

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

* HONOURABLE SRI JUSTICE M. GANGA RAO

+ WRIT APPEAL No.1020 of 2017

% 13-11-2017

BETWEEN:

1. The Union of India, rep. by its Secretary, Ministry of Consumer Affairs, Food & Public Distribution, New Delhi.
2. Mr. Sudhir Kumar, IAS (Retd), Secretary, Ministry of Consumer Affairs, Food & Public Distribution, New Delhi.

... Appellants/respondents

Vs.

Lakshmi Suri W/o. Late Amarnath Suri
GPA T.D. Dayal R/o. 1-1-261/15/D,
Street No.2, Chikkadpalli, Hyderabad.

... Respondent/ writ petitioner

!Counsel for the Appellants : Mr. B. Krishna Mohan S.C. for CG

^ for the Respondent : Mr. T Deena Dayal party-in- person

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? Cases referred

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT APPEAL No.1020 of 2016

JUDGMENT: (*V. Ramasubramanian, J*)

Aggrieved by a direction issued by the learned Single Judge in a writ petition filed by the respondent, to pay family pension to the respondent, at least from the date of the death of the first wife, the Union of India has come up with the above writ appeal.

2. Heard Mr. B. Krishna Mohan, learned Standing Counsel appearing for the appellant and Mr. T. Deena Dayal, General Power of Attorney holder of the respondent appearing in-person.

3. The respondent filed a writ petition in W.P.No.27522 of 2016 seeking a direction to the Union of India to sanction to her, the family pension payable on account of the death of her husband, contending *inter alia* that she was married to the deceased Government Servant on 18.04.1983; that she lived with him as his wife till his death on 18.12.1997 and also had three sons born in the relationship; that she submitted a petition on 28.03.2000, to the Minister for Consumer Affairs seeking family pension, not only for herself but also for her three minor children; that however no order was passed, presumably at the intervention of another lady (impleaded as the 3rd respondent in the main writ petition), the alleged first wife of the husband of the respondent; that the marriage claimed by the 3rd respondent in the writ petition was void under Section 5 (ii) (b) of the Hindu Marriage Act, 1955, due to her incapacity to have cohabitation and to bear children; that she filed one writ petition in W.P.No.22212 of 2000 on the file of this Court, in which a direction was issued on 03.07.2001 to the authorities to dispose of the

representation of the respondent on merits; that in the said order, an observation was also made by this Court that this Court cannot go into the details of the marriage of the respondent herein; that challenging the observation so made, the respondent filed an appeal in W.A.No.2266 of 2003 and the same was disposed of by a Bench of this Court on 04.12.2003 permitting the respondent to give a fresh representation and with a further direction to the Government to take action on the representation within four months; that however there was no post of Regional Director in Department of Food, to enable the respondent to give a representation as per the directions of the Division Bench; that therefore the respondent filed a fresh writ petition in W.P.No.25865 of 2005; that the said writ petition was disposed of by a learned Judge, by an order dated 24.06.2013 directing the Secretaries in the Ministry of Consumer Affairs and in the Department of Pension to conduct a *de novo* enquiry into the matter, after affording reasonable opportunity both to the 1st respondent herein and to the person who claimed to be the first wife and to take further action depending upon the outcome of the enquiry; that thereafter an order was passed by the then Secretary to Government, Ministry of Consumer Affairs on 07.02.2014 rejecting the claim of the 1st respondent, on the ground that the 1st respondent is not the legally wedded wife of the deceased Government Servant; that thereafter the respondent submitted a petition to the Hon'ble the Chief Justice of this Court on 19.10.2014, requesting the Chief Justice to treat her letter as a writ petition to take appropriate action; that the said letter was forwarded to the High Court Legal Services Committee; that the Secretary of the High Court Legal Services Committee opined that the respondent should approach the Ministry of Consumer Affairs; that thereafter the respondent

filed a Contempt Case, but the same was closed by a learned Judge of this Court, with liberty to the respondent to challenge the order dated 07.02.2014 by way of a separate writ petition and that therefore the respondent was obliged to file the present writ petition W.P.No.27522 of 2016 out of which the present writ appeal arises.

