

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No. 332/00121/2017

Order reserved on : 16.05.2018

Pronounced on : 30.05.2018

Hon'ble Mr. Justice V.C. Gupta, Member (Judicial)

Syed Akhtarul Mulk aged about 78 years S/o Late Sayed Jameel Ahmad, R/o Mulk Apartment, 1-A, Sunderbagh, Hawett Road, Lucknow-226018.

.....Applicant

By Advocate : Applicant in person.

Versus

1. The Commissioner, Kendriya Vidyalaya Sangathan(HQ) Institutional Area, Shaheed Jeet Singh Marg, New Delhi.- 110016.

2. The Joint Commissioner of Finance, Shaheed Jeet Singh Marg, New Delhi-110016.

3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Officer, Sector-I, Aliganj, Lucknow.

.....Respondents

By Advocate : Ms. Garima Dixit for Ms. P. Bisht.

ORDER

Delivered by: Justice V.C. Gupta, Judicial Member:

This original application has been filed by the applicant seeking following relief(s):

- I- To quash the memorandum/order dated 06.02.2017 vide letter No. F18/3240)3140/98/KVS/(HQ)P&I/2043 is annexed with this original application as Annexure No.2.*
- II- To direct the opposite party no. 1 to release the family pension of the applicant along with the arrears with the interest in accordance with the law settled.*
- III- To allow the original application in favour of the applicant with cost.”*

2. The brief facts giving rise to this petition are that wife of the applicant Aijaz Fatima Khan was a teacher in Kendriya Vidyalaya and retired after attaining the age of superannuation in the year 1999 and was receiving pension after retirement by PPO issued on 13.07.1990 (appears to be wrong in view of the fact that date of retirement was pleaded in the year 1999). It is the case of the applicant that she left the applicant being legal wedded husband and as such he was withdrawing the family pension in a legal manner. It has been further contended that marriage of the applicant with late Aijaz Fatima Khan, deceased employee, was solemnized in the year 1963 and they were living happily. However, the applicant suffering serious trouble and fell ill and got his illness diagnosed and came to know countless disease i.e. CORONARY ARTERY DISEASE, RECENT IWMI, TRIPLE VESSEL DISEASE, SPONDYLITIS, BRONCHITIS, DYSPNOEA, EXERTION,

HYPERTENSION, SEVERE LIVER DYSFUNCTION, for which the applicant has to take lifelong treatment for the aforesaid illness. As the applicant wife Aijaz Fatima Khan was in a government job but real problem started when she was transferred to another city and whereby leaving the applicant helpless as he has been working with AJL National Herald, as a journalist, as a private employee. As his job was private so he cannot move with his wife at the time of her transfer and being the lonely person the health of the applicant deteriorated and he could not maintain himself and was in need of someone to take his care and protection. The applicant has already lost his job at the AJL National Herald in the year 1999 and has not been paid any penny. He filed writ petition which is still pending for his grievances against AJL National Herald and as such he became fully dependent on the salary of his wife but at the same time the applicant was in need of someone who may help in his poor illness days. The applicant has suffered from heart stroke in 2010 and he was admitted in Medanta Hospital at Gurgaon with the help of wife late Aijaz Fatima Khan and she borne expenses more than Rs. 300000/- for the treatment of the applicant.

3. The applicant was interacted with one Smt. Madhubala Oberai urf Noor Jahan in the year 1990 and he got married with consent of his first wife Aijaz Fatima Khan

and his daughter Ms. Shahina Mulk. According to the applicant he married to Smt. Noor Jahan because he was in need of some helping hand in his illness days who can help in his treatment but second marriage was called off in the year 2012 when second wife started quarrelling him on each day and she wanted to live independent life and wanted to live in another place. The applicant due to pathetic condition was not allowing the same and consequently decided to divorce to her second wife Noor Jahan by mutual consent on 15.12.2012.

4. Smt. Aijaz Fatima Khan was transferred to her hometown after making effort by the applicant and thereafter she retired in the year 1999. After the death of his first wife Aijaz Fatima Khan, he made a representation that he is the only surviving husband of Late Aijaz Fatima Khan and requested for family pension which was allowed to him since 30.12.2013.

5. Suddenly, the applicant has received a notice dated 19.05.2016 issued by respondents asking to show cause on the ground that he is not eligible to withdraw the family pension as per Rule 54(6) of CCS CCA (Pension) Rule, 1972. The applicant gave a detailed reply on 30.05.2016. The copy of the reply to show cause notice has been annexed as Annexure No. 4 to this O.A. The copy of show cause notice has already been annexed as Annexure No. 1

to this OA which reads as under:

ANNEXURE NO. 1
[SHOW CAUSE NOTICE]
 “KENDRIYA VIDYALAYA SANGATHAN (HQ)
 18, Institution Area,
 Saheed Jeet Singh Marg,
 New Delhi-110016

F.18(3240)3140/99/KVS(HQ)/P&I/846 Dated 19/05/2016

Sh. Shyed Akhtarul Mulk
 H/o late (Smt.) A.F. Khan
 R/o 1-A, Sunderbagh,
 Lucknow-226018.

