CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 1254 of 2013

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

JAHANARA

VS

UNION OF INDIA & ORS.

For the applicant : Mr.S.P.Bhattacahrjee, counsel

For the respondents : Mr.K.K.Maity, counsel
Mr. P. K. Roy, Counsel.

Order on : 28.6.16.

O R D E R

This matter is taken up in the 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. By way of this application the applicant has sought for the following relief:

> "The applicant prays for pension after the death of her husband though the petitioner's husband was receiving pension during his lifetime. But refuse3d to pay family pension by order dt. 19.3.12 issued by Deputy Commissioner of Customs (Annexure A/5)."

3. The admitted position as could be gathered from the reply would be as under :

The present applicant Smt. Jahan Ara has claimed family pension as she is the second wife of the retired employee who had retired on 31.12.1998 and expired on 23.3.11. She has also stated that the first wife Bibi Hadisa expired on 14.9.92. The employee submitted his Marriage Registration Certificate regarding his second marriage on 5.11.88 i.e. during the lifetime of his first wife. As per Rule 21 of CCS Conduct Rules, no Government employee shall enter into or contract a marriage with any person if the Government employee has a spouse living. It is also stated that if the employee is not governed by the Hindu Marriage Act, he has to take permission from the competent authority

under Personal Law applicable. Whereas the employee has informed the office on 7.11.2000 about his second marriage on 5.11.88 while his first wife was living.

Further, Service Book of the ex employee demonstrated that he declared the family particulars in 1984 as follows :

1.	Smt. Hadisa Khatoon	Wife	DOB : 15.1.1945
2.	Md. Ashalam	Son	DOB : 21.3.1964
3.	Md. Shelim	Son	DOB : 25.4.1966
4.	Kum. Zarina Khatoon	Daughter	DOB : 30.3.1976

After his retirement on 7.11.2000 he sought for change of nomination/entry in Service Book in favour of the present applicant as his wife. He expired on 23.3.11. The applicant wrote a letter dated 5.4.11 to the respondent No.2 seeking pension. The respondent No.2 by letter dated 7.9.11 requested the applicant to submit a declaration from Zarina Khatun, the married daughter of Hadisa Khatun. She submitted the declaration of Zarina Khatun which was received by the respondent on 21.9.11. By letter dated 19.3.12 the respondent No.2 refused to pay the pension.

As per Rule 54 (7)(a)(ii) of CCS (Pension) Rules on the death of a widow her share of the family pension shall become payable to her eligible child, provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full to her.

The respondents have already informed the present applicant that after the death of the pensioner and the spouse, the entitlement is bestowed on widow/widower or divorced or unmarried daughter/parents/dependent disabled son/daughter. She was also asked to submit a declaration about the present marital status of the daughter of the ex employee. The present applicant submitted the required documents by letter dated 21.9.11. But the respondents did not consider her claim as per Rule 21 of CCS (Conduct) Rules.

4. Therefore the case at hand is one where the first wife expired in 1992 but during the lifetime of the first wife the employee married the applicant on 5.11.88 under his personal law and therefore the applicant is the sole surviving legal wife.

5. Ld. Counsel for the applicant would argue that the respondents having failed to get the marriage of the employee with the applicant nullified by a competent Court of Law, could not deny her settlement dues of her late husband since her co-habitation with the employee for years together, begetting children out of the wedlock/relationship and admission of her status by the employee himself would make her entitled to settlement dues in her favour more so in absence of any rival claimants to the family pension.

6. Per contra, the respondents would rely upon the following excerpts from Central Civil Service Rules :

> "if an employee not governed by the Marriage Act, desires to contract a marriage while the spouse is living, he has to apply to the Government for permission of second marriage either under the personal law applicable to him or on other grounds. Such applications will be scrutinized by the competent authority as to the adequacy of the grounds for allowing an exception to Government is general policy and orders issued."

