

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/669/2018

Date of Order: 25.06.2019

Between:

Ambati Krupavathi @ Rupavathi
W/o Late Sri Ambati Krishna Rao
Age 58 Years, Occ: Housewife, Gr.C
R/o D.No.11-75, Near 'Z' Bridge
Indrapalem, Kakinada – 533 006.

... Applicant

AND

1. Chief Post Master General
NZ 16, Satya Narayana Nagar
Krishna Lanka, Vijayawada,
Andhra Pradesh – 520 013.
2. The Post Master General
Visakhapatnam Range
Postmaster, Post Office L B Colony (sub Office)
Visakhapatnam (Urban), Post Master General Office
Visakhapatnam, Andhra Pradesh, India (IN)
PIN Code – 530 017.
3. Superintendent of Post Offices
Kakinada Division
East Godavari District-533001.
4. The Inspector Posts
Kakinada South Sub-Division
East Godavari District
Kakinada – 533 003.
5. The Director of the Accounts Postal
AP Circle, Vijayawada, Krishna District.
6. The Senior Accounts Officer
Pension Section

O/o Director of Accounts, Postal,
AP Circle, Krishna District.

... Respondents

Counsel for the Applicant ... Mr. N. Siva Reddy.

Counsel for the Respondents ... Smt. K. Bharathi, Addl. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed challenging the non-grant of family pension.
3. Applicant's husband, while working for the respondents organisation as Cash Overseer, was compulsorily retired on 28.2.1995. First wife of the husband of the applicant deserted/died leaving behind a daughter, who was later married. After the death of the 1st wife, applicant got married to the ex- employee. Thereafter, when her husband passed away on 7.3.2015, applicant represented for grant of family pension on 6.4.2015. However, as the same was not granted, the OA is filed.
4. The Contentions of the applicant are that the respondents having made detailed inquiries, there is no reason as to why family pension should not be granted. There is no rival claim.
5. Respondents resist the contentions of the applicant on the ground that the deceased employee indicated Smt A.PadmaVathi as his wife on 9.7.1965, and on 10.4.1991 informed that the name of his wife is Smt. A.PadmaVathi alias A.Krupavathi. Taking cognizance of this

fact, the deceased employee was proceeded for bigamy and penalty of compulsory retirement was imposed. Consequently, service pension was granted to the deceased employee leaving the question of family pension open. While seeking sanction of service pension, the deceased employee did submit that he has no family members. A few years later, the deceased employee did represent that he got remarried on 13.3.1997 submitting the marriage certificate issued by the Pastor. Respondents, on inquiry, became aware that due to the dispute between the deceased employee and his daughter, through 1st wife, the deceased employee did not inform about the 2nd marriage to the respondents for nearly a decade. After settlement of the dispute, the details of the 2nd wife, i.e., the applicant and her two children, was brought to the notice of the respondents. However, the 5th respondent sought certificate of divorce with first wife or her death certificate and to submit marriage certificate confirming the marriage of the deceased employee with the 2nd wife, issued by the registrar of marriages. When the ex-employee was alive, he informed the respondents on 9.4.2001 that his 1st wife deserted him and got married to some other person and that he does not know about her whereabouts. The separation letter confirming separation from 1st wife, issued by the village elders, was taken away by the daughter of the 1st wife and, hence, he is not able to produce the letter. As the documents sought by the 5th respondent were not produced, family pension was not granted.

6. Heard both the counsel and perused the documents placed on record in detail.
7. I) The deceased employee has intimated vide his representation dated 9.4.2001 that his wife has deserted him and that the separation issued by the village elders confirming the separation was grabbed by the daughter of the 1st wife in view of certain internal family squabbles. Deceased employee has submitted the marriage certificate (copy at R-5) solemnising the marriage with the 2nd wife. The deceased employee, due to certain

disputes within the family, did not intimate the details of his 2nd marriage to the respondents as soon as he got married. For this, he suffered the punishment of compulsory retirement on grounds of bigamy. However, after the disputes were settled, deceased employee represented that he got remarried on 13.3.1997 giving details of his 2nd wife and other family members for the sake of family pension. This was got verified by the 4th respondent and reported that the deceased employee married the applicant after the 1st wife has deserted him. The report also confirms that due to dispute of the deceased employee with his daughter through the 1st wife, the details of the 2nd marriage were revealed to the respondents after the resolution of the disputes. There is no rival claim.