4. Before proceeding further, we are obliged to take note of two things, viz., (1) that the person, who claimed to be the first wife, who was arrayed as the 3rd respondent in the main writ petition, died on 01.07.2015; (2) that the three children born to the respondent in this writ appeal have already attained majority and (3) that the Union of India did not have an opportunity to file a counter to the writ petition.

5. The learned Judge, before whom the writ petition came up, allowed the writ petition after recording the following findings, viz., (1) that the deceased Government servant, viz., Amarnath Suri, first married Smt. Santhoshi Kumari, who was arrayed as the 3rd respondent in the writ petition; (2) that thereafter, the deceased Government servant married the respondent herein since the first wife was not able to beget children, due to a cyst in the abdomen; (3) that the enquiry conducted by the 2nd respondent, pursuant to the orders passed by a learned Judge of this Court in W.P.No.25865 of 2005, was perfunctory in nature, since the enquiry officer did not go into the question of the legal status of the respondent; (4) that the conclusion reached by the 2nd respondent in the writ petition (2nd appellant herein) that the respondent was not the legally wedded wife, was not based upon any concrete material; (5) that Rule 54 recognises the right of the children born to the second wife to receive a share in the family pension, even if the marriage is declared as void; (6) that Rule 54 of the Central Civil Services (Pension) Rules, 1972 obliges the

Government to pay family pension to all the widows, wherever there are more than one, in equal shares; (7) that even if the second marriage of a Government servant, during the subsistence of the first marriage, tantamount to a misconduct, the 2nd wife cannot be penalized for the sins of the ex-employee; and (8) that therefore the respondent was entitled to the grant of a share in the family pension up to the date of death of the first wife and to the full family pension at least from the date of the death of the first wife.

6. Assailing the judgment of the learned Single Judge, it is contended by Mr. B. Krishna Mohan, learned Standing Counsel for Union of India that Rule 21(2) of the Central Civil Services (Conduct) Rules, 1964 prohibits a Government servant from entering into a marriage with any person, while having a spouse living; that the proviso to sub-rule (2) of Rule 21 carves out an exception, only in cases where the personal law applicable to the Government servants, permits such marriage; that it is only to take care of such contingencies that Rule 54 (7) provides for the sharing of the family pension between the widows where there are more than one; and that the issue raised in this case is already settled by at least two decisions of the Supreme Court, one in *Rameshwari Devi v. State of Bihar*¹ and *Raj Kumar v. Krishna*².

7. In response to the above contentions, Mr. T. Deena Dayal, the General Power of Attorney holder of the respondent, submitted (1) that by virtue of Section 5 (ii)(b) of the Hindu Marriage Act, 1955, the marriage of the deceased Government servant with his first wife Smt. Santhoshi Kumari, stood automatically annulled on account of her physical disability for cohabitation and procreation of children; (2) that therefore in law, the

¹ (2000) 2 SCC 431

² AIR 2015 SC 2697

respondent was the only legally wedded wife of the deceased Government servant; (3) that Section 10 of the Hindu Succession Act, 1956 recognises that there can be more widows than one and enables all the widows to take one share of the property of an intestate, together; (4) that when the statutory Rule, viz., Rule 54 recognises the entitlement of more than one widow to receive a share in the family pension, the appellants cannot go into the question of validity of the marriage; and that at any rate none of the contentions now raised by the Standing Counsel for the Central Government were raised before the learned Judge and hence they should not be taken into consideration.

8. We have carefully considered the rival contentions. From the rival contentions the following questions arise for our consideration:

1. Whether the respondent could be taken to be the legally wedded wife of the deceased Government servant, despite the admitted fact that there was already a valid marriage subsisting, on the date of the Government servant contracting a second marriage?
2. Whether by virtue of Rule 1 under Section 10 of the Hindu Succession Act, 1956 read with Rule 54 of the Central Civil Services (Pension) Rules, 1972 a lady whose marriage with the Government servant was not lawful, was entitled to a share in the family pension?

