

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.27522 of 2016

Date : 08.03.2017

Between :

Lakshmi Suri w/o. late Amarnath Suri,
R/o. 1-1-287/A/1, Chikkadpally,
Hyderabad.

.....Petitioner

And

The Union of India, rep.by its Secretary,
Ministry of Consumer Affairs, Food and Public
Distribution, New Delhi and others.

..... Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

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ORDER:

Heard Sri T.D.Dayal, G.P.A.holder, appearing for party-in-person and Sri B.Appa Rao, learned standing counsel for Central Government for respondents 1 and 2.

2. Petitioner is challenging the decision rejecting her claim for share in the family pension. Smt. Santhoshi Kumari, 3rd respondent, is deleted from the array of respondents in view of the orders in W.P.M.P.No.4246 of 2017. However, for convenience sake, she is referred to as 3rd respondent.

3. The averments in the affidavit filed in support of the writ petition would disclose that petitioner married late Amarnath Suri on 18.04.1983. Petitioner claims to be the 2nd wife and the 3rd respondent in the writ petition is the first wife of late Amarnath Suri. They were blessed with three children born on 14.07.1986, 07.06.1988 and 22.05.1990. Late Amarnath Suri was an employee of Food Corporation of India. He retired from service on attaining the age of superannuation while working as Assistant Manager. Late Amarnath Suri died on 18.12.1997. After the death of late Amarnath Suri, petitioner submitted application to grant family pension to three sons. Since there was no response to grant family pension, petitioner filed W.P.No.22212 of 2000. The writ petition was disposed of, by order dated 03.07.2001, directing the authority to dispose of the representation of the petitioner. Learned single Judge also observed that Court cannot go into the details of the marriage of the petitioner. Aggrieved by this portion of the observation, where learned single Judge refused to go into the

details of the marriage, petitioner filed W.A.No.2266 of 2003. On elaborate consideration of the matter, Division Bench modified the earlier order passed by the learned single Judge and directed the respondents that on the appellant submitting a fresh representation addressed to the Regional Director (Food), Southern Region, Chennai, respondents should deal with expeditiously and necessary enquiry/investigation should take place at the Regional Office at Hyderabad after notice to the appellant. The Division Bench further directed to take necessary action on the representation of the appellant within four months from the date of receipt of representation from the appellant. Appellant was also granted liberty to produce all the records during the course of the enquiry. Fresh representation was submitted on 31.12.2003 and it appears by order dated 05.05.2004 claim of the petitioner was rejected. Petitioner then preferred representation dated 18.12.2005 to the Hon'ble Minister for Agriculture and the same was also rejected holding that children of second wife are not entitled to get share in the family pension during the life time of the first wife.

4. Petitioner filed W.P.No.25865 of 2005 praying to grant direction to sanction share in the family pension of her husband to three children. During the pendency of this writ petition, petitioner filed W.P.No.9051 of 2008 praying to grant direction to sanction family pension to the petitioner. The said writ petition was dismissed on the ground that W.P.No.25865 of 2005 was pending and that the petitioner was virtually claiming the same relief in favour of her three children. The Court also granted liberty to file application for amendment of the prayer. Petitioner filed W.P.M.P.No.2239 of 2007 praying to amend the prayer in the writ

petition, where under sought for direction to sanction family pension to the petitioner. The prayer for amendment sought in W.P.M.P.No.2239 of 2007 was allowed. The writ petition was disposed of by order dated 24.06.2013.

5. Having elaborately considered the precedent decisions, learned single Judge passed the following order, as modified in W.P.M.P.No.29496 of 2013, dated 13.09.2013.

“As seen from the above, it is clear that late Amarnath Suri had made a nomination in favour of his first wife (respondent No.3 herein), but under Rule 54 of the Central Civil Services (Pension) Rules, 1972, it appears that no nomination is required. Since it is submitted that the post of Regional Director, Food, Southern Region, Chennai was abolished long back and the documents filed by the petitioner were not considered by respondents 1 and 2 in their order dated 05.05.2004, I am inclined to order as follows:

Respondents 1 and 2 are hereby directed to conduct a de novo enquiry into the matter by appointing the competent authority to enquire into the matter after giving reasonable opportunity to the petitioner and the third respondent to put forth their pleas. The petitioner is also directed to furnish the copies of the documents to respondents 1 and 2. be it made clear that in the light of the observations made by the Apex Court in the judgments referred supra, respondents 1 and 2 need not drive the petitioner to seek a declaration from the Civil Court and they have to decide the only point whether the petitioner is the second wife of Late Amarnath Suri and the three sons of the petitioner are born to her through late Amarnath Suri. If respondents 1 and 2 are satisfied with the documents furnished by the petitioner and by the enquiry made by them, grant the petitioner with the family pension or a share in the family pension, in the family pension of Late Amarnath Suri. Respondents 1 and 2 shall complete the above exercise and pass appropriate orders within a period of four (04) months from the date of receipt of copy of this order. ”

