

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT JUSTICE T.RAJANI

FAMILY COURT APPEAL No.212 of 2011

06.02.2017

Between:

The Principal Secretary to Government,
Finance & Planning (F&W) Department,
Hyderabad and another

..Appellants

and

Smt.Ambati Chennamma

..Respondent

Counsel for the appellants: Government Pleader for Appeals (TS)

Counsel for the respondent: Mr.S.B.Mohammed Ibrahim

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Family Court Appeal is filed against the order and decree, dated 26.04.2010, in O.S.No.30 of 2003 on the file of the Judge, Family Court, Hyderabad.

2. The respondent herein claiming to be the wife of one A.Bala Narsimha (hereinafter referred as 'the deceased employee') filed the aforementioned suit under Section 7 of the Family Courts Act, 1984 to declare her as the legally wedded wife of the deceased employee and that she is entitled to the service benefits consequent on the death of her husband. The appellants are arrayed as the defendants in the suit.

3. It is the pleaded case of the respondent that she is the second wife of the deceased employee, who died in the year 1972, leaving behind him herself and his first wife - Smt.A.Anantamma, who also died on 06.07.2002. That as the deceased employee had no issues through his first wife, with her consent he married the respondent and that the first wife herself performed the said marriage in the year 1955. That the deceased employee used to work as Dafedar in Finance and Planning (Projects Wing) at Secretariat, Hyderabad and after his death, the appellants gave employment to his first wife - Anantamma on compassionate grounds and that the said Anantamma also died on 06.07.2002. The respondent further pleaded that the deceased employee remained issueless as both the wives have not procured children. That the respondent approached Anantamma and requested her to pay family pension as she got compassionate appointment, on which the said Anantamma executed a declaration-cum-undertaking, dated 14.12.1990, agreeing to pay entire family pension to the respondent. That appellant

No.1 issued memo No.660/Fin./(OP-II)-96.2, dated 23.10.1996 directing the respondent to approach the Court and obtain necessary orders and accordingly, she filed the suit.

4. Appellant No.1 – Principal Secretary to Government, Finance and Planning (F&W) Department, Secretariat, Hyderabad, filed its written statement in the suit and the same was adopted by appellant No.2. It is, *inter alia*, averred in the written statement that as per the Government records, one late A.Narasimhaloo S/o A.Sayanna worked as permanent Dafedar in the office of F.A. and C.A.O., NSP, Secretariat Building, Hyderabad and he expired on 15.02.1972 while in service. That on his death, his wife - Anantamma submitted pension papers for sanction of family pension and gratuity and accordingly, she was sanctioned family pension at Rs.65/- per month from 16.02.1972 to 15.02.1979 and at Rs.35/- per month from 16.02.1979 onwards. That the appellants gave employment on compassionate grounds to Anantamma as Sweeper in Finance Works and Projects Department, Secretariat, Hyderabad and that while submitting the pension papers, the said Anantamma declared that she alone is the family member to her husband – late A.Narsimhaloo. It is also averred that there is no employee by name A.Bala Narsimha in the department. The appellants further denied taking place of marriage of the respondent with the deceased employee in the year 1955 as she was only 8 years of age by then and that even if such marriage has taken place, child marriages are prohibited according to law.

5. Before the Family Court, on behalf of the respondent, she examined herself as P.W.1 and got Exs.A-1 to A-22 marked on her side. On behalf of the appellants, R.W.1 was examined and no document was

marked on their side. On appreciation of the oral and documentary evidence, the Family Court decreed the suit with costs, directing the appellants to release the family pension of the deceased employee from 13.12.1990 i.e., the date of Ex.A2, which was executed by the deceased Anantamma, if pension was not given to her till the month of June, 2002 and if family pension was paid to Anantamma till 06.07.2002, the date on which she died, family pension of the deceased employee shall be given to the respondent from the month of July, 2002 onwards. Feeling aggrieved by this decree, the appellants filed this appeal.