Issue No.1:

9. There is no dispute about the fact that on the date on which the respondent claims to have married the deceased Government servant namely, 18.04.1983, he already had a lawfully wedded wife by name Santhoshi Kumari living and the marriage between them was subsisting. Therefore, even the power agent of the respondent appearing in-person admits that the marriage of the respondent with the deceased Government servant was in violation of Section 5(i) of the Hindu Marriage

Act 1955. It is seen from paragraphs 2 and 3 of the affidavit filed by the respondent in the writ petition (out of which the present writ appeal arises) that the respondent claims her marriage to be a lawful marriage by a convoluted logic that the marriage with the first wife became automatically void under Section 5(ii) (b) of the Hindu Marriage Act, 1955 due to the disability of the first wife to have cohabitation and procreate children.

10. To say the least, the contention of the power agent of the respondent in this regard is obnoxious. Section 5 (ii) (b) of the Hindu Marriage Act prescribes as one of the conditions for a valid marriage between two Hindus that at the time of marriage neither party should be suffering from a mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children. Section 5 may be extracted usefully as follows:

“Conditions for a Hindu marriage: —A marriage may be solemnized 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) at the time of the marriage, neither party, - —
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity
- (iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

11. It is not and it was never the case of the respondent throughout the period of this litigation that the first wife of the deceased Government servant was suffering from a mental disorder of such a kind or to such an extent, as to be unfit for marriage and the procreation of children. The respondent came into the life of the deceased Government servant only in the year 1983, long after the marriage of the deceased Government servant with his first wife. Therefore, the respondent cannot even know what was the mental condition of the first wife at the time of marriage. The emphasis in Section 5(ii) is on the condition of the spouse at the time of the marriage and not thereafter. All that is stated by the respondent in paragraph-3 of the affidavit in support of the writ petition is that the marriage of the Government servant with his first wife was void under Section 5(ii) (b) of the Hindu Marriage Act, 1955 due to a cyst in her abdomen, on account of which, she was unable to cohabit and procreate children. This averment does not even meet what is required under Section 5 (ii), leave alone the perverse interpretation sought to be given to the provision by the respondent.

12. It was contended by the power agent of the respondent that it is only in cases where the marriage between two Hindus was in contravention of any of the conditions specified in Clauses (i), (iv) and (v) of Section 5 that there is a requirement under Section 11 for the affected party to approach the Court and seek declaration by a decree of nullity and that in cases where the contravention was under Clauses (ii) or (iii), there is not even a necessity to approach the Court and seek a decree of nullity.

13. In other words, the contention of the power agent of the respondent is, (1) that in cases covered by Clauses (i), (iv), (v) of

Section 5, of the Hindu Marriage Act, 1955 there is a requirement to approach the Court and seek a decree of nullity; and (2) that in cases covered by Section 5 (ii) and (iii), the marriage would automatically become void without any necessity even to approach the Court with a petition.

14. We doubt whether any counsel would dare to advance such an abhorring proposition. If a counsel had been appearing for the respondent, we would not allow him even to raise such a contention. But when parties appear in-person or through their power agents (about which we have something to say at the end), it is unavoidable for the Courts to listen to such arguments.

15. Be that as it may, a marriage contracted in violation of Section 5(ii) of the Hindu Marriage Act, 1955 is only a voidable marriage, by virtue of Section 12 (1) (b). In other words, the contravention of clauses (i), (iv) & (v) of Section 5 would make a marriage void, but a contravention of Section 5(ii), would make the marriage only voidable. It is not the case of the respondent that the deceased Government servant sought annulment of his marriage with the first wife, by a decree of nullity, in terms of Section 12 (1) (b). Therefore, there is no doubt that even by her own admissions, the marriage of the respondent with the deceased Government servant, was void on account of Section 5(i). When this is so clear even on admitted facts, we do not know why this Court entertained a doubt in its mind in the second round of litigation in W.P.No.25865 of 2005 and directed the 2nd appellant to hold an enquiry into the status of the respondent. The status of the respondent was so obvious from her own pleadings and contentions and the same did not require wastage of time in the form of an enquiry.

16. Unfortunately, the learned Judge against whose order the present appeal arises, termed the enquiry conducted pursuant to the order passed in W.P.No.25865 of 2005 to be perfunctory and the order dated 07.02.2014 passed by the 2nd appellant to be arbitrary. In our considered view, the status of the 2nd respondent has turned out so clearly from her own pleadings and hence no amount of enquiry could have improved it. Therefore, we do not agree with the findings recorded by the learned Single Judge that the enquiry conducted into the status of the respondent was perfunctory and that the order rejecting her claim was illegal. By her own pleadings, the status of the respondent was that of a person who contracted a marriage with another, who already had a spouse living and the marriage with her subsisting at that time.