7. A bare perusal of the aforesaid provision would exemplify and demonstrate that a Govt. servant, irrespective of the personal law governing him, is not permitted under service rules to marry for a second time while the first wife is living. Such a marriage can take place with the permission of Central Govt. "if it is permissible under the personal law applicable to such Govt. servant" and if "there are other grounds for so doing". Therefore "Bigamy" which is a prohibited under Hindu Marriage Act and punishable under Section 17 ,would constitute on offence under Section 295 of IPC and is punishable under Section 495 of Indian Penal Code read with Section 17 of Hindu Marriage Act as well as under service rules, could be allowed by Central Govt. if there were "other grounds" which grounds have not been enumerated, which itself is a strange proposition. In the case at hand, provisions of Hindu Marriage Act would not apply to the employee being a Muslim, therefore it is not a case where second marriage during subsistence of the first one was to be treated null and void.

8. In regard to presumption as to documents and second marriage the following decisions could be noted :

i) In ***Smt. Aina Devi -vs- Bachan Singh & Anr. [AIR 1980 All 174]*** rendered by Hon'ble High Court at Allahabad it was held that

> *"Certified extracts from the electoral roll and the family register of a village which are public documents are admissible in evidence to prove their contents. The entries made therein are*

presumptive evidence of what they recorded until disproved by satisfactory evidence to the contrary. The burden is on the other party to prove that the entries were incorrect."

ii) In ***Smt. Sheel Wati –vs- Ram Nandini [AIR 1981 All 42]*** it was held that

"a marriage though null and void for contravening any of the conditions prescribed by Clauses (i), (iv) and (v) of Section 5 of the Act, has yet to be regarded a subsisting fact, and in that sense it cannot be said to be wholly non est in law, or a nullity, so long as it is not declared to be null and void by a decree of Nullity of the District Court on a petition presented by either party thereto against the other party to me marriage. No third person can treat the marriage to be void or have it adjudged to be null and void in any other suit or proceeding unless it bus already been declared to be so by a decree of Nullity of a District Court in accordance with the procedure prescribed by and under the Act; the only exceptions being the case where the aggrieved spouse of the first marriage on account of whose being living the second marriage is void, prosecutes the other spouse for being punished for bigamy under Section 406 or 495 of the Indian Penal Code, read with Section 17 of the Hindu Marriage Act; or the ease where the aggrieved spouse prosecutes the guilty spouse for a contravention of Clauses (iv) and (v) of Section 5 under Section 18(b) of the Act.

iii) In ***Smt. Nirmala & Ors. –vs- Smt. Rukminibai & Ors. [AIR 1994 Karnataka 247]*** the Hon'ble Division Bench referred to a decision rendered in ***Smt. Parameshwaribai –vs- Muthojirao Scindia [AIR 1981 Kant 40]*** wherein in a case of second wife the Hon'ble Court observed :

One thing that stands out permanently in this case is that during his life time Narayanrao treated and acknowledged defendant No. 1 as his legally wedded wife and defendants 2 to 7 as his legitimate children. This position is also not disputed but in fact admitted by the plaintiffs themselves.

When there is a cohabitation of a man and a woman as husband and wife, a presumption arises to the effect that there was a valid marriage between the parties. In Badri Prasad v. Deputy Director of Consolidation the Supreme Court held that where a man and a wpman live as husband and wife for about 50 years, a strong presumption arises in favour of their wedlock. It is also further held that the proof as to the factum of marriage by examining the priest and other witnesses is not necessary in such cases. The law in its wisdom has laid this presumption. If a man and a woman live as husband and wife for a pretty long time and the husband acknowledges his woman as his wife, a presumption can be raised in favour of the legality of their marriage. To expect them to bring witnesses at a point of time when the witnesses will not be available to prove their marriage is to expect something which cannot be done by the parties at that point of time. Therefore, the law in its wisdom has created this presumption in favour of a valid marriage.

