

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 8926 of 2004 (K)

PETITIONER(S):

**SUKUMARI AMMA M.M.
MECHERI MADATHIL HOUSE, CHERUVALLY, KAVUMBHAGOM P.O.
PONKUNNAM.**

**BY ADVS.SRI.SURIN GEORGE IPE
SRI.ANIL NAMBOODIRI**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT
THIRUVANANTHAPURAM.**
- 2. ACCOUNTANT GENERAL (A & E),
THIRUVANANTHAPURAM.**
- 3. C.K.LAKSHMIKUTTY AMMA,
D/O. KUTTY AMMA, NATTASSERY, PERUMPAIKAD VILLAGE
KOTTAYAM.**

R1&R2 BY ADV.P.V. ELIAS, GOVERNMENT PLEADER

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

JV

WP(C) NO.8926/2004

APPENDIX

PETITIONER'S EXHIBITS:

- P1 : COPY OF THE DEATH CERTIFICATE
- P2 : COPY OF THE CONSENT LETTER OF THE 3RD RESPONDENT DATED
26.11.2011
- P3 : COPY OF THE CERTIFICATE ISSUED BY THE TAHSILDAR DATED
16.05.2000

RESPONDENTS' EXHIBITS: N I L

//TRUE COPY//

P.A. TO JUDGE

JV

ANIL K. NARENDRAN, J.

W.P.(C) No.8926 of 2004

Dated this the 28th day of July, 2015

JUDGMENT

The petitioner has approached this Court in this writ petition seeking a writ of mandamus commanding the respondent to disburse the family pension payable on the death of Sri.Bhaskaran Nair and other pensionary benefits due to him, by treating her as his only legal heir.

2. Going by the averments in the writ petition, the petitioner is the second wife of late Bhaskaran Nair, a retired teacher in S.D.U.P. School, Ponkunnam, who died on 19.08.1999, as evident from Ext.P1 death certificate. In paragraph 2 of the writ petition, the petitioner has admitted that, the aforesaid Bhaskaran Nair initially married the 3rd respondent and no issues were borne out of the said wedlock. As such, with the consent of the 3rd respondent, Bhaskaran Nair married the petitioner on 15.11.1970. Bhaskaran Nair died on 19.08.1999. After his death the petitioner applied for family pension. For that purpose, the petitioner obtained Ext.P2 consent letter dated 26.11.2001 from the 3rd respondent, in which she has stated that, she has no

objection in disbursing the pension and other benefits payable on the death of Bhaskaran Nair to the petitioner.

3. Even prior to that, the petitioner has obtained Ext.P3 certificate dated 16.05.2000, from the Tahsildar, Kanjirappally certifying that, she is the only legal heir entitled for receiving the family pension and other benefits of late Bhaskaran Nair. The petitioner would also contend that, prior to the issuance of Ext.P3 certificate a notification has been published in the Official Gazette as well as in the Taluk Office, Kanjirappally calling for objections, if any, with regard to issuance of such a certificate. Relying on the aforesaid facts, the petitioner would contend that, she is the only person entitled to receive the family pension and other benefits payable on the death of Sri.Bhaskaran Nair.

4. On 27.08.2001, the petitioner submitted an application before the Assistant Educational Officer concerned, through the Head Master of S.D.U.P.School, Ponkunnam, claiming family pension and other benefits. The Assistant Educational Officer sent a reply requesting the petitioner to submit certain records referred to by the Accountant General (A&E), Kerala, the 2nd respondent herein. Later, the 2nd respondent by order dated 14.11.2002 rejected the claim made

by the petitioner on the ground that, the second marriage of Sri.Bhaskaran Nair with the petitioner has to be treated as null and void and as such, the petitioner is not entitled for any benefits. It is aggrieved by the aforesaid stand taken by the 2nd respondent, the petitioner has approached this Court in this Writ Petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the 1st respondent contending that, Sri.Bhaskaran Nair was receiving service pension as per Pension Payment Order No.WOKTM 10665. At the time of submitting the pension proposals he had not nominated anybody for claiming the family pension. Sri Bhaskaran Nair married the 3rd respondent before 1970. It is reported that, he had no issues in that wedlock and that, after five years the couple separated. On 15.11.1970, he remarried the petitioner. On the strength of Ext.P3 certificate issued by the Tahsildar, Kanjirappally sanction was issued from the office of the Educational Officer concerned for payment of family pension to the petitioner, at the rate of Rs.1,275/- per month. When the order was forwarded for approval, the 2nd respondent has not admitted sanction. By letter dated 14.11.2002 the Educational Officer concerned was directed to report whether the first