Issue No.2:

17. The second issue arising for consideration is as to whether in the light of Rule 1 under Section 10 of the Hindu Succession Act, 1956 and Rule 54 of the Central Civil Services (Pension) Rules, 1972, a lady whose marriage with the deceased Government is void, will be entitled to claim a share in the family pension or not.

18. Let us first take up Rule 1 under Section 10 of the Hindu Succession Act, 1956. Section 10 reads as follows:

Section 10:- Distribution of property among heirs in class I of the Schedule.—The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:—

Rule 1.— The intestate's widow, or if there are more widows than one, all the widows together, shall take one share;

Rule 2.— The surviving sons and daughters and the mother of the intestate shall each take one share;

Rule 3.— The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share;

Rule 4.— The distribution of the share referred to in Rule 3;

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters gets equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

19. The contention of the Power Agent of the respondent appearing in person is that what is contained in rule 1 of section 10 is a recognition of the fact that there could be more than one widow and that all of them will be entitled to a share irrespective of the legitimacy of the marriage.

20. But the said contention is misconceived. Section 10, as can be seen from its plain language, prescribes the Rules for the distribution of property of an intestate, among the heirs in class-I of the Schedule. Family pension, cannot by any stretch of imagination, be construed as a property left behind by a deceased Government servant. If it is treated as a property left behind by a Government servant, then he would be entitled even to dispose of the same by way of a testamentary instrument. Alternatively, even if it is construed as a property by an imaginative interpretation, on account of the facility of nomination available to the Government servant, when he is alive, then the nomination would, by the same logic, become a kind of last wish (we are careful in not equating the nomination to the level of testamentary instrument). In such a contingency also the respondent will not get a share, since in this case, the deceased Government servant had nominated his first wife and the nomination continued till his death.

21. The second difficulty in applying Section 10 would be that if section 10 has any application, then *de hors* the Central Civil Services (Pension) Rules, 1972, a family pension may have to be distributed among

all the class-I heirs, such as, son, daughter, widow, mother, son of a pre-deceased son, and so on and so forth. The Central Civil Services (Pension) Rules, 1972 confer a right upon some of the legal heirs of the deceased Government servant to receive pension and that too in accordance with the rules. But for the Central Civil Services (Pension) Rules, 1972, there can be no right to receive pension. In fact, *the beneficiaries of the Central Civil Services (Pension) Rules, 1972, are the legal heirs of the deceased Government servant and not the Government Servant himself. Therefore, what applies to a property left behind by him, cannot be applied to a right that accrues to some of his legal heirs after his death.* Hence the argument based upon Section 10 (1) has to be rejected outright.

22. That takes us to the next part of the argument revolving around Rule 54 of the Central Civil Services (Pension) Rules, 1972. Sub-Rule 7 (a) (i) of Rule 54, no doubt, states that where family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. The learned Judge, in the order impugned in this appeal considered Rule 54 (7) (a) (i) to be a statutory recognition of the right of woman other than the one legally wedded to the deceased Government servant to receive a share in the family pension, irrespective of whether such marriage is recognised by or prohibited in law. The learned Judge put it, purely on the humanitarian perspective that the Government recognised the possibility of an employee having more than one wife and the responsibility of such employee to look after the welfare of such wives. Taking such a view, the learned Judge held in paragraph-18 of the impugned judgment that the employer, by incorporating Rule 54(7), condoned the sins of the ex-employees.

23. But what has been omitted to be taken note of is that it is not open or up to the Government to condone the sins of its ex-employees. The sins of a sinner can be condoned only by the person, who is sinned against and not by a third party. If Rule 54 (7) (a) (i) is to be interpreted in such a manner, the lawfully wedded wife gets deprived of a portion of the family pension that she is otherwise entitled to in full, merely because her husband has committed a sin. It may be true that the lady, whom a Government servant marries during the subsistence of the first marriage, may also be a victim, if without any knowledge of the subsistence of the first marriage, she enters into the marriage with the Government servant. But among the two victims of such a marriage, the first wife's position becomes more precarious, if the Rule is interpreted in the manner done by the learned Judge. This is for the reason that the quantum of family pension payable does not increase with the number of wives taken by a deceased Government servant. Rule 54(7)(a) contemplates only a distribution of one single pension among all the widows. Therefore, Rule 54(7)(a) cannot be interpreted in such a manner as to penalize one widow who was the lawfully wedded wife of the deceased Government servant, merely because another woman cannot be left in the lurch.

