

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Civil Revision No.01 of 2015**

1. Smt. Subabli Pujari Wd/o. Ganesh Prasad Pujari;
2. Ashok Pujari S/o. Late Ganesh Prasad Pujari;
3. Miss Sarita Pujari D/o. Late Ganesh Prasad Pujari;
4. Shri Krishna Pujari S/o. Late Ganesh Prasad Pujari;

All are Residence at Munda Tikrapara Village/Post Barsur District
South Bastar Dantewada (CG)

----Petitioners**Versus**

1. Smt. Padmani Bai Wd/o. Ganesh Prasad Pujari aged about 37 years
Caste Halba (Adivasi);
2. Vikas Pujari S/o. Late Ganesh Prasad Pujari aged about 19 years,
Both are R/o Village/Post Nakatisemara Tahsil Jagdalpur District
Bastar (CG)
3. Chief Engineer (Zonal Area) Chhattisgarh State Electricity
Distributor Company Limited Jagdalpur, District Bastar (CG)
4. Superintendent Engineer (सं/स.) Chhattisgarh State Electricity
Distributor Company Limited Jagdalpur, District Bastar (CG)
5. Executive Engineer (सं/स.) Chhattisgarh State Electricity
Distributor Company Limited Dantewada, District Dantewada (CG)
6. Zonal Accountant Chhattisgarh State Electricity Distributor
Company Limited, Jagdalpur, District Bastar (CG)

---- Respondents

 For Petitioners : Mr.P.K.Tulsyan, Advocate
 For Respondents No.1&2 : Mr.Manoj Paranjape & Mr.Anurag
 Singh, Advocates
 For Respondents No.3 to 6 : Mr.Ghanshyam Patel, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****20/08/2018**

1. Late Shri Ganesh Prasad Pujari died after having retired as
Lineman Class-I from the Chhattisgarh Electricity Board, Jagdalpur
(now Chhattisgarh State Power Distribution Company Limited).

Admittedly petitioner No.1 is first wife of late Shri Ganesh Prasad Pujari and petitioners No.2 to 4 are his wards. After his death, second wife Smt. Padmani Bai and her son Vikas Pujari/respondents No.1 and 2 filed an application under Section 372 of the Indian Succession Act, 1925 for grant of succession certificate in their favour in respect of retiral dues of late Shri Ganesh Prasad Pujari, which was rejected by the Succession Court. On appeal being preferred by respondents No.1 and 2, the Appeal Court allowed the appeal and directed that respondent No.1/second wife of late Shri Ganesh Prasad Pujari is also entitled for succession. Questioning that order, this civil revision has been preferred by the petitioners herein.

2. Mr.P.K.Tulsyan, learned counsel for the applicants, would submit that undisputedly respondent No.1 is second wife of late Shri Ganesh Prasad Pujari, who alleged to have entered into second marriage during subsistence of first marriage of Ganesh Prasad Pujari with petitioner No.1, therefore, he is not entitled for succession in her favour. However, he fairly submits that son Vikas Pujari/respondent No.2, who born out of wedlock of Padmani Bai/respondent No.1 with late Shri Ganesh Prasad Pujari, is entitled for succession by virtue of the provisions contained in Section 16 of the Hindu Marriage Act, 1955 (hereinafter called as 'the Act of 1955'), as such, the impugned order granting succession certificate in favour of respondent No.1 deserves to be set aside.
3. On the other hand, Mr.Manoj Paranjape, learned counsel for respondents No.1 and 2 would support the impugned order.
4. Mr.Ghanshyam Patel, learned counsel for respondents No.3 to 6 would submit that the applicants being nominee by late Shri

Ganesh Prasad Pujari are entitled for retiral dues of late Shri Ganesh Prasad Pujari.

