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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:28.11.2016
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU
W.P(MD)No.14537 of 2013
and
M.P(MD)No.1 of 2013

M.Yesudhasan

... Petitioner

Vs.

The Union of India,
Rep. By its General Manager,
Office of the General Manager,
Postal Accounts and Finance,
Tamilnadu Postal Circle,
Chennai- 600 008.

... Respondent

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the Central Administrative Tribunal, Chennai in O.A.No.1301 of 2011, dated 25.04.2013, quash the same and direct the respondent to make necessary endorsement in the PPO application by nominating the petitioner's wife Lalitha Mary as being entitled to family pension.

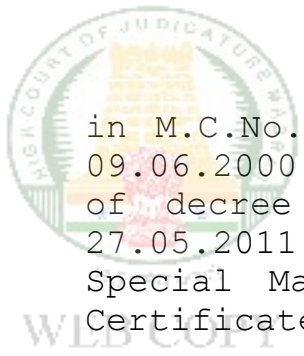
For Petitioner :Mr.M.R.Sreenivasan
For Respondent :Mr.S.Jeyasingh

ORDER

(Judgment of this Court was delivered by
M.SATHYANARAYANAN, J.)

The effort made by the petitioner to nominate one Tmt.Lalitha Mary with whom the petitioner herein had a relationship as a live-in partner, as a nominee to receive the family pension after his demise, ended in futility. Therefore, he came forward to file this writ petition.

2. The petitioner would state that he married one Tmt.Jesintha Mary on 21.05.1981 as per Christian Rites and Customs and sometime thereafter, she filed a petition for divorce in <https://hcservicescourts.mojin/hcservices/> 1995 on the file of the Principal District Court, Kanniyakumari, alleging adultery and got a decree of divorce on 09.07.1997 and it was referred to the High Court for confirmation



in M.C.No.40 of 1997. The order of confirmation was passed on 09.06.2000. According to the petitioner, after the confirmation of decree of divorce, he got married to Tmt.Lalitha Mary on 27.05.2011 and it was also registered under the provisions of the Special Marriage Act and he was also issued with Registration Certificate bearing Document No.4 of 2011.

3. The petitioner would further state that on an earlier occasion, on attaining the age of superannuation on 31.05.2008, he filed a nomination to include the name of Tmt.Lalitha Mary as a nominee for the reception of family pension, after his lifetime. However, the Senior Superintendent of Post Offices, Kanniyakumari, had rejected the said request holding that the petitioner's marriage with Tmt.Lalitha Mary on 11.11.1994, is not a valid one and it was contracted, when his first marriage with Tmt.Jesintha Mary was not dissolved. Therefore, the petitioner in order to get over the same, got married to Tmt.Lalitha Mary on 27.05.2011 and got the above said Registration Certificate. Thereafter, despite making request to nominate the said Tmt.Lalitha Mary as a recipient of family pension after his demise, he was not successful in doing so and therefore, he approached the Central Administrative Tribunal, Chennai, praying for a direction, directing the respondent herein to make necessary endorsement in the PPO application to include the legally wedded wife Tmt.Lalitha Mary as being entitled for family pension.

4. Before the Central Administrative Tribunal, the respondent has filed a counter affidavit stating among other things that the marriage of the petitioner with the Tmt.Jesintha Mary took place on 21.05.1981 and got dissolved vide decree of divorce on 09.07.1997 and it was confirmed by the High Court on 09.06.2000. But, however, the petitioner contracted the second marriage with Tmt.Lalitha Mary on 11.11.1994 during the subsistence of marital relationship with Tmt.Jesintha Mary and therefore, in the light of Government of India Decisions 15 below Rule 54 of CCS (Pension) Rules, 1972, such kind of nomination is impermissible, as the second marriage is not permissible, consequently, she is not entitled to any benefit. The respondent would further contend that mere registration of marriage solemnized on 11.11.1994 during the subsistence of first marriage and getting it registered subsequently on 27.05.2011 will not cure the defect and therefore, prays for dismissal of Original Application.

5. The petitioner has also filed a rejoinder, reiterating his earlier stand.

6. The Tribunal on consideration of the materials placed before it, by the petitioner, in its order dated 25.04.2013, had dismissed the Original Application on the basis of facts and also in view of Government of India Decisions 15 below Rule 54 of CCS (Pension) Rules, 1972



and challenging the legality of the same, the petitioner has filed the present writ petition.