6. The learned Government Pleader for Appeals (TS) appearing for the appellants has submitted that since the Hindu Marriage Act, 1955 (for short 'the Act') prohibits a Hindu male contracting a second marriage during the subsistence of his first marriage, the respondent cannot be recognized as the legally wedded wife of the deceased employee and that therefore, the Family Court has committed an error in decreeing the suit. In support of this submission, he has placed reliance on the judgment of this Court in G.Bharathi and others v. G.Prameela and others¹. The learned Government Pleader has further submitted that there was discrepancy in the names of A.Narasimhaloo and A.Bala Narsimha, that no evidence was placed before the Family Court to show that A.Bala Narsimha and A.Narasimhaloo are one and the same and that in the absence of such evidence, the Family Court erred in recognizing the respondent as the legally wedded wife of the deceased employee.

7. As regards the identity of the deceased employee, we find from the judgment under appeal that the Family Court has given cogent reasons

¹ 2008(2) ALD 444

for arriving at the conclusion that A.Bala Narsimha was no other than A.Narasimhaloo and that there is no dispute regarding the identity of the said person. The learned Government Pleader has not joined serious issue on this aspect. Therefore, it is unnecessary for us to dilate deeper on this issue.

8. With regard to the critical aspect as to whether the respondent could be recognized as the legally wedded wife of the deceased employee for the purpose of sanction of family pension, the Family Court, having referred to and relied upon circular memo No.36840/A/329/A2/Pen.I/93, dated 11.09.1996, held that the respondent is the legally wedded wife of the deceased employee. On a perusal of the said circular memo, which was marked as Ex.A-8 in the suit, we find the following point and clarification thereto.

Point	Clarification
Whether in respect of cases where such marriages have been contracted prior to the issue of Andhra Pradesh Civil Services (Conduct) Rules, 1964, the second wives can be allowed Family Pension irrespective of the Personal Laws governing them:	Irrespective of the personal Laws if a Government employee having a living wife contracted second marriage after the introduction of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 without the permission of the competent authority, such marriage is null and void and second wife does not have any legal status and such second wife is not entitled to the family pension. On the other hand if the employee contracted second marriage with permission of the competent authority such wife will have legal status for all purposes for receiving family pension along with the first wife or the children of the first wife in terms of sub-rule (6) of Rule 50 of the Andhra Pradesh Revised Pension Rules, 1980. <u>If the second marriage is contracted before the introduction of Andhra Pradesh Civil Services (Conduct) Rules, 1964 family pension can be paid in the same manner.</u> (Emphasis added)

9. From the above reproduced circular memo issued on behalf of the appellants, it is quite evident that if a person contracts second marriage prior to the commencement of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 (for short 'the Rules'), the second wife will have the legal status for all purposes for receiving family pension along with the first wife and the children of the first wife in terms of Sub-Rule (6) of Rule 50 of the Andhra Pradesh Revised Pension Rules, 1980.

10. There does not appear to be a serious dispute that the marriage of the respondent has taken place prior to the commencement of the Rules, if not in the year 1955. The judgment in G.Bharathi (supra) does not come to the aid of the appellants, because the circular memo, dated 11.09.1996, was not brought to the notice of this Court in the said case and that the judgment turned only on the provisions of the Act. In the instant case, we have no hesitation to hold that the marriage of the respondent has taken place prior to the commencement of the Rules and therefore, in terms of the aforementioned circular memo, she has the status of legally wedded wife of the deceased employee on par with the first wife. It is also not in dispute that the first wife – Anantamma executed declaration-cum-undertaking, dated 14.12.1990, which was marked as Ex.A-2 in the suit, declaring that not only that she has agreed for the second marriage of her husband, but also, she herself has performed the marriage of the respondent with her husband as she could not procure children with an intention to have children. She also relinquished her right to the family pension as she was given employment on compassionate grounds in place of her husband.

11. On a detailed consideration of the facts and circumstances of the case and for the aforementioned reasons, we do not find any merit in this appeal and the same is, accordingly, dismissed. Since the respondent is denied the benefit of family pension for nearly three decades, a sum of Rs.10,000/- (Rupees ten thousand only) is awarded to her towards compensatory costs.

12. As a sequel to dismissal of the appeal, interim stay granted on 11.10.2011 in F.C.A.M.P.No.405 of 2011 is vacated F.C.A.M.P.Nos.405 of 2011, 606 of 2015 and 155 and 547 of 2016 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

T.RAJANI, J

06th February, 2017
GHN