24. As rightly pointed out by the learned Standing Counsel for the Central Government, we cannot interpret Rule 54 (7) (a) of the Pension Rules in isolation. This Rule has to be interpreted, keeping in mind (1) the personal law applicable to the parties; (2) the provisions of Section 5(i) of the Hindu Marriage Act, 1955, if the deceased Government servant was a Hindu; and (3) Rule 21 (2) of the Central Civil Services (Conduct) Rules, 1972. Once a marriage is declared void in terms of a parliamentary enactment and once the marriage of a Government servant with another

person, even while having a spouse living, is declared as a misconduct, it is not possible to interpret Rule 54 (7) (a) of the Pension Rules in such a manner as to reward (i) a violation of the law and (ii) a misconduct.

24. The only manner in which Rule 54 (7) (a) of the Pension Rules can be harmoniously construed in tune with Rule 21 (2) of the Central Civil Services (Conduct) Rules, 1964 is to hold that the distribution of family pension among all the widows is made possible by Rule 54 (7) only in cases where the proviso (a) to sub-rule (2) of Rule 21 of the Central Civil Services (Conduct) Rules, 1972 apply. Rule 21 of the Central Civil Services (Conduct) Rules, 1964 reads as follows:

“Rule 21:- (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person;

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in Clause (1) or Clause (2), if it is satisfied that-

Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and There are other grounds for so doing.

(3) A Government servant who has married or marries a person other than of Indian nationality shall forthwith intimate the fact to the Government.”

25. The object of the provision made under Rule 54 (7) (a) is to provide for all the women who get into a legally valid marriage with the Government servant. There may be cases where the Government servant divorced his first wife and lawfully married another. In such cases, the right to receive maintenance from the husband would have continued for the divorced wife up to the date of death of the Government servant. Probably, in order to ensure that such a woman, who is deprived of the monthly maintenance after the death of her husband, is not thrown to the

streets that Rule 54 (7) (a) is carefully worded. In fact the above interpretation is fortified by sub-rules (11A) and (11B) of Rule 54, which enables a judicially separated wife to receive family pension. Sub-rules (11A) and (11B) read as follows:

“(11A) 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 taken 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.

(11B) (a) Where a female Government servant or male Government servant dies leaving behind a judicially separated husband/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.”

26. Though sub-rules (11A) and (11B) use the expression “judicial separation” and not the expression “divorce”, the purport of the rule is made clear by what follows in the proviso to sub-rule (11A). The proviso to sub-rule (11A) of Rule 54 carves out an exception to sub-rule (11A) by providing that if judicial separation had been 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 survivor, who is held guilty of committing adultery.

27. In other words, a wife, who is not divorced, but judicially separated, on account of which her status as a lawfully wedded wife continues, is disentitled from receiving family pension, by virtue of the proviso to sub-rule (11A) of Rule 54 if the conditions stipulated therein are present. Therefore, the rule 54 (7) in entirety, appears to focus only on a relationship born out of lawful wedlock and not otherwise.

28. A question may arise, as a fall out of the interpretation that we have given in the preceding paragraphs, as to what would happen to a lady with whom the deceased Government servant had a living in relationship, especially after the advent of The Protection of Women from Domestic Violence Act, 2005. It is true that this Act, came long after India ratified the Convention on the Elimination of Discrimination Against Woman. It is also true that the Domestic Violence Act recognises certain rights for a woman, who was in a living in relationship with a person.

29. But the right that such a woman would have as against the individual with whom she had such a relationship, is not to be confused with a right that is sought to be enforced as against the Government in terms of the Pension Rules. If the Government servant was alive and the respondent was seeking to enforce certain rights as against him, in terms of the Domestic Violence Act, the same would certainly go in favour of the respondent, to the extent she is conferred with certain rights. But no right would arise even under the Domestic Violence Act, for the respondent to claim a share in the pension that the lawfully wedded wife is entitled to. If there was no lawfully wedded wife, then the person in a relationship with the Government servant may also have a right to seek pension. But where there is already a lawfully wedded wife living at the time of death of the Government servant and the marriage between her and the deceased had not been dissolved or annulled, then it is that wife who will get the family pension.