Sub: - Show Cause Notice-Regarding.
 Sir,

I am to inform you that you have been drawing Family Pension consequent upon the demise of your wife Late (Smt.) Aijaz Khan, Ex-PGT, KV AMC Lucknow w.e.f. 30.12.2013 to 30.04.2016 in compliance to PPO No. F. F.18(3240)3140/99/KVS dated 13.07.1999. It has been brought to our notice that you got married with Mrs. Madhu Bala Oberoi during January 1990 and prima-facie necessary documents/evidence of marriage are received in this office. However, you have submitted the application for family pension to KVS by concealing the fact about your second marriage. As per Rule 54 of CCS (Pension) Rules, 1972, you forfeit your entitlement of Family Pension on the grounds of remarriage.

It is, therefore, requested to explain the position regarding 2nd marriage within the 15 days from the date of receipt of this letter and also state the reason as to why the sanction of Family Pension should not be stopped with immediate effect and order for recovery of the amount already drawn by you w.e.f. 30.12.2013 to 30.04.2016.

Yours faithfully,
 Sd/-
 (M. Arumugam)
 Joint Commissioner (Fin) ”

6. After considering the representation made by the applicant in pursuance of the show cause notice, a memorandum has been issued on 06.07.2017 directing the State Bank of India for stoppage of family pension to the

applicant from June, 2016 and further directed the applicant to refund the amount of family pension withdrawn from 30.12.2013 to 31.05.2016 to Kendriya Vidyalaya Sangathan, New Delhi. The copy of this memorandum has been annexed as Annexure No. 2 to this O.A.

7. Aggrieved by action of the respondents the present original application has been filed on the ground that applicant gave divorce with second wife on 15.12.2012 as such the matrimonial relations with second wife comes to an end before the death of the first wife, as such he would be entitled to get family pension. It was further contended that no opportunity of being heard was given to the applicant and as such the order passed is in utter violation of the principle of natural justice and doctrine of ***Audi Altrem Partam*** .

8. It is important to mention here that in pleadings the applicant did not dispute that the second marriage was performed with Hindu lady and alleged that after she converted to Muslim celebrated marriage in accordance with Muslim law. He has annexed an affidavit as document for alleged dissolution of marriage by mutual consent.

9. Counter reply has been filed stating therein that daughter of the applicant Shahina Mulk borne out of

wedlock of first wife Aijaz Fatima Khan informed the department that the applicant has got remarriage on 13.01.1990 and as such as per Rule 54(6) (i) of CCS (Pension) Rule family pension could be admissible to a surviving spouse till his/her remarriage or till death which event occurs first and in the present case the applicant has already contracted a marriage during lifetime of the pensioner would not be entitled to any family pension. On the basis of it, a show cause notice was issued and after considering the reply of the applicant where he admitted remarriage, as alleged by his daughter, in the year 1990 and the plea of divorce being false one, the impugned order for stoppage and recovery of the pension was passed. The applicant after death of his first wife concealed this fact that he got remarriage in the year 1990 when first wife Aijaz Fatima Khan was alive. After seeking clarification from Ministry of HRD, the Ministry of HRD responded to this office vide office order dated 25.04.2016 and stated that as the applicant got remarriage during lifetime of first wife therefore is not entitled to get family pension in view of Rule 54(6) (i) of CCS (Pension) Rules. The matter is also scanned by DOP&T and held that the applicant was not entitled to get family pension in view of solomonizing the second marriage during lifetime of the first wife. After considering the reply, the applicant was also informed vide letter dated 09.06.2016 that his pension has been stopped w.e.f. June,

2016. When the applicant was asked to explain about the second marriage, in reply he admitted solemnizing the second marriage during lifetime of the first wife late Aijaz Fatima Khan but pleaded that he gave mutual divorce on 15.12.2012. The applicant has given full opportunity of being heard by issuing notice of show cause and the reply given by him was also considered by the respondents before passing the impugned order.