6. In terms thereof enquiry authority was appointed. The enquiry authority report dated 05.12.2013 would disclose that,

“From the examination of the documents of the petitioner Smt. Lakshmi Suri and their opponent Santosh Suri, it appears that smt. Lakshmi Suri has produced documents in order to establish that she lived with Sri Amarnath Suri for a considerable period of time. This evidence has been refuted by the family of Smt. Santosh Suri as being concocted after the demise of Mr Amarnath Suri.

As per Hindu Marriage Act, any second marriage is void, but in the peculiar circumstances of the case as determined by the Hon'ble Court an attempt has to be made to find out whether Smt Laxmi Suri is the second wife of Shri Amarnath Suri. In the 2nd para of its judgment the honourable court observed very clearly that Smt. Lakshmi Suri is the 2nd wife of Sri Amarnath Suri but has also simultaneously ordered a de novo enquiry to find out whether she is the 2nd wife of Sri Amarnath Suri. ***The judgment, therefore, needs clarification as the honourable court has mentioned in its para 2 on basic facts that she is the 2nd wife in which case a further de novo enquiry may not be necessary and this is the contention of Smt. Laxmi Suri.*** Smt LaxmiSuri contends that any further enquiry would be a contempt of court.

With regard to proving as to whether the children belong to Sri Amarnath Suri and Smt Lakshmi Suri, it can be seen on the basis of the documentary proof presented by Smt. Lakshmi Suri ***there can be a strong presumption that the children belong to Shri Amarnath Suri and Smt Laxmi Suri. The opposite party*** while strongly objecting to this have stated that these documents have been created after the death of Sri Amarnath Suri and that there is no other scientific corroborative evidence. However, they ***have not taken up any appropriate legal recourse in ventilating their objections.*** (emphasis supplied)

7. After the report of enquiry, Secretary, Ministry of Consumer Affairs, Department of Food & Public Distribution, passed orders on 07.02.2014. Paragraph 6 of the order reads as under:

“6. Considering the above findings of inquiry and all the relevant aspects noted above, the following orders are hereby issued:

- (a) Smt Lakshmi Suri is the second wife of late Shri Amarnath Suri. But she is not a legally wedded wife as per the Hindu Marriage Act, since the first wife Smt. Santosh Kumari Suri is the lawfully wedded wife of Shri Amarnath Suri and is living even now. Hence, Smt. Lakshmi Suri is not eligible for a share in family pension as per Rule 54 (7) of CCS (Pension) Rules and as per the letter of Department of Pension & Pensioner's Welfare No.1/39/86-P&PW dated 16.02.1987. Her eligibility is also not acceptable as per the Hindu Marriage Act and as per decision of the Hon'ble Supreme Court of India in Rameshwari Devi v. State of Bihar case.
- (b) As far as the eligibility of the sons of Smt Lakshmi Suri for a share in the family pension is concerned, it is noted from the inquiry report that the third child has expired in 2007. It is also noted from the documents submitted by Smt Lakshmi Suri to the Inquiry Officer that the date of birth of the first son Shri Raghunath Suri is 14.07.1986 as per his passport i.e., he has crossed the age limit of 25 years. The date of birth of the second son Shri Srinath Suri as per his PAN Card and Driving License is 07.06.1988 i.e., he has also crossed the age limit of 25 years. Therefore, both of these living sons are not eligible for share in family pension. Further, no arrears can be paid to these sons for the period before they attained the age of 25 years, and no recovery can be made from pension paid to the first wife, as per Department of Pension and Pensioner's Welfare O.M.No.1/16/1966-P&PW (E) (Vol.II) dated 27th November, 2012. ”

8. Aggrieved thereby this writ petition is filed. To complete the narration, it is also relevant to note that during pendency of this writ petition, Smt. Santosh Kumari died on 01.07.2015. To this extent, petitioner filed affidavit deposed on 30.01.2017.