marriage of Sri.Bhaskaran Nair was legally separated and it was made clear that, if the first marriage is not legally separated, the second marriage with the petitioner will be treated as null and void. A copy of the aforesaid letter was also forwarded to the petitioner with a direction to submit records, if any, relating to the legal separation of the first marriage of Sri.Bhaskaran Nair. Since no reply was received from the petitioner, it was presumed that the first marriage was not legally separated. Therefore, relying on the provisions in Rule 18 of Chapter XIVB of the Kerala Education Rules (hereinafter referred to as 'the KER'), the 1st respondent would contend that, the second marriage of Sri.Bhaskaran Nair without obtaining permission of the Government, notwithstanding that a subsequent marriage is permissible under the personal law for the time being applicable cannot be sustained. Since the petitioner contracted marriage with Sri.Bhaskaran Nair, while his first wife was alive and without getting legal separation, the second marriage contracted without obtaining permission from the Government has no legal standing. Therefore, the petitioner is not entitled for family pension.

6. I heard the arguments of the learned counsel for the

petitioner and also the learned Government Pleader appearing for the respondents.

7. The sole issue that arises for consideration in this Writ Petition is as to the legality of the claim made by the petitioner for family pension and other benefits payable on the death of late Bhaskaran Nair, who was a pensioner receiving service pension under P.P.O. No.WOKTM 10665.

8. The pleadings and materials on record make it explicitly clear that, at the time when the petitioner contracted marriage with Sri.Bhaskaran Nair he was having a living spouse, namely, the 3rd respondent herein. Section 5 of the Hindu Marriage Act, 1965 (hereinafter referred to as 'the Act') deals with conditions for a Hindu marriage. Going by clause (i) of Section 5 of the Act, a marriage may be solemnised between any two Hindus, if neither party has a spouse living at the time of their marriage. Therefore, in view of the mandate of Section 5 of the Act, the marriage contracted between the petitioner and Sri.Bhaskaran Nair can only be treated as a void marriage.

9. Chapter XIVB of the KER deals with the Conduct Rules applicable to teachers. Going by Rule 18 of Chapter XIVB of the KER, no teacher who has a wife living shall contract

another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him. The mandate of Rule 18 of Chapter XIVB of the KER is that, no teacher who has a living wife and who has been permitted to contract another marriage under the personal law for the time being applicable to him, shall contract another marriage, without first obtaining the permission of the Government. But, the provisions under Rule 18 of Chapter XIVB of the KER has no application in the case of a teacher who has a wife living, and who has not been permitted to contract a subsequent marriage under the personal law applicable to him. In view of the mandate of Section 5 of the Hindu Marriage Act, the second marriage of Sri.Bhaskaran Nair with the petitioner, contracted during the lifetime of the 3rd respondent is null and void. In such circumstances, I find absolutely no merit in the argument advanced by the learned counsel for the petitioner that, in the absence of any reliable materials to show that Sri.Bhaskaran Nair had not obtained prior permission from the Government for contracting the subsequent marriage with the petitioner during the lifetime of the 3rd respondent, the status of

the petitioner as the legally wedded wife of Sri.Bhaskaran Nair cannot be denied.

10. In **M.M.Malhotra v. Union of India (2005 (8) SCC 351)** the Apex Court, in the context of Clause 578(g) of the Regulations for the Air Force (Revised Edition), 1964 held that, the marriage of Hindu with a living spouse is null and void. In **Ambujakshi Amma v. State of Kerala (2007 (4) KLT 86)**, a learned Judge of this Court, in the context of Rule 93 of the Kerala Government Servants Conduct Rules, 1960 held that, the provision in Rule 93 gives no authorisation, nor could it; for the Government to grant permission to a Government servant to contract a subsequent marriage, if it is impermissible under the personal law, for the time being applicable to that person. This Court held further that, the Government Servant, who is a Hindu married for the second time during subsistence of the earlier marriage, his second wife is not entitled to claim family pension. Paras.13 to 17 of the judgment read thus;