The Hon'ble Division Bench relied upon ***Smt. Parameshwaribai*** (supra) and propounded the following (extracted with supplied emphasis for clarity) :

> *A man and a woman tied together by wedlock form the least unit of our complex society and whenever a man and woman lived as husband and wife for a fairly long time and were so reputed, law presumes that they are living as husband and wife and not in a state of concubinage. Presumption is both with regard to factum of marriage and legality of it. It is a strong presumption as it goes to the root of the structure of society and the persons who challenge it will have to rebut it by clear, cogent and satisfactory evidence. This burden is heavy on them."*

The Hon'ble Court further held :

> *In view of the law quoted above, it is clear that a cohabitation of a man and a woman as husband and wife for a long time under the same roof will raise a presumption of a legal and valid marriage in their favour and the off-springs of such union cannot be termed as illegitimate. This presumption will be a rebuttable presumption. But the evidence required to rebut this presumption cannot be an evidence of mere probabilities but it should be an evidence to prove conclusively that the possibility of such valid marriage is completely ruled out. A perpetual union of a man and a woman goes in favour of legality and not a crime. The evidence of DW-1 proves that there was a valid marriage between her and Narayanrao somewhere in 1948 at Hebbal and the case of plaintiffs that DW-1 was a kept mistress of Narayanrao is difficult to accept. From the evidence, it is clear that the age of DW-1 was 60 when she deposed in the year 1986. Therefore she must have been around 22 years of age when she married Narayanrao in the year 1948. No such antecedents of DW-1 are brought in evidence to show that either she came from a family of ill-repute or she was a woman of loose morals or of a bad character so as to make her to live with Narayanrao at such an young age as kept mistress. Even the treatment that Narayanrao meted out to her and her children in his house and in the society at large is as his legitimate wife and legitimate children born to her in his union with DW-1. This leads to an inference that there was a valid marriage between Narayanrao and defendant No. I in the year 1948 at Hebbal as deposed by defendant No. 1. A presumption can be raised in favour of their marriage by virtue of a law of cohabitation of Narayanrao with defendant No. 1 under the same roof as husband and wife and the treatment meted out to defendant No. 1 by Narayanrao as his legitimate wife and to defendants 2 to 7 as his legitimate children*

iv) In ***Lalsa –vs- District IVth Upper District Judge, Basti & Ors.*** ***[AIR 1999 All 342]*** wherein the railway employee and the female, co-habited for about 40 years, but the employee omitted to mention the female as wife in the family register The Hon'ble Court found that "*entry in family register could not be treated as clinching evidence to deny status of wife to the female in question*".

v) In ***Bhilaji Bandu Sutar & Lohar –vs- Rangarao Shankar Sutar & Ors. [AIR 2015 (NOC) 519 (BOM)]*** in regard to presumption as to marriage Hon'ble Court held :

> *"Woman was staying with man for about 22 years till his death. In ration card and voters list she was described as his wife. After his death her name was entered in Gram Panchayat records as owner of suit house. Ration card and voters list were prepared during life time of man and to his knowledge. Electoral roll being public document and prepared by public servant in discharge of his public duty is relevant under Section 35. She would be legally wedded wife of that man."*

9. In ***Rameshwari Devi –vs- State of Bihar & Ors. [(2000) 2 SCC 431]*** where Rameshwari Devi was the first wife of deceased Narain Lal and tried to prevent the authorities from disbursing the death benefits of Narain Lal to Yogmaya Devi the second wife, the Hon'ble Apex Curt held as follows :

> *"Rameshwari Devi has raised two principal objections : (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi with her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. First objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. Inquiry was quite detailed one and there are in fact two witnesses examined during the course of inquiry being (1) Sant Prasad Sharma, teacher, DAV High School, Danapur and (2) Sri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, Rtd. District Judge, Bhagalpur, Smt. (Dr.) Arun Prasad, Sheohar, Smt. S.N. Sinha, w/o Sri S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in records as sons of Narain Lal."*

In the said case there were two rival claimants to the death benefits of Narain Lal namely Rameswari Devi, the first wife and Yogmaya Devi, the

second wife, whereas in the present case only the second wife of the deceased employee has come forward claiming family pension and other death benefits.

