

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

**Original Application No.21/899/2018
M.A.No.625/2019**

**Date of C.A.V.: 14.08.2019
Date of Pronouncement: 19.08.2019**

Between:

J. Ramachandraiah, S/o J. Veerajah
Aged 72 years, Retired Postman, Himayatnagar Post Office, Gr. 'C'
R/o H.No.1-1-336/90, Near Thyagaraya Ganasabha
Beside Bank of Baroda
Hyderabad 500 020. Applicant

AND

1. Union of India, rep. by its Secretary
Ministry of Communications & I.T., Department of Posts
Dak Bhawan, Sansad Marg
New Delhi – 110 001.
2. The Chief Post Master General,
Telangana Circle
Hyderabad G.P.O., Hyderabad – 500 001.
3. The Senior Superintendent of Post Offices
Hyderabad City Division, Hyderabad – 500 001.
4. The Director of Accounts (Postal), Hyderabad-1
GPO, Abids, Hyderabad – 500 001. ... Respondents

Counsel for the Applicant ... Mr.Mamidi Venu Madhar
Counsel for the Respondents ... Mr. Megha Rani Agarwal, Addl. CGSC

CORAM:

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

ORDER

M.A.No.625/2019 for restoration of the OA is allowed.

2. OA is filed for not authorising the second wife of the applicant to receive family pension.
3. Brief facts of the case, that need to be adumbrated, are that the applicant who worked as a Postman in the respondents organisation has married Smt J.Anjali on 21.5.1987 when his first wife Smt. Jyothi Lakshmi could not be traced for 17 years, presuming that she was dead in the eyes of law. The first wife Smt. Jyothi Lakshmi was later found and she rejoined the family. In fact, through the first wife, applicant has been blessed with a boy, by name Sri J. Guru Prasad, on 2.6.1990. The first wife has also filed a pre interest litigation for maintenance of herself and her son in Lokadalat in L.S.A No.16/2000 where in a consent award was passed on 25.3.2000 granting Rs.1000/- towards maintenance of the first wife and Rs.2000/- for educational expenses of the son which were to be directly deducted from the salary of the applicant and remitted to the first wife. The same was complied with. The first wife died on 5.10.2005 and thereafter he got the rites and customs performed under the Hindu Marriage Act, to remarry Smt. J. Anjali on 10.11.2005. Through her, applicant has been blessed with 2 daughters. Marriage Certificate to this effect has been issued on 14.7.2014 by the Registrar of Marriages. Applicant retired on 30.11.2007 and requested the

respondents to include the name of the 2nd wife Smt. J. Anjali as a nominee for family pension which was rejected vide letter dated 25.4.2011 on the ground that the 2nd wife is not eligible for family Pension as per GOI (15) of CCS Pension Rules 1972. When represented against the same by stating the latest developments, respondents collected relevant documents but rejected the claim, on 7.11.2017, to consider the 2nd wife as the nominee for family Pension on the ground that section 5 (1) of the Hindu Marriage Act has been violated. Aggrieved over the same, OA is filed.

4. The contentions of the applicant are that the respondents have issued the CGHS card accepting that the 2nd wife and the children born through her as legally acceptable. The marriage with the 2nd wife was contracted since the first wife was missing for nearly 17 years and that the same was solemnised as per the Hindu Customs and Rites on 10.11.2005 after the death of the first wife on 5.10.2005 which was duly certified by the Registrar of Marriages. Section 5 (1) is not applicable to the case on hand. Daughters of the 2nd wife have become major and even the son of the first wife has filed a no objection affidavit for grant of family pension to the 2nd wife. The second marriage was contracted, which is legally tenable, even according to Sections 107 and 108 of the Evidence Act, 1872.