“13. Rule 93 of the Conduct Rules applies to all Government servants. The provision in Rule 93 gives no authorisation, nor could it; for the Government to grant permission to a Government servant to contract a subsequent marriage, if it is impermissible under the

personal law, for the time being applicable to that person. Notwithstanding that such subsequent marriage is permissible under the personal law of a particular Government servant, that person is prohibited from contracting any marriage without first obtaining the permission of the Government. Though the personal law of a Government servant may permit that person to marry, while a spouse of that person is alive, such a marriage can be contracted by that Government servant only after obtaining the permission of the Government, for such marriage. Rule 93 requires that a Government servant has to conduct himself in terms of that rule. The obedience or violation of that rule would have a bearing on the legality of such marriage.

14. While it may not be absolutely necessary to decide in this case as to whether the infraction of Rule 93 of the Conduct Rules would result in invalidating the subsequent marriage of such a Government servant, the Government are right in contending that in the context of Rule 93 of the Conduct Rules, the plea of the petitioner does not sustain since it is her admitted case that Gopinathan Nair had earlier married Rajamma.

15. The parties are admittedly Hindus. Hindu Marriage Act, 1955, hereinafter referred to as the "HM Act", applies to them. Section 5 of that Act provides the conditions for a Hindu marriage, which, inter alia, prohibits marriage of a person who has a spouse living. The relevant portion of Section 5 of the HM Act reads as follows:

"Conditions for a Hindu marriage.-- A marriage may be

solemnised between any two Hindus, if the following conditions are fulfilled, namely.--

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

(ii) xxxx xxxx xxxx."

16. The effect of the aforesaid legal provision is that during the subsistence of marriage between Gopinathan Nair and Rajamma, the petitioner could not have been validly married by Gopinathan Nair. A marriage between Hindus, solemnised otherwise than in terms of Hindu Marriage Act is void - See - Smt.Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and another (1988 (1) SCC 530 : 1988 (1) KLT 416). Admittedly, Gopinathan Nair predeceased Rajamma. Therefore, the petitioner will not be able to hold out a valid marriage between her and Gopinathan Nair. Being one in violation of Section 5 of the HM Act, the alleged transaction between the petitioner and Gopinathan Nair cannot be held out to be a marriage.

17. For the aforesaid reasons, the view contained in the impugned order that the petitioner cannot be treated as a widow of Gopinathan Nair is not vitiated by any jurisdictional error or legal infirmity."

11. The learned counsel for the petitioner would point out that, in Ambujakshi Amma's case (supra) this Court was dealing with a case in which the second wife raised an objection to the claim for family pension made by the first wife and this Court after referring to the provisions under Rule 93 of the Conduct

Rules came to a conclusion that the second wife will not fall within the sweep of widow referred to in Rule 93. But, in the case on hand, the 3rd respondent, who is the first wife of late Bhaskaran Nair, has stated in Ext.P2 consent letter that, she has no objection in disbursing the pension and other benefits payable on the death of Sri.Bhaskaran Nair to the petitioner. The learned counsel would point out further that, the second marriage of Sri.Bhaskaran Nair with the petitioner was even with the consent of the 3rd respondent.

12. As I have already noticed, the second marriage of Sri.Bhaskaran Nair with the petitioner, who are governed by the provisions under the Hindu Marriage Act, is a marriage contracted in contravention of clause (i) of Section 5 of the said Act and as such null and void. Therefore, merely for the reason that the 3rd respondent, who is the first wife of Sri.Bhaskaran Nair, gave consent for contracting the second marriage, will not make the subsequent marriage contracted between Sri.Bhaskaran Nair and the petitioner, during the lifetime of the 3rd respondent, a valid marriage. Similarly, neither the consent given by the 3rd respondent in Ext.P2 consent letter nor Ext.P3 heirship certificate issued by the Tahsildar concerned would

entitle the petitioner to claim family pension and other benefits on the death of Sri.Bhaskaran Nair, as his legal heir, by claiming the status of a legally wedded wife.

13. In that view of the matter, I find absolutely no merit in the various grounds raised in the Writ Petition.

In the result, the Writ Petition fails and the same is dismissed. No order as to costs.

sd/-
ANIL K. NARENDRA,
JUDGE