10. Rejoinder has also been filed by applicant and reiterated the fact of solemnizing the second marriage during lifetime of first wife but alleged that the daughter Shahina made a complaint of the applicant without going into the facts that applicant has divorced to second wife during life span of first wife. It was further contended that the respondents has not given opportunity to clarify himself on the ground that petitioner was single at the time of death of first wife. The applicant was first time alongwith RA pleaded the divorce by filing the photostate copy of an affidavit of Smt. Madhubala oberai @ Noorjahan alleged to have been of dated 30.05.2016. The contents of affidavit are extracted herein below for ready reference:

‘शपथ पत्र

मैं शपथिनी मधुबाला ओबराय उर्फ नूर जहाँ आयु करीब 61 साल पुत्री स्व० मोतीराम ओबराय निवासिनी फ्लैट नम्बर- 1 ए सुन्दर बाग, लखनऊ शपथ पूर्वक निम्न बयान करती हूँ:-

।- यह कि शपथिनी की शादी वर्ष 1990 में सैययद अख्तरुल मुल्क से लखनऊ मुस्लिम रीति रिवाज से सम्पन्न हुई थी।

।।- यह कि शपथिनी और उसके पति सैययद अख्तरुल मुल्क के मध्य आपसी वाद-विवाद हो जाने के कारण शपथिनी अपने पति से मौखिक रूप से तलाक लेकर उक्त फ्लैट के एक भाग में अलग रहने लगी है। दि० 15.12.2012 से शपथिनी तथा सैययद अख्तरुल मुल्क के मध्य कोई पति पत्नी का सम्बन्ध नहीं रह गया है। शपथिनी अपनी बेटी अजरा मुल्क के साथ उक्त फ्लैट में अलग रह रही है। अब शपथिनी तथा सैययद अख्तरुल मुल्क दोनों पूर्ण रूप से स्वतंत्र हैं।

लखनऊ/दिनांक 30.05.2016”

11. He also filed alleged fatwa issued by Niyaz Ahmad Nadvi. The perusal of this paper reveals that as per facts mentioned in upper part of fatwa by applicant the fatwa has been issued treating the allegation made in the upper part of the fatwa as true.

12. I have heard the applicant in person at length and also Ms. Garima Dixit for Ms. P. Bisht, learned counsel for the respondents and perused the records.

13. The question in this case requires consideration is; whether divorce alleged to have been given by the applicant is acceptable or not in the eyes of law?

14. The fact that the applicant has contracted the second marriage during lifetime of first wife is not denied. It is also not denied that his real daughter made the complaint and when notice was issued on 09.05.2016 the alleged affidavit appears to have been prepared on 30.05.2016 the day on which applicant has to submit his reply.

15. Much emphasis has been given on the two documents filed alongwith RA. One document is an affidavit

of second wife and other is fatwa issued in his favour. The perusal of affidavit reveals that there appears to be some dispute in between Madhubala Oberai urf Noor Jahan and the applicant and for this reason Madhubala, the deponent after taking oral mutual divorce from her husband started residing in the part of the same flat separately and also stated that there is no matrimonial relation in between her and her husband, the present applicant w.e.f. 15.12.2012. If contents of the affidavit are taken to be correct the question arises whether in Muslim Law the wives have any right to gave divorce as alleged in the affidavit.

16. The contents of this affidavit reveal that form of divorce given by the second wife has not been disclosed. No provision has been placed on record wherein a muslim wife have a right to give mutual oral divorce. The perusal of the affidavit further reveals that it does not contain that applicant gave divorce by saying Talak thrice. The contents disclosed for seeking fatwa are contrary to this affidavit wherein the applicant stated that he give triple talak to second wife. Therefore, the fatwa issued in those circumstances cannot have any legal binding. Even otherwise also mere “fatwa” does not treated to be a decree of divorce issued by the competent court having jurisdiction in the matter.

17. The applicant has relied upon two judgments. The

first one is a judgment rendered by Central Administrative Tribunal, Mumbai Bench, in the case of Afsar Salim Shaikh in O.A. No. 517 of 2011 decided on 03.09.2013. The perusal of this judgment reveals that in this case there were two claimants one is the first wife and other is second wife. The claim was in respect of family pension and other retiral dues as both are claiming as a legal heir of the deceased employee. The department in this case directed both the ladies to get right determine of legal heir to receive the family pension and retiral dues by producing a succession certificate from competent court. The Tribunal after examination found that claim of the first wife is not sustainable because the deceased employee in his lifetime got deleted the nomination of the first wife much before his death and inserted the name of second wife and children of the second wife. Marriage performed with the second wife after granting the divorce to the first and divorce was got recorded by deceased in the service record. In these circumstances the Tribunal finds that the second wife would be legally entitled to receive family pension and retiral dues on the basis of material available on record before the authorities.

