

Court No. - 21

Case :- SPECIAL APPEAL No. - 732 of 2023

Appellant :- Rita Sonkar

Respondent :- State Of U.P. And 6 Others

Counsel for Appellant :- Raj Kumar Tiwari, Lok Nath Shukla

Counsel for Respondent :- C.S.C., Bholeswar

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Donadi Ramesh, J.

1. Heard learned counsel for the appellant, learned Standing Counsel for the State-respondents and Shri Bholeswar, learned counsel appearing on behalf of the respondent no.7.
2. The instant intra Court appeal is directed against the order of the learned Single Judge dated 10.08.2023 rejecting the claim of the petitioner for family pension.
3. The dispute relates to the person entitled to family pension after the death of Hemraj Sonkar on 24.07.2016. The appellant admits that his first marriage took place with Smt. Somwati, however, the appellant alleges that she had taken Rs.25,000/- from Hemraj Sonkar towards permanent alimony and there was understanding between them as per local custom that the marriage would stand dissolved. Thereafter, Hemraj Sonkar married with one Shreedevi but they also separated. Thereafter, he married with the appellant. Therefore, appellant alone would be entitled to family pension after the death of Hemraj Sonkar.
4. Learned Single Judge has noted in the impugned judgement that the appellant was not nominated in Form-3 in the official records of the concerned employee as person entitled to draw family pension. The learned Single Judge has also held that the parties being Hindu, the marriage had to be dissolved as per provisions of the Hindu Marriage Act, 1956. There is no decree of dissolution of marriage or judicial separation under the statutory provisions, therefore, the separation, as per custom or rituals would not have the effect of annulling the marriage so as to defeat the claim of the first wife Smt. Somwati. The order also records that as per relevant rules, if there are more than one widow, the pension would be payable to the senior one.

5. Learned counsel for the appellant tried to contend that the first wife Smt. Somwati having received permanent alimony of Rs.25,000/-, it is an indication of the fact that the matrimonial alliance between her and late Hemraj Sonkar stood dissolved. However, we are in agreement with the view taken by the learned Single Judge that the parties being Hindu, there is no provision under the Hindu Marriage Act, 1956, which recognizes dissolution of marriage as per custom or rituals. Rather Section 4 of the Act specifically provides that any custom or usage insofar as it is inconsistent with any provision of the Act would cease to apply.

6. Consequently, the claim of the appellant for family pension was rightly held to be unsustainable in law. We find no error in the order and judgement of the learned Single Judge to warrant the interference.

7. The appeal is, accordingly, **dismissed**.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 6.12.2023

Ankit.