7. The learned counsel appearing for the petitioner has drawn the attention of this Court to Rule 54 of CCC (Pension) Rules, 1972 and invited the attention of this Court to explanation 7 (a) (i) and would submit that as per the said provision "Where the family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares" and the said provision thereby, recognises the payment of family pension to more than one spouses and would further contend that admittedly, after the decree of divorce confirmed by the High Court, there was no marital relationship between Tmt.Jesintha Mary and the petitioner and she is also no more and in the light of the contract of marriage with Tmt.Lalitha Mary on 27.05.2011 and its registration under the Special Marriage Act bearing Document No.4 of 2011, Tmt.Lalitha Mary is the sole surviving spouse and there cannot be any impediment on the part of the respondent to consider the request of the petitioner to nominate Tmt.Lalitha Mary as a nominee to receive family pension after his demise and therefore, prays for interference.

8. The learned counsel appearing for the petitioner in support of his submission, has placed reliance upon the order, dated 06.08.2004, made in *W.P.No.31990 of 2012 (Smt.S.Kamatchi v. Accountant General, Chennai-18 and another)*.

9. In the considered opinion of this Court, the said order has no application to the case on hand for the reason that the live-in relationship, is recognized so as to enable the concerned woman to claim maintenance and the same will not elevate her to the position of legally wedded wife.

10. Per contra, the learned standing counsel appearing for the respondent has drawn the attention of this Court to the counter affidavit of the respondent filed in the Original Application as well as in this writ petition and would contend that in the light of the specific bar contained in the Statutory Rule namely, Rule 54 of CCS (Pension) Rules, 1972, coupled with the factual aspects that the said Tmt.Lalitha Mary, cannot be termed as a legally wedded wife as admittedly there was existing relationship between the petitioner and Tmt.Lalitha Mary during the subsistence of first marriage and merely because the marriage came to be registered on 27.05.2011 after confirmation of decree of divorce, it cannot be construed that Tmt.Lalitha Mary, is the legally wedded wife and the said aspect has been taken note of by the Tribunal and it came to the right decision of dismissing the Original Application and prays for dismissal of this writ

11. This Court paid it's best attention to the rival



contentions put forth on either side and perused the materials placed before the Court.

12. It is relevant to extract some provisions of Rule 54 of CCS (Pension) Rules, 1972.

Sub-Rule:(7) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to widows in equal shares.

Sub-Rule:(14) (b) "family" in relation to a Government servant means-

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant.

(ia) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(ii) Unmarried son who has not attained the age of twenty-five years and unmarried or widowed or divorced daughter, including such son and daughter adopted legally;

(iii) dependent parents;

(iv) dependent disabled siblings (i.e. brother or sister) of a Government servant.

Sub-Rule:(15) when second wife not entitled to the family pension: The Department of pension and Pensioners' Welfare have since clarified that the second wife will not be entitled to family pension as a legally wedded wife. A copy of their clarification is enclosed for information.

Sub-Rule:(16) Point raised for clarification:

If the husband has another living wife at the time of death of a female Government servant, it is the same as re-marriage and as such the husband of the deceased female Government servant is not entitled to the Family Pension under Rule 54 (6) (i) of the CCS (Pension) Rules, 1972. Will it be in order in the instant case to pay the family pension to the minor children through the father of the deceased employee who is their guardian, when the natural guardian, viz., father of the children is living?

Sub-Rule(20): Family pension is admissible also to children from the void or voidable marriage:- Attention is invited to provisions contained in Rule 54 (8) of CCS(Pension) Rules, 1972 and decisions thereunder on regulation of amount of family pension payable. This Department has been receiving references from Departments seeking advice on the question of admissibility of family pension to children of a deceased Government servant/pensioner from a wife whose



marriage with the said Government servant/pensioner would be voidable or held void under the provisions of Hindu Marriage Act.

2.The matter regarding grant of pensionary benefits to such children has been examined in consultation with the Ministry of Law.

3.In view of the fact that Section 16 of the Hindu Marriage Act, 1955 as amended by Hindu Marriage Laws (Amendment) Act States "Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of Marriage Law (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this act, and whether or not the marriage is held to be void otherwise than on a petition under this act."

4.The rights of such children require to be protected and will accrue accordingly. It is therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rule 54(8). It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same.

(20-A) Eligibility of children from a void or voidable marriage for family pension:- The undersigned is directed to refer to this Department's O.M.No.1/16/96-P&PW(E), dated 02.12.1996, whereby it was clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from void or voidable marriages when their turn comes in accordance with Rule 54(8). It is mentioned in Para.4 of the O.M. That "It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same."

2.The matter has been re-examined in consultation with the Ministry of Law and Justice (Department of Legal Affairs) and Ministry of Finance (Department of Expenditure). It has been decided that in supersession of Para.4 of the O.M., ibid, dated 02.12.1996, the share of children from illegally wedded wife in the family pension shall be payable to them in the manner given in rule 7(c) of Rule 54 of CCS (Pension) Rules, 1972, along with the legally wedded wife.