5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.
6. It is not in dispute that respondent No.1 is said to have allegedly entered into second marriage with late Shri Ganesh Prasad Pujari during subsistence of first wife i.e. petitioner No.1/SmtSubali Bai, as such, second marriage of respondent No.1 is void. The Appeal Court has allowed the appeal solely on the ground that the parties being an aboriginal tribe the provisions contained in the Hindu Succession Act, 1956 (hereinafter called as 'the Act of 1956') would not apply and in the custom of Schedule Tribe, more than one marriage is permissible.
7. In the matter of **S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and others**¹ the Supreme Court has held that the children born out of wedlock of husband and wife leaving together under same roof and cohabiting for a number of years would raise presumption of living as husband and wife and such children being legitimate is entitled to share in the properties devolving on their father.
8. Likewise, in the matter of **Bhogadi Kannababu and others v. Vuggina Pydamma and others**² the Supreme Court has held that children born out of null and void (second) marriage would inherit the property of father with other heirs. It was observed as under:-

“14. Section 5 of the Act clearly states the grounds when the marriage cannot be solemnized. Clause

¹ 1992 Supp (2) SCC 304

² (2006) 5 SCC 532

(i) of Section 5 is one such condition, which clearly provides that no marriage can be performed if there is a living spouse. Therefore, in view of Section 5, the marriage between Suryanarayana and Pydamma cannot be considered to be legal as at the time of such marriage, Chilakamma was very much alive. Section 11 of the Act, which deals with a void marriage says that any marriage solemnized after the commencement of this Act shall be null and void if it contravenes any of the conditions specified in Clause (i), (iv) and (v) of Section 5 of the Act. Therefore, in view of Sections 5 and 11 of the Act, it must be held that the marriage between Suryanarayana and Pydamma is a void marriage as the said marriage was admittedly solemnized after the commencement of the Act. Therefore, considering that the marriage between Suryanarayana and Pydamma was a void marriage, the question that would now arise is whether their daughters, namely, respondents 2 and 3 were entitled to inherit the properties in question, with the first wife, Chilakamma, on the death of Suryanarayana. In this connection, we may refer to Section 16 of the Act. Section 16 of the Act deals with legitimacy of children of void and voidable marriages. Sub-section (1) of Section 16 of the Act clearly says that 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. (Emphasis supplied). Therefore, in view of Section 16, it is clear that the daughters, namely, Respondents 2 and 3 inherited the properties in question, along with Chilakamma, on Suryanarayana's death.....”

9. In the present case, the Succession Court has already granted succession in favour of respondent No.2, who is son of respondent No.1, born out of wedlock of late Shri Ganesh Prasad Pujari with respondent No.1.

10. In **Rameshwari Devi v. State of Bihar and others**³ the Supreme Court considered the issue of entitlement to a widow who incidentally happened to be second wife and not a legally wedded wife arose for consideration. It was held as under:-

“10.Mr. Dubey, counsel for Rameshwari Devi, submitted that inquiry conducted by the State Government as to the marriage of Narain Lal with Yogmaya Devi was

³ AIR 2000 SC 735

incompetent as there was no lawful authority with the State Government to hold such an inquiry. It was for Yogmaya Devi to establish her right of her being married to Narain Lal in a court of law. Mr. Dubey said under the relevant Conduct Rules applicable to Narain Lal he could be charged with misconduct of his having married a second time during the life time of his first wife. It is only in that circumstance when there is charge of misconduct there could be an inquiry as to the marriage of Narain Lal with Yogmaya Devi. He referred to Rule 21 of the Central Civil Service (Conduct) Rules as well as to Rule 23 of the Bihar Government Servant's conduct Rules, 1976, which are as under:-

CCS Rules

"21. Restriction regarding marriage

- (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
 - (a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and
 - (b) 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.
- Bihar Government Servant's Conduct Rules, 1976

23. Restrictions regarding marriages.
- (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 Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (4) or clause (2) if it is satisfied that.
 - (a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and
 - (b) 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."

