death/divorce/insanity. Therefore, learned counsel for respondents would argue that Joydev Ghosh who was not the son i.e not regarded as the son by the employee had no right to be considered as such.

7. Learned counsel for respondents placed an order passed by the Court of Judicial Magistrate, 5th Court Alipore in M. Case No. 606/2001, T. R. No. 62/2002 in the case of Uma Ghosh vs. Debashis Ghosh where Uma Ghosh was granted maintenance under Section 125 of Cr. P.C. as wife of the employee, Debashis Ghosh.

8. Learned counsel for applicant on the contrary placed a decree from Civil Judge (Junior Division), Kalyani, Title Suit/Case No. 229/09 in Kalyani Ghosh and other vs. Additional C.I.T., where the decision with reasons were as follows:

"Issues Number 1, 2 and 5

From the facts and circumstances of this case this Court finds that as per the assertions of the plaintiffs it appears that the plaintiff number 1 has claimed herself to be the legally married wife of the deceased Debashis Ghosh and it is the claim of the plaintiffs that the plaintiffs number 1 got married with the said Debashis Ghosh 26 years ago and the marriage was registered in the year 1988 and at out of their wedlock the plaintiff number 2 was born and the plaintiff number 1 and Debashis Ghosh resided together as husband and wife. The plaintiffs further state that the said Debashis Ghosh expired on 09.01.2009 and he was an employee of tax department and his designation was tax assistant."

The Court considered the moot point as follows:

" So, from the facts and circumstances of this case this court finds that the mute point of consideration is that as to who is the legally married wife of Debashish Ghosh and on determination of such issue it can be concluded as to who is entitled to get the post service benefit of deceased Debashish Ghosh".

The Learned Court found that Debashis Ghosh married the plaintiff Kalyani Ghosh on 21.05.1988 but no evidence had come forward on behalf of Smt. Uma Ghosh (added defendant no. 2 therein) showing that she was the legally married wife of Debashis Ghosh and that the marriage took place prior to the marriage of Kalyani

Ghosh with Debashis Ghosh and therefore the Court held that Kalyani Ghosh was the legally married wife of deceased Debashis Ghosh and "so the plaintiffs" (Kalyani Ghosh and her son Joydev Ghosh the applicant herein) "are entitled to entire amount in respect of Provident Fund, Gratuity and Death benefits standing in the name of deceased Debashis Ghosh". No declaration in favour of Uma Ghosh could be noticed.

9. In view of such an emphatic declaration by a Competent Court of Civil jurisdiction, as on 22.04.2014, in favour of Kalyani Ghosh and in absence of any contention in regard to pendency of any petition before any higher forum or any contrary decision by a higher forum, this Tribunal as well as the authorities would be bound to act in terms of the Civil Court's declaration.

10. Therefore the respondents may consider the prayer of Kalyani Ghosh or the present applicant for appointment in place of Uma Ghosh for employment assistance on compassionate ground on the basis of the Civil Court Declaration and pass appropriate order within three months.

11. Accordingly, the OA is disposed of. No costs.

(Bidisha Banerjee)
Member (J)

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