It has also been decided that in past cases, no recovery from the previous beneficiary should be made. On receipt of an application from eligible child/children of the deceased Government employee/pensioner born to an ineligible mother, a decision regarding division or otherwise of family pension may be taken by the competent authority after satisfying himself/herself about veracity of facts and entitlement of the applicant(s).

4. As regards pensioners/family pensioners belongings to the Indian Audit and Accounts Department, these Orders will be issued after consultation with the Comptroller and Auditor-General of India.

5. This issues with the concurrence of Department of Legal Affairs vide their FTS No.3036, dated 17.10.2012.

6. This issues with the concurrence of Ministry of Finance, Department of Expenditure vide their I.D.No.530/E.V/2012, dated 23.11.2012."

13. The admitted facts are that the petitioner herein while working as a Sub-Post Master, got married to Tmt.Jesintha Mary on 21.05.1981 and she filed a petition for divorce in I.D.O.P.No.32 of 1995 on the file of the Principal District Court, Kanniyakumari, Nagercoil District against the petitioner herein, seeking divorce on the ground of adultery and it was ordered on 09.07.1997 and the same was also confirmed by the High Court in M.C.No.32 of 1995 vide order, dated 09.06.2000. Even prior to dissolution of the first marriage, the petitioner had contracted the marriage with Tmt.Lalitha Mary for the second time and entered into a marriage agreement typed it in the stamp paper and the same was also executed in the presence of witnesses and it was also duly registered by the office of the Sub-Registrar of Parasala. Therefore, it is the proved fact that during the subsistence of valid marriage with Tmt.Jesintha Mary, the petitioner developed relationship with Tmt.Lalitha Mary and registered the marriage with her in the form of agreement.

14. Admittedly, the divorce decree was granted against the petitioner at the instance of his legally wedded wife Tmt.Jesintha Mary on the ground of adultery and the said decree has not been put to challenge and hence, it has become final. The petitioner on an earlier occasion, approached the Senior Superintendent of Post Offices, Kanniyakumari Division, to get his second wife Tmt.Lalitha Mary nominated as a recipient of family pension after his effort was unsuccessful and in order to get over the same, got married with Tmt.Lalitha Mary and got it registered in the form of Registration Certificate bearing



Document No.4 of 2011 and in the Certificate of Marriage also it has been stated that the marriage between the petitioner and Tmt.Lalitha Mary came into effect from 11.11.1994 i.e., during the subsistence of marriage with Tmt.Jesintha Mary/legally wedded wife.

15. It is the case of the petitioner that on account of the decree of divorce, which came to be confirmed by the High Court on 09.06.2000 and the first wife is no more, the marriage contracted by him with Tmt.Lalitha Mary, is perfectly valid and as such, he is entitled to file nomination, nominating Tmt.Lalitha Mary as recipient of family pension after his demise.

16. In the considered opinion of this Court, the said stand of the petitioner, is wholly untenable for the reason that Government of India Decisions 15 below Rule 54 of CCS (Pension) Rules, 1972, makes it very clear that the second wife will not be entitled to family pension as legally wedded wife.

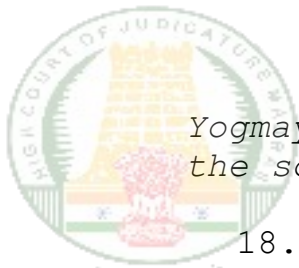
17. In (2000) Supreme Court Cases 431 (Rameshwari Devi v. State of Bihar and Others), the dispute concerns payment of family pension and death-cum-retirement gratuity to two wives of Narain Lal, namely Rameswari Devi and Yogmaya Devi and it was put into issue before the High Court of Patna and a single Bench of the Patna High Court has issued a direction to the State Government to issue fresh sanction order for payment of family pension and death-cum-retirement gratuity to the minor children born out of the wedlock between the second wife, till they attain majority and indicated that nothing could be payable to Yogmaya Devi and the said order was taken in the form of appeal before the Honourable Supreme Court of India. Ultimately, the Honourable Supreme Court of India has upheld the decision of the Patna High Court that the children born to the second wife are entitled to family pension. it is relevant to extract paragraph Nos.14 and 15 of the said judgment:

14. It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of a void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolves firstly on heir in clause (1) which include the widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described as a widow of Narain Lal, her marriage with Narain Lal being void. The sons of the marriage between Narain Lal and Yogmaya Devi being the sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage



of Rameshwari Devi with Narain Lal. That is, however, the legal position when a Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which are governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned Single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.