II) In the context of the above facts, the 5th respondent seeking the divorce/death certificate of the 1st wife or the marriage certificate from the registrar of marriages with the 2nd wife is impractical. The ex-employee is no more to respond to the requirements of the 5th respondent. Applicant, who is a house wife, is around 60 years and expecting her to comply with the impossible conditions laid, would be unfair. Besides, the deceased employee was punished with compulsory retirement for not informing the respondents about the 2nd marriage. The very fact that the deceased employee was proceeded for bigamy confirms that he has married the applicant. The disciplinary proceedings issued in regard to bigamy stand as ample testimony to the marriage. Citing the same and demanding that the applicant, who is aged 60 years, should produce marriage certificate is akin to double jeopardy. Besides, it is not fair to make the family suffer for the mistake committed by the deceased employee. The 4th respondent's report confirms that the applicant is the 2nd wife. The deceased employee did request to include the name of the 2nd wife and other family members in the official records for family pension. Therefore, as

the husband of the applicant is no more, it may not be feasible to produce the divorce certificate with the 1st wife. Besides, it is evident that the 1st wife whereabouts is not known for years. When a person is missing for more than 7 years, then as per Section 108 of the Evidence Act, it is for the 5th respondent to prove that she is alive, if they insist that her death or divorce certificate is to be produced. As is seen from the records, the respondents have not produced any such evidence. Hence, respondents cannot insist for the submission of the certificates called for. In regard to the 2nd marriage, the report of the 4th respondent would demonstrate that the applicant is the 2nd wife. More importantly, there is no rival claim till date for the respondents to be circumspect about any future competing claim. Applicant is having children to be taken care and to lead a dignified life till her last breath, family pension is a must. The deceased employee is from the lower rung of the respondents organisation who may not be fully aware of the complex rules governing pension. Yet, he did try to make up for his mistake by giving details of the applicant and children through her, but before the bureaucratic red tape could be cut, he kicked the bucket leaving the family in shambles and forcing them to run from pillar to post. Deceased employee made the mistake and the applicant is made to suffer for want of family pension for the last 4 years.

iii) Let it not be forgotten that family pension is not a family estate of the deceased employee for him to nominate any one to have a right on the same. Family pension is not something for which he has contributed and earned. Family pension is a right accrued to a person on acquiring a particular status. The status, though not a happy one, is that of a widow. Hence, the family pension, as a right, goes to the widow of the deceased employee. The right to family pension flows to the applicant on acquiring widowhood. There

is no other widow making the claim . The profound observation of the Hon'ble Supreme Court made in Violet Isaac (Smt) v. Union of India, (1991) 1 SCC 725, extracted hereunder, leads us to a glitch less solution to the issue on hand:-

"The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

5. In *Jodh Singh v. Union of India*, this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The court observed:

"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition."

The applicant is the only widow and there is no other widow or any other rival individual making the claim. It is her right to receive pension for being a widow of the deceased employee. It is a welfare measure designed to favour a widow, who, in the present case, is the applicant.

IV) Thus, there being overwhelming evidence as adduced above; in the form of the report of the 4th respondent, recommendation of the 3rd respondent to authorise family pension to the 5th respondent, marriage certificate issued by the pastor, need for fulfilment of Section 108 of Evidence Act, there being no rival claim, the balance of convenience and interest of justice are in favour of the applicant. The Hon'ble Supreme Court's observation, referred to hereinbefore, fully supports the cause of the applicant. The rejection of the family pension by the respondents is arbitrary and is incongruent to the legal principle enunciated by the Hon'ble Apex Court. Hence, the OA succeeds.

V) Consequently, respondents are directed to consider as under:

- i) To grant family pension to the applicant as per pension rules in vogue from the date of death of the ex-employee.
- ii) Time allowed to implement the order is 3 months from the date of receipt of this order.
- iii) No order as to costs.

With the above directions, made in Para 7(V), the OA is allowed.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 25th day of June, 2019

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