30. As a matter of fact the Government appears to have already taken a decision on the applicability of Rule 54 (7)(a) of the Pension Rules, way-back in the year 1987. The decision of the Government of India in this regard is found in para (15) under Rule 54 of the Central Civil

Services (Pension) Rules, 1972. Paragraph-15 quotes a DO letter No.1/39/86-P & P.W., dated 16.02.1987, reproducing the advise given by the Ministry of Law. Paragraph-15 also quotes Letter No.211-Audit I/13-86, dated 04.03.1987 of the Comptroller and Auditor General. This paragraph-15 is extracted as follows:

“(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.

(C.& A.G. New Delhi, Letter No.211-Audit I/13-86, dated the 4th March, 1987)

COPY OF D.O., LETTER NO.1/39/86-P. & P.W., DATED 16.02.1987 RECEIVED FROM SHRI HAZARA SINGH, DEPUTY SECRETARY, DEPARTMENT OF PENSION AND P.W., NEW DELHI.

An extract of the relevant advice given by the Ministry of Lw in the matter is enclosed. You may like to take necessary action in the matter accordingly.

EXTRACT

It is specifically a question arising under the Hindu Marriage Act, 1955. Under Rule 54(7) of the CCS (Pension) Rules, 1972, in case a deceased Government servant leaves behind more than one widow or a widow and eligible offspring from another widow, they are entitled to family pension in respect of that deceased Government servant. Section 11 of the Act provides that nay marriage solemnized after the commencement of the Act shall be null and void and can be annulled against the other party by a decree of nullity if the same contravenes any of the conditions specified in Clauses (i), (iv) and (v) of Section 5 of the Act. Section 5(1) stipulates that the marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage. Therefore, any second marriage by a Hindu male after the commencement of 1955 Act during the lifetime of his first wife will be a nullity and have no legal effect. Such marriage cannot be valid on the ground of any custom. In fact, a custom opposed to an expressed provision of law is of no legal effect. So under these circumstances, the second wife will not be entitled to the family pension as a legally wedded wife.”

31. Unfortunately, the decision of the Government of India extracted above, was not brought to the notice of the learned Judge. Therefore, we are of the considered view that the respondent, even by her own admission with regard to her status, was not entitled to family pension.

32. In *Rameswari Devi*, the Supreme Court was concerned with the correctness of a judgment of the Division Bench of the Patna High Court, which held that the second wife was not entitled to family pension. While approving the decision of the Patna High Court and dismissing the appeal, the Supreme Court held as follows:

“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 the Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include 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). Yogamaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate 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, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement gratuity payments which is 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.”

33. Similarly a 3 Member Bench of the Supreme Court held in *Raj Kumari v. Krishna* that pension is payable only to the legally wedded wife of the deceased employee. Paragraph-15 of the said decision is clear on this aspect.

34. As a matter of fact, there is no ambiguity in clause (a) of sub-rule (7) of Rule 54. Clause (a) of sub-rule (7) of Rule 54 reads as follows:

“(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 dhare 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.”

35. Sub-clause (i) of clause (a) of sub-rule (7) enables the distribution of family pension in equal shares among widows, only in cases where family pension is payable to more widows than one. *The expression used in the rule is “where payable”*. The question that arises in these cases is whether it is payable at all. It is only if family pension is payable lawfully to someone that the question of paying the same in equal shares under sub-rule (7) would arise. The word “payable” clinches the issue. Therefore, we are of the considered view that the respondent is not entitled to family pension and the order of the learned Judge is to be set aside.

36. One contention advanced by the power agent of the respondent is that the arguments now raised by the learned standing counsel for the Union of India, were not raised in the writ petition and that therefore, they cannot now be raised. But we do not agree. All the contentions raised by the learned standing counsel for the Union of India are only legal submissions. The Union of India has not placed before us any facts, which can be disputed by the respondent. In fact we have found the status of the respondent, even by her own pleadings, to be that of a person whose marriage with the deceased Government servant was void. The learned senior standing counsel made submissions only on the legal consequences flowing out of such a status. Therefore, the absence of pleadings, will not deprive the Union of India from advancing legal arguments on admitted facts.