"15. 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 through her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. The first objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of the 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. The inquiry was quite a 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) Shri 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, retired District Judge, Bhagalpur, Smt (Dr) Arun Prasad, Sheohar, Smt S.N.Sinha, w/o Shri S.N.Sinha, ADM and others. Other evidence were also collected which showed that 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 the records as the sons of Narain Lal."

18. In 2014-2L.W.936 (Badshah v. Sou.Urmila Badshah Godse and another), the issue regarding payment of maintenance under Section 125 Cr.P.C to the second wife came up for consideration and the facts of the case would disclose that the petitioner/respondent not revealing the fact of first marriage and pretending that he was single and after living together for some time and the respondent No.2/child was also born out of the wedlock, deserted them.

19. The Honourable Supreme Court of India taking into consideration the factual aspect that the petitioner duped the first respondent by suppressing the factum of first marriage, found that he may not be exonerated from paying maintenance by taking advantage of his own drama. It is relevant to extract Paragraph Nos.24 and 25 of the said judgment:

"24. In Rameshchandra Daga v. Rameshwari Daga [AIR 2005 SC 422], the right of another woman in a similar situation was upheld. Here the Court had accepted that Hindu Marriages have continued to be bigamous despite the enactment of the Hindu Marriage Act in 1955. The Court had commented that though such marriages are illegal as per the provisions of the Act, they are not immoral and hence a financially dependent woman cannot be denied maintenance on this ground.

25. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydons Case [(1854) 3 Co.Rep.7a,7b] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat quam pereat, in such cases i.e. Where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction



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which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125, Cr.P.C., such a woman is to be treated as the legally wedded wife."

20. Law governing marriage among Christians also prohibits second marriage during the subsistence of earlier marriage and as such, above cited decisions are fully applicable to the facts of the case.

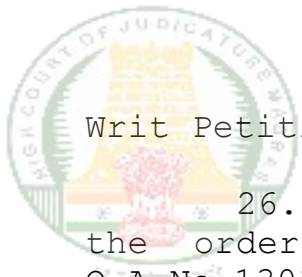
21. The learned counsel appearing for the petitioner made a faint attempt by submitting that admittedly even for the sake of argument, the marriage of the petitioner with Tmt. Lalitha Mary, cannot be recognized, the fact remains that they had a live-in relationship and therefore, continuous cohabitation as husband and wife for a number of years, may raise presumption of marriage and as such, it can be construed as there was a valid marital relationship between the petitioner and Tmt. Lalitha Mary.

22. In the considered opinion of this Court, the said submission lacks merits and substance for the reason that the live-in relationship came to be recognized so as to enable the particular woman to claim maintenance and in any event, it cannot be equated with the status of lawful marriage and that apart, the statutory Rule in the form of Government of India Decisions 15 below Rule 54 of CCS (Pension) Rules, 1972, disentitles the petitioner from nominating Tmt. Lalitha Mary as his wife to receive the family pension, after his demise.

23. At this juncture, the learned counsel appearing for the petitioner would pray for a leave to submit a representation to nominate his daughter born out of the relationship between him and Tmt. Lalitha Mary for receiving family pension.

24. It is to be pointed out at this juncture that a child or children born out of such kind of relationship, should not be made to suffer with regard to their status, for the mistake of their parents, over which, the child or children have no control.

25. This Court on an independent appraisal of mind and on a <https://hcservicescourts.gov.in/hcservices/> perusal of the entire material placed before it, finds that the reason assigned by the Tribunal for dismissing the Original Application cannot be said to be perverse and finds no merit in this



Writ Petition.

26. Therefore, this Writ Petition is dismissed confirming the order passed by the Central Administrative Tribunal in O.A.No.1301 of 2011, dated 25.04.2011. However, the petitioner is at liberty to submit a representation/application for the nomination of his daughter born out of the relationship between him and Tmt.Lalitha Mary to receive family pension after his demise, within a period of four weeks from the date of receipt of a copy of this order to the Senior Superintendent of Post Offices, Kanniyakumari Division, Nagercoil - 629001 and upon receipt of the same, the Authority is directed to consider the same on merits and in accordance with law and pass orders within a period of twelve weeks thereafter and communicate the decision taken to the petitioner.

No Costs.Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar

To

1.The Central Administrative Tribunal,
Chennai.

2.The Senior Superintendent of Post Offices,
Kanniyakumari Division, Nagercoil - 629001.

+1 cc to Mr.M.R.Sreenivasan,Advocate, Sr.No:73638

+1 cc to Mr.S.Jeyasingh,Advocate, Sr.No:73771

W.P(MD)No.14537 of 2013

28.11.2016

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