5. Respondents oppose the contentions of the applicant on the ground that as per the decision No.13 of Govt. of India under Rule 54 of CCS (Pension) Rules, 1972, the second wife is not entitled for family pension as a legally wedded wife. Therefore, the request of the applicant to grant the family pension equally to his second wife and to the son through the first wife on her demise was rejected. Further, Section 5 (1) of the Hindu Marriage Act has been grossly violated. Applicant has married the first wife on 25.5.1971 and the second wife on 21.5.1987 without getting the marriage with the first wife dissolved by obtaining a divorce decree from a competent court. Therefore, the second marriage is null and void. Further, Rule 21 of CCS (Conduct) Rules, 1964 has also been violated, which states that an employee should not contract a second marriage unless the earlier marriage was legally terminated by a divorce decree. Had he been proceeded on disciplinary grounds for violating Rule 21 of CCS (Conduct) Rules, 1964, he would not have even got pension. Applicant suppressed the facts and got the CGHS card in the name of his second wife against rules. In fact, applicant is liable to refund the medical expenditure incurred on the 2nd wife as she is not entitled for the same as per relevant rules. Besides, applicant has not made any effort to file a police complaint to trace his wife, whom he claims is missing, for nearly 17 years. Regarding grant of family pension to the son, respondents assert that it would be examined after the death

of the applicant. Decision taken to reject the request of the applicant to nominate the 2nd wife for family pension is strictly in accordance with rules and law on the subject.

6. Heard both the counsel and perused the pleadings on record.
7. I) Applicant who worked in the cadre of Postman in the respondents Organisation married Smt J. Anjali , the 2nd wife, since his first wife Smt. Jyothi Lakshmi was claimed to be missing for 17 years. However, as was rightly pointed out by the respondents, applicant did not make any effort to file a police complaint about the missing wife. Later, the first wife Smt. Jyothi Lakshmi rejoined the applicant and they were blessed with a son. Even a case of maintenance was filed in the Lok Adalat and the same was resolved with a consent award. Respondents have asserted that the Applicant's marriage with the first wife occurred on 25.5.1971 and the second wife on 21.5.1987. As claimed by the respondents, the applicant was liable for disciplinary action under Rule 21 of CCS (Conduct) Rules, 1964 but the same was not initiated. Had it been initiated, the story line would have been different. Nevertheless, reverting to actual situation on the ground, applicant on his retirement in 2007 made a request to nominate his 2nd wife Smt J. Anjali to receive family pension which was rejected vide letter dated 25.4.2011 on the ground that the 2nd wife is not eligible for

Family Pension as per the decision of Government of India (15) of CCS (Pension) Rules, 1972. Later when the first wife died on 5.10.2005, applicant re-married the second wife on 10.11.2005 as per Hindu Customs and Rites and a marriage certificate has been issued by the Registrar of Marriages on 14.7.2014. Therefore, the legal requirement of marrying as per law has been complied with. Respondents have taken objection that the second marriage was null and void as per Section 5 (1) of the Hindu Marriage Act, which is extracted here under:

“5. Condition for a Hindu Marriage.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

(i) neither party has a spouse living at the time of the marriage;”

Section 5 (1) of the Hindu Marriage act is not violated since the first wife was no more when the second marriage was duly certified by the Registrar of Marriages, in 2014.

II) Further as per the relevant Pension Rules, the procedure prescribed for endorsement of family pension entitlement of post retirement spouses, is as under:

“i) As and when a pensioner marries or re-marries after retirement, he shall intimate the event to the Head of Office who processed his pension papers at the time of his retirement. He shall also furnish along with his application an attested copy of the marriage in respect of his post-retirement marriage.

ii) The Head of Office on receipt of the application

mentioned above and after due verification where necessary, forward the papers to the concerned Pay & Accounts Officer for issue of corrigendum PPO. While forwarding the papers to the Pay & Account Officer, the provisions of Clause (b) of sub-rule (7) of Rule 54 of the CCS (Pension) Rules, 1972, shall be kept in mind. When the pensioner does not have any child or children from his previous marriage, if any, the post-retiral spouse shall be eligible for full family pension. Where the pensioner has any eligible child or children from another wife who is not alive, the family pension to the post-retiral spouse and the child/children from the previous marriage will be authorized in terms of clause (b) of sub-rule (7) of Rule 54 ibid.

iii) The corrigendum PPO shall be forwarded by the Pay & Accounts Officer to the concerned Pension Disbursing Authority through the Central Pension Accounting Office. A copy of the corrigendum PPO shall also be endorsed to the pensioner.

iv) As far as children, including those born after retirement, are concerned, a fresh PPO will be issued as and when the turn of each child for receipt of family pension is reached as at present.”