37. But before parting, we are constrained to say something. In the affidavit filed by the respondent in support of the writ petition, she has mentioned the names of all the learned Judges, who have dealt with this

litigation in the past. Apart from mentioning the names of the learned Judges, the respondent has also made certain remarks. For instance, in paragraph-4 of the affidavit in support of the writ petition, the respondent has commented that one particular Judge, who passed orders on 03.07.2001 in W.P.No.22212 of 2000, made an unwarranted remark forcing the respondent to file a writ appeal. In the same paragraph, the respondent has also stated that a Division Bench of this Court while disposing of her writ appeal No.2266 of 2003, directed her to make a fresh petition to a non-existing person, viz., Regional Director, Department of Food, Southern Region, Chennai, which post was abolished forty years back.

38. Apart from making a mention of all the learned Judges, who dealt with all her previous writ petitions and apart from making certain comments, the respondent seems to have engaged a person as power agent to pursue her case. The power agent of the respondent does not appear to be related to the respondent. A person has a right of audience in the court, either as a party-in-person or through a counsel appointed by self or through a counsel appointed by the Legal Services Authority. In some cases, close relatives, such as, parents, spouse or children, may act as power agents to present the case of a party. But a third party cannot take a power from a litigant and seek to argue a case before this Court.

39. As a matter of fact, Justice Jagannadha Rao (as he then was), held in Hari Om Rajendra Kumar and others v. Chief Rationing Officer of Civil Supplies (AIR 1990 AP 340), that after the advent of Section 33 of the Advocates Act, 1961, a non-advocate cannot be permitted to address the Court on the strength of the power of attorney. The learned Judge pointed out that the provisions of Order III Rule 1 of

the Code, are also subject to the provisions of the Advocates Act, 1961, in particular Sections 32 and 33. After tracing the history of the bar imposed by the Bar upon non-advocates from representing causes, the learned Judge pointed out that though this Court has power to grant permission for non-lawyers to plead/argue cases in certain special circumstances, it cannot be done in a routine fashion.

40. But unfortunately, in this case something strange had transpired earlier. Along with the writ petition in W.P.No.27522 of 2016 (out of which the present appeal arises), the respondent filed a petition in WPMP.No.6878 of 2016 for permission to appear through her power agent. This petition was ordered on 08-08-2016, by a learned single Judge, on the sole ground that in a writ appeal filed by the respondent in an earlier round of litigation W.A.No.153 of 2006, the respondent was permitted to revoke the vakalath given to her advocate and to allow her power of attorney agent to appear on her behalf.

41. But in W.A.No.153 of 2016, the Division Bench did not go into the question as to whether the power agent of the respondent can claim as a matter of right, to appear and argue on behalf of the respondent. A Miscellaneous Petition in WAMP.No.684 of 2006 in W.A.No.153 of 2006 for revoking the vakalath of the previous advocate and to permit the G.P.A. holder to appear was just allowed by the Division Bench without going into the law.

42. The law is, as enunciated by the learned Judge of this Court in Hari Om Rajendra Kumar, that no party to a case, as of right can plead and argue his/her case through a power agent though in special circumstances, this Court can permit such representation.

43. If in special circumstances this Court can permit a party to be represented by a power agent, such special circumstances should be established in every case. The permission granted in W.A.No.153 of 2006 is not a reservoir to allow the power of flow at all times.

44. In fact, we have heard the power agent of the respondent in full without raising any objection to his entitlement and we have decided the case actually on merits. A question would naturally arise as to why we are now spending our valuable time on the entitlement of the power agent of the respondent to appear, especially when we have already heard him in full on 08-11-2017 and reserved for judgment. The answer to this question is to be found in something that happened at the stage of the writ petition.

45. As we have stated earlier, the respondent filed the writ petition W.P.No.27522 of 2016 (out of which the present appeal arises), along with WPMP.No.6878 of 2016 for permission for the power agent to appear and argue. Though one learned Judge ordered the petition on 08-08-2016 by just referring to the permission granted in an earlier case in W.A.No.153 of 2006, without finding out the existence of special circumstances, another learned Judge passed an order on 01-11-2016 quoting the decision in Hari Om Rajendra Kumar and directing the respondent to engage a counsel.