9. Basic facts are not in dispute. Late Amarnath Suri married Smt. Santosh Kumari (3rd respondent). Later, he married Smt. Lakshmi Suri, petitioner herein. Petitioner claims that Smt. Santosh Kumari was unable to beget children due to cyst in her abdomen. She was unable to cohabit and procreate children and thus, the said marriage is void under Section 5 (ii) (b) of Hindu Marriage Act, 1955 and, therefore, marriage of petitioner is valid. It is at her insistence, petitioner married late Amarnath Suri. Initially petitioner claimed for payment of share in family pension to her three children. In W.P.No.25865 of 2005, petitioner also sought to grant pension to her. In W.P.No.22865 of 2005, this Court directed the competent authority to conduct *de novo* enquiry into the matter after giving reasonable opportunity to the petitioner and third respondent. Court also observed that in view of the law laid down by the Supreme Court, the parties need not be driven to the Civil Court and was required to decide whether petitioner is the 2nd wife of late Amarnath Suri and three sons of the petitioners were born through late Amarnath Suri.

10. Perfunctory enquiry was conducted and even though enquiry officer observes that he requires clarification on the observations of the High Court that petitioner is second wife, neither he sought clarification nor he records finding on the claim of the petitioner

marrying Amarnath Suri. However, he recognizes late Amarnath Suri as father of children of petitioner.

11. As seen from the order of this Court, extracted above, by referring to the judgments of the Supreme Court, this Court directed conducting of enquiry on legal status of claim for terminal benefits by petitioner and 3rd respondent without directing the petitioner to seek a declaration from the Civil Court. The Enquiry Officer was required to go into the issue and give his finding. Enquiry Officer failed to discharge his primary duty to comply with the directions of this Court and record a clear finding. It is also strange to note that while avoiding to record a finding, holding that an order of the Court “needs clarification”, went on to hold that the three children of petitioner are children born to late Amarnath Suri. This would imply that he was accepting the petitioner as a wife of late Amarnath Suri, but deliberately avoided to give a clear finding on her entitlement to claim share in family pension.

12. When it comes to taking decision after the report of the enquiry authority, the competent authority drifted further. The competent authority resorts to record finding holding that petitioner is not legally wedded wife as per Hindu Marriage Act and holds further that 3rd respondent is legally wedded wife. This finding of the competent authority is not based on any material on record. No opportunity was afforded to petitioner before undertaking such exercise. It is not known how he has come to such a conclusion and declared the petitioner as not legally wedded wife, because no finding was recorded on the legal status of the petitioner marriage and legal status of third respondent

marriage by the enquiry authority. It is not in dispute that petitioner marriage with Amarnath Suri was not nullified. All of them agree that petitioner and late Amarnath Suri lived together and they were blessed with three children. He also refused to grant family pension to the children on the ground that full family pension was already granted to Smt Santosh Kumari and the question of recovery of amount would not arise. The counter-affidavit is blissfully silent on all these aspects.

13. Rule 54 recognizes the right of children born to second wife, even if such marriage is declared as void. Thus, once it is established, at least, that three sons, Raghunath Suri, Srinath Suri and Sainath Suri were children of late Amarnath Suri, they were entitled to share in the family pension. This claim was denied and such denial is not justified. It is also to be noted that petitioner was compelled to look after her children in the absence of support from her husband after his death and has to face such hardial for no fault of her. In the order impugned, though competent authority recognizes their entitlement but refuses to pay their share on the ground of delay. In this case delay cannot be attributed to petitioner or her children. Petitioner has been fighting litigation since the year 2000.

14. At this stage, it is to be noted that the late Amarnath Suri died in the year 1997. Claim for family pension relates to 1997. At least, it is on record that petitioner has been fighting the issue since the year 2000, i.e, for the last more than 16 years. As no enquiry as directed by this Court in WP No.22865 of 2005 was conducted, ordinarily the matter ought to be relegated to the stage

of conducting *de novo* enquiry. However, having regard to the age of the petitioner and the delay in resolution of dispute, this Court is not inclined to subject the petitioner to the rigmarole of further enquiry. Further, in the meantime, 3rd respondent died. Thus, no enquiry can be conducted in her absence as envisaged in the order of this Court in W.P.No.22865 of 2005. In the peculiar facts of the case, it is not just and equitable to relegate the petitioner to the stage of enquiry.

15. Employer ensures that after retirement his former employee be suitably provided fixed amount per month for sustenance of his former employee and his family. This is in recognition of long and satisfactory service rendered by the employee and with the realization that such employee should not be subjected to financial difficulties after retirement when he is suddenly deprived his monthly pay and allowances. The monthly payment after retirement is called pension. This helping hand is also extended to family members in the event of his death after retirement. Family pension is extended to spouse/spouses and children. This concept of payment of family pension is based on the recognition of the fact that as long as ex-employee was alive he/she was taking care of his/her family members. After his/her death, they cannot become destitute. It is an accepted fact that in the old age both husband and wife are dependent on each other and in many instances children do not take proper care of them. At the advanced age, they would be in need of some money to attend to their daily requirements and medical treatment. A fortiori same principle would apply to children if parent die when they are young and have not settled.