As per this rule applicant is eligible since he has obtained the marriage certificate certifying the marriage with the second wife after the demise of the first wife. The son, through the first wife, has filed an affidavit (Annexure A-10) that he has no objection for sanction of family pension to the second wife since he is employed and that his mother, i.e., the 1st wife has passed away.

III) A similar case was dealt by the Hon'ble High Court of Madras in W.P no 319900 of 2012 , between S. Kamatchi v The Accountant General, on 6.8.2014, which is reproduced as under:

“3. The second wife is before this Court seeking pension due to her husband Subramanian who died on

5.2.2010. The case of the petitioner is that she got married one Subramanian on 3.7.1981 and gave birth to a son. Subsequently she came to know that her husband already married one Saroja. The petitioner submitted that through Saroja, her husband got two children. The case of the petitioner is that all the 3 children are aged above 25 years and they are not entitled to any pension. Her husband Subramanian died on 5.2.2010. The case of the petitioner is that after the demise of Saroja, the name of the petitioner has been incorporated in the service records wherein the husband has nominated the name of the second wife as a nominee along with other children. The nomination was given at the time of voluntary retirement of the petitioner's husband, on 31.3.2003. The petitioner has produced the legal heir certificate showing the name of the 3 children born to the deceased Subramanian through the first wife and the second wife and that the children are above 25 years of age and that the daughter is already married. The case of the petitioner is that she is entitled to pension in terms of the Tamil Nadu Pension Rules 49(7)(a)(i).

11. A glance at Rule 49 makes it very clear that the provisions of the Hindu Marriage Act, Rule 49 is independent. Even the children born to the first wife are excluded to get the pensionary benefits during the life time of the first wife. The Rule has been enacted to give protection to the women who are almost on streets after the demise of the employee/bread winner of the family. The second marriage at the time of subsistence of the first marriage may be illegal. De hors the Personal Law, the Government Rules permits the second wife to get pensionary benefits that has been held to be valid by the Madurai Bench of this Court in W.P. (MD) No. 13372 of 2012 dated 4.4.2014. In that case, after the demise of the person, two wives were survival. In this case, the first wife is no more. The first respondent has recognised the petitioner as the wife of the deceased Subramanian.

12. Taking note of the above said Rule, I find much force in the contention of the writ petitioner and the writ petition is allowed and the impugned order is set aside. The first respondent is directed to consider the claim of the writ petitioner and grant all benefits to the petitioner

from the date of demise of her husband Subramanian on 5.2.2010 if not already paid, within a period of 3 months from the date of receipt of a copy of this order.”

In the case of the applicant, the CCS (Pension) Rules, 1972 as cited supra provide for considering the 2nd wife to be authorised for receiving the family pension. The first wife is no more. In case, her name is not nominated for family pension, she will be on the streets after the demise of the applicant. Definitely, this is not the intention and motto of the CCS (Pension) Rules. Respondents need to apply the rules positively and proactively within the ambit of law. The case of applicant is fairly covered by the legal principle set out by the Hon’ble High Court of Madras referred to above.

IV) Respondents claiming that the applicant is liable for disciplinary action for suppressing the information regarding the first marriage cannot be overlooked but the respondents themselves failed to take action in time. Taking objection at this juncture of time, when the first wife is dead, applicant is retired and he has fulfilled the legal requirement of obtaining the Marriage Certificate from the competent authority as per law, may not be a fair preposition. However, it is open to the respondents to act as per rules in regard to the aspect of discipline.

V) Further, Decision No.13 of Govt. of India under Rule 54 of CCS (Pension) Rules, 1972, is also not violated since the marriage with

the second wife; was legally solemnised as per the certificate issued by the Registrar of Marriages, in 2014.

VI) To sum up, in view of the aforesaid, respondents decision in rejecting the request of the applicant to authorise his second wife to receive family pension is arbitrary, violative of rules and against the legal principle laid down by the Hon'ble High Court of Madras. Therefore, impugned order dated 7.11.2017 is quashed. Consequently, respondents are directed to consider nominating the second wife of the applicant, Smt J.Anajali, for family pension within a period of 3 months from the date of receipt of this order. There shall be no order as to costs.

With the above direction, the OA is allowed.

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

Dated, the day of August, 2019

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