18. The applicant relied upon another judgment of Hon'ble High Court of Tripura, Agartala in WP (C) No. 588 of 2015. The perusal of this judgment reveals that the

applicant who was a constable in Border Security Force contracted the second marriage during lifetime of first wife. The fact of entering to second marriage during lifetime of first wife was not in dispute. When a complaint was received, the court of enquiry was conducted and on the basis of enquiry report the petitioner was found guilty and the order of dismissal from service was passed. The case of the petitioner in this case was that he is a mohamddan, govern by Muslim Personal Law and therefore, as per his personal law he is entitle to enter into second marriage. He also alleged that he entered second marriage with consent of the first wife. The High Court after considering Rule 7 in Chapter II of BSF Rules ruled that Rule 7 is not applicable because it disqualify a person to be recruited who having a spouse entered into or contracted a second marriage with any person. However the Central Governments after its own satisfaction exempt such person who entered the second marriage permissible under personal law applicable to such person and other parties to the marriage and for that there exist other ground to do so. The High Court ruled that this Rule-7 would not be applicable however, the High Court finds that Rule-21 of Central Civil Services (Conduct) Rules, 1964 are applicable which provides the restrictions regarding marriages during continuance of the service. Sub-Rule 2 provides that no government servant, having a spouse living, shall enter into, or contract, a marriage with

any person provide that the Central Government may permit a Government servant to enter into, or contract any such marriage as is referred to in Clause (1) & Clause (2), if it is satisfied. For ready reference Rule 21 of CCS (Conduct) Rule, 1964 is extracted herein below which is equally applicable in the present case:

“21. Restriction regarding marriage-

- (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and
- (2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause(2), if it is satisfied that-

- (a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and
- (b) there are other grounds for so doing.
- (3) A Government servant who has married or marries a person other than of India Nationality shall forthwith intimate the fact to the Government.”

In the light of this provisions the Hon’ble High Court ruled that if any second marriage has been entered into without seeking any exemption by the government servant the same would be impermissible. Merely for this reason that Muslim Personal Law provides the second marriage does not given any reason to condone the misconduct on the part of the government employee. In this case misconduct of applicant of contracting second marriage during lifetime of 1st wife was found proved in terms of Rule 21 however, the court was of the view that punishment award was totally disproportionate and imposed the lesser

punishment of compulsory retirement instead of dismissal from the service.

19. Both these judgments how helped the applicant is not coming forth. In the first case the Mumbai Bench of this Tribunal found that first wife was divorced legally and then second marriage was performed which was also emerged out from the service record of the deceased employee and also by making nomination in the favour of the second wife after entering the fact that the first wife was divorced by him.

20. In the second case, the Agartala High Court held that unless there is exemption granted by central government to the employee to contract the second marriage the solemnizing marriage during lifetime of the first wife with other person would be a serious misconduct.

21. Here in the case in hand the applicant has not filed any consent of his first wife for the second marriage. It is also not the case that the applicant is the government servant. As such Rule 21 of the CCS (Conduct) Rule will not be attracted so far as the applicant is concern. The relevant rules which would be applicable in this case is Rule-54 (6) (1) of the CCS CCA (Pension) Rules which provides that if any person during the lifetime of his wife or husband as the case may be entered into second marriage during the

continuance of the first one, the person would be seized to get family pension from the date when he contracted the second marriage. Here in this case solemnizing the second marriage during the lifetime of the first wife of the applicant is not denied. It is true that Muslim law permits second marriage to the Muslim man but in view of the Rule 54 if a spouse entered into second marriage during the lifetime of first wife he would be disentitled to get the family pension.

22. So far as the question of the divorce is concerned the facts and circumstances of the case as has been discussed herein above no provision has been shown by the applicant that Muslim lady can give mutual oral divorce to her husband as stated in the affidavit given by wife.

23. It is not in dispute that second marriage was performed with a Hindu lady. It is contended by the applicant that she was first converted into Muslim then in accordance with Muslim Law marriage was performed. No Nikahnama has been placed on record to prove this fact. If marriage was performed not in accordance with Muslim Law the alleged divorce cannot take place as alleged by the applicant. If Muslim Law applies no provision of giving divorce orally by a Muslim wife has been shown, therefore the question of giving divorce of the second wife is not substantiated from the record. Moreover it is worth mentioned that the compliant has been made by none else

but by the real daughter born after wedlock of the first wife. The alleged consent of the first wife contracted into second marriage has not been placed on record. Therefore, in these circumstances the order passed by the authorities cannot be interfered and at the same time it would be important to mention here that this Tribunal having a limited jurisdiction to decide the service matter and is not competent to decide the matrimonial status of any individual or person for which the competent court is Family Court as held by Hon'ble Supreme Court in **Balram Yadav Vs. Fulmania Yadav, 2016 (13) SCC 308.**

24. Hence, this Tribunal is of the view that the applicant may seek declaration from the competent court of his matrimonial status as on the date of death of first wife Aijaz Fatima Khan. Unless such declaration is obtained, no interference is warranted in the impugned order and respondents cannot be directed to release the family pension in favour of the applicant.

25. With these observations, this OA is dismissed. However, there shall be no order as to costs.

(Justice V. C. Gupta)
Member (J)

JNS