46. Thereafter, the respondent filed a petition in MP.No.47810 of 2016 seeking a very strange and contentious prayer. The prayer made in MP.No.47810 of 2016 is as follows:

“For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon’ble Court may be pleased to ignore the decision of this Hon’ble Court in Hari Om Rajendra Kumar and others v. Chief Rationing Officer of Civil Supplies (AIR 1990 (AP) 340) and restore the permission granted to Sri T.D. Dayal, G.P.A. of the petitioner Smt.

Lakshmi Suri in WPMP.No.6878 of 2016 in W.P.No.27522 of 2016 in the interest of justice and/or pass such other order or orders deemed fit and proper in the circumstances of the case.”

47. In the affidavit in support of the said petition, the respondent claimed that in a Special Leave Petition filed by the respondent as against one order of the Division Bench of this Court, the power agent was permitted to appear and plead on her behalf.

48. Actually, the order passed by the Supreme Court on 15-03-2010 in SLP (Civil) No.298 of 2010 is as follows:

“SLP (C)298/2010

Application for permission to Sri T.D. Dayal, holder of the GPA of the petitioner to appear and plead on her behalf is granted.

The Special Leave Petition is dismissed.

SLP...../2010 (CC 217/2010)

The Special Leave Petition is dismissed on the ground of delay.”

49. The aforesaid order of the Supreme Court was not a permanent licence granted to the power agent of the respondent to practice in Law Courts, forever on behalf of the respondent. The law laid down in Hari Om Rajendra Kumar, was not set at naught by the Division Bench or the Supreme Court in any case. Therefore, it was nothing but audacity on the part of the respondent to pray in MP.No.47810 of 2016 to ignore the decision of this Court in Hari Om Rajendra Kumar and to permit the power agent to appear.

50. In fact we are not carried away by such small things, as it is more important to deal with a case on its merits rather than on peripherals. This is why we have actually dealt with the case on its merits. But before parting we were also compelled to take note of these things, only because of the manner in which the names of all the learned Judges

are mentioned in the affidavit and remarks are passed about the judgments rendered by them.

51. In fine, we are of the considered view that the respondent is not entitled to family pension. Rule 54 (7)(a) of the CCS (Pension) Rules, 1972 cannot be interpreted in such a manner as to be directly in conflict with Rule 21 (2) of the CCS (Conduct) Rules and Section 5 (i) of the Hindu Marriage Act, 1955.

Therefore, the writ appeal is allowed and the order of the learned Judge is set aside. The writ petition filed by the respondent shall stand rejected.

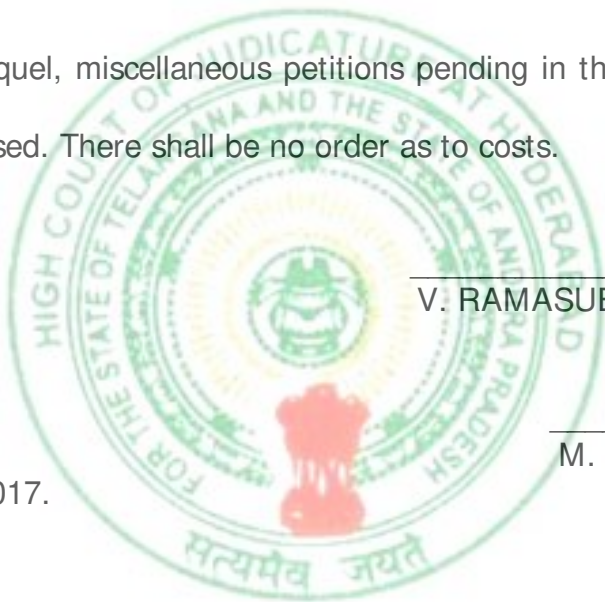
As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

M. GANGA RAO, J.

Date: 13-11-2017.

Js/Ksn



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE M. GANGA RAO

WRIT APPEAL No.1020 of 2016
(per VRS, J.)



13th November, 2017.

Ksn