16. At this stage, it is useful to consider the relevant provisions dealing with scheme of family pension.

17. Rule 54 of CCA (Pension) Rules, 1972 deals with family pension. Sub-rules (7), (8) (11-A) and (11-B) are relevant for this case. To the extent relevant, they read as under:

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

(ii) 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.

Sub Rule (8) (i) Except as provided in sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time;

(ii) if a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.

Sub Rule 11-A : where a female Government servant or male Government servant dies leaving behind a judicially separated husband or widow and no child or children, the family pension in respect of the deceased shall be payable to the person surviving:

Provided that where in a case the judicial separation is granted on the ground of adultery and the death of the Government servant takes place during the period of such judicial separation, the family pension shall not be payable to the person surviving if such person surviving was held guilty of committing adultery.

Sub Rule 11-B : (a) Where a female Government servant or male Government servant dies leaving behind a judicially separated husband or widow with a child or children, the family pension payable in respect of deceased shall be payable to the surviving person, provided he or she is the guardian of such child or children.

(b) where the surviving person has ceased to be the guardian of such child or children, such family pension shall be payable to the person who is the actual guardian of such child or children.

(c) subject to the proviso to or of sub-rule (11-A), after the child or children cease to be eligible for family pension under this rule, such family pension shall become payable to the surviving judicially separated spouse of the deceased Government servant till his or her death or remarriage, whichever is earlier. ”

18. A close analysis of the above extracted provisions disclose that employer extends family pension to widow/widower/widows and children. Family pension is also extended to judicially separated spouse and their children. This shows that employer recognizes the possibility of ex-employee having more than one wife and the responsibility of ex-employee to look after the welfare of his wives and extends helping hand to widows after his death. In other words, employer condones the sins of his ex-employee, assuming he has contracted more than one marriage even though not legally permissible and extends succor in the form of family pension to widows. Employer allows share of family pension in equal proportion among the widows. This helping hand is also stretched to a judicially separated spouse.

19. It cannot be said that employer was not aware of legal implications of a second marriage when he recognizes grant of family pension to more than one widow. This scheme of providing family pension to dependents of ex-employee is a social welfare measure by employer. It has a foundation on the fact that irrespective of legal status of a wife, the husband has obligation to maintain his wife and after his death she cannot be left in the lurch, more particularly at the advanced age. It is also significant to note that only exception carved out to this helping hand is, where the person was found guilty of committing adultery [Rule 54 (11-A)] .

20. Be it noted at this stage marriage of petitioner is not declared as void. Her marriage was not nullified as 'Bigamous'. Employer did not initiate disciplinary action against employee as violating conduct Rules on the allegation of contracting second marriage during subsistence of first marriage. Third respondent did not seek legal course against petitioner alleging invalidity of marriage of petitioner with late Amarnath Suri. As per the assessment of enquiry authority and competent authority, Raghunath Suri, Srinath Suri and Sainath Suri are children of petitioner and Amarnath Suri confirming their relationship as husband and wife.

21. It is also strange to note that with reference to the claim of three children for share in family pension, though the Enquiry Officer held that they are entitled, though the competent authority also agrees their entitlement, but refused to pay them a family pension on the ground that entire family pension was paid to third respondent and the same cannot be recovered. When the lapses are on the part of the competent authority in not attending the grievance, which at least, dates back to year 2000, on the ground that it is 25 years by the time the order was passed in the year 2014, the rightful claim could not have been denied. The right accrued to them in terms of the provision of Rule 54 of the Pension Rules, is a substantive right to claim share in the family pension by the children, even born during the subsistence of first marriage and even if second marriage is declared as void. On account of denial of the family pension, legally payable to children of the petitioner, all along petitioner was put to lot of hardship and suffering as after the demise of her husband entire burden shifted

on her to bring them up until they settled in life as they were very young.

22. Having regard to the peculiar facts of this case, as noted above, and as the relationship of the petitioner with late Amarnath Suri is not in dispute, petitioner being widow of late Amarnath Suri, she is entitled to family pension. After the death of 3rd respondent, except petitioner, there is no other person claiming family pension. However, till her death 3rd respondent was paid family pension. I am of the considered opinion that justice and equity would serve if respondents are directed to grant family pension to the petitioner at least from the date of death of the 3rd respondent and continue to pay during her life time. The order impugned in this writ petition is set aside and writ petition is accordingly allowed.

Miscellaneous petitions if any pending shall stand cancelled.
There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 08.03.2017
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HONOURABLE SRI JUSTICE P. NAVEEN RAO



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