10. Recently Hon'ble Apex Court in ***Khursheed Ahmad Khan -vs- State of U.P. & Ors. [2015 (2) AISLJ 274]*** has held that contracting second marriage in the lifetime of the first wife was a misconduct. But there again a proceeding was initiated against the employee and he was removed from service which dismissal was upheld by the Hon'ble Apex Court while answering the question whether the impugned Conduct Rule which required permission of Government for contracting a second marriage would be violative of Article 25 of the Constitution.

The Hon'ble Court relied upon ***Javed -vs- State of Haryana [2003 (8) SCC 369]*** where the Court held that

> *"what was protected under Article 25 was the religious faith and not a practice which may run counter to public order, health or morality. Polygamy was not integral part of religion and monogamy was a reform within the power of the State under Article 25. This Court upheld the views of the Bombay, Gujarat and Allahabad High Courts to this effect. This Court also upheld the view of the Allahabad High Court upholding such a conduct rule. It was observed that a practice did not acquire sanction of religion simply because it was permitted. Such a practice could be regulated by law without violating Article 25.*
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> *54. Rule 21 of the Central Civil Services (Conduct) Rules, 1964 restrains any government servant having a living spouse from entering into or contracting a marriage with any person. A similar provision is to be found in several service rules framed by the States governing the conduct of their civil servants. No decided case of this Court has been brought to our notice wherein the constitutional validity of such provisions may have been put in issue on the ground of violating the freedom of religion under Article 25 or the freedom of personal life and liberty under Article 21. Such a challenge was never laid before this Court apparently because of its futility. However, a few decisions by the High Courts may be noticed.*

The Hon'ble Apex Court held as follows :

> *"In view of the above, we are unable to hold that the Conduct Rule in any manner violates Article 25 of the Constitution."*

11. In the case at hand the Bench is confronted with the question whether, having failed to dismiss the employee on the ground of bigamy, having failed to declare the marriage with the second wife as null and void when such marriage was not prohibited under the Personal Law governing the employee, the

authorities could deny family pension and other death benefits of the employee to the second wife in absence of any rival claimants thereto when, as enumerated hereinabove it has been consistently held that co-habitation for years together and presence of contemporaneous documents in proof of marriage and parentage of the issues would raise a presumption of a valid marriage.

12. On charge of bigamous marriage a Govt. Employee can be proceeded against departmentally and even removed from service. Nevertheless, no law has been enacted to empower the Central Govt. (or the employer) to declare a marriage of its employee who is governed by a Personal Law, as null and void, when such second marriage under the Personal Law governing the employee is permitted. The marriage was not governed by Hindu Marriage Act and therefore not prohibited under Section 5 thereof, mandating "monogamy" or punishable under Section 17 thereof. It could not be treated as null and void. The marriage being duly solemnised could not be regarded as a void marriage.

13. Therefore even going by a phantasmagorical thoughts it could not be comprehended as to how the respondents could declare the marriage of the employee with the applicant as void to deny her family pension, when she as a Muslim lady co-habited with the man for years under a valid marriage, begotten children out of the relationship and was declared by the employee himself as his wife and enjoyed that status with dignity and honour for years together and being a Muslim lady she was governed by her Personal Law whereunder second marriage was not void.

14. Further in terms of pension rules governing the employee, if the children of the first wife were available and eligible they could receive the share of the family pension payable to their mother and very well share it with the present applicant, the second wife of the deceased employee.

15. In the aforesaid backdrop the impugned order is quashed and the respondents are directed to disburse within two months to the applicant the death benefits of her husband, arrears of family pension as per her share, with interest on arrears in accordance with law.

16. The OA is accordingly disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

In