11. We may also note two judgments of this Court on the question when there is charge of misconduct against a Government servant. In State of Karnataka

and another v. T. Venkataramanappa⁴ the respondent, a police constable was prosecuted at the instance of his wife for having contracted second marriage. He was discharged for want of evidence. A departmental inquiry was instituted against him for having contracted second marriage, for which he was suspended. He approached the Karnataka Administrative Tribunal against the order of suspension and for stopping of the inquiry against him on the ground that a criminal court had discharged him of the offence of bigamy. Tribunal accepted the stand of the respondent, quashed the departmental proceedings and lifted the suspension. On appeal filed by the State this Court said as under: --

"There is a string of judgments of this Court whereunder strict proof of solemnisation of the second marriage, with due observance of rituals and ceremonies, has been insisted upon. The prosecution evidence in the criminal complaint may have fallen short of those standards but that does not mean that the State was in any way debarred from invoking Rule 28 of the Karnataka Civil Service Rules, which forbids a government servant to marry a second time without the permission of the Government. But, here the respondent being a Hindu, could never have been granted permission by the Government to marry a second time because of his personal law forbidding such marriage. It was thus beyond the ken of the Tribunal to have scuttled the departmental proceedings against the respondent on the footing that such question of bigamy should normally not be taken up for decision in departmental enquiries, as the decisions of competent courts tending to be decisions in rem would stand at the highest pedestal. There was a clear fallacy in such view because for purposes of Rule 28, such strict standards, as would warrant a conviction for bigamy under Section 494, I.P.C. may not, to begin with be necessary."

12. In State of W.B. and others v. Prasenjit Dutta⁵ departmental proceedings were initiated against the respondent, who was a member of the Police Service of the State of West Bengal under Rule 5(4) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 for having contracted a second marriage. That Rule says that no government employee who has a wife/husband living shall contract another marriage without previously obtaining the dissolution of the first marriage in accordance with law for the time being in force, notwithstanding such second marriage is permissible in the personal law of the community to which he or she

⁴ (1996) 6 SCC 455

⁵ (1994) 2 SCC 37

belongs. On an inquiry made by an officer, appointed for the purpose, and on his report that the respondent was guilty of misconduct alleged, an order of dismissal was passed by the disciplinary authority. Respondent approached the High Court and the order of his dismissal was stayed. Nevertheless High Court was of the view that the second marriage was a serious matter, which could not be left to be decided by the departmental authorities, in proceedings such as these, and a civil or matrimonial court needs to pronounce thereon properly and finally. On appeal filed by the State Government this Court said: -

"The view of the High Court may be correct that a matter such as the present one concerning the existence or not of a relationship of husband and wife is normally to be dealt with in a matrimonial or a civil court. It cannot at the same time be said that the departmental authorities cannot go into such question for the limited purposes of sub-rule (4) of Rule 5 of the aforesaid Rules. When contracting another marriage, in the presence of the previous one, has been termed to be misconduct visiting departmental punishment it is difficult to keep suspended action under the Rule till after a proper adjudication is made by the civil or matrimonial court. It would, thus, have to be viewed that the departmental proceeding could not be shut in the manner in which the High Court has done and it would have to go on to some finality at a departmental end, on the culmination of which, it may then give rise to the delinquent approaching the civil court for determining his matrimonial status."

13. But then it is not necessary for us to consider if Narain Lal could have been charged of misconduct having contracted a second marriage when his first wife was living as no disciplinary proceedings were held against him during his lifetime. In the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long drawn affair. Doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. Decision has to be taken in a bona fide reasonable and rational manner. In the present case an inquiry was held which cannot be

termed as sham. Result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as legal. Of course, when there is a charge of bigamy under Section 494, IPC strict proof of solemnisation of the second marriage with due observance of rituals and ceremonies has been insisted upon.

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 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). Yogmaya 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.”

11. Question for consideration would be whether second marriage during subsistence of first marriage is permissible among the parties to the application who are ab-original tribes.
12. A careful reading of sub-section (2) of Section 2 leaves no manner of doubt that the Act of 1956 would not be applicable to the members of any scheduled tribe within the meaning of Clause (25) of Article 366 of the Constitution of India, unless Central Government by notification in the Official Gazette otherwise

directs and Halba Tribe is Tribe within the meaning of the Constitution of India notified by the President and it is Tribe within the meaning of Clause (25) of Article 366 of the Constitution of India and the provisions of the Act of 1956 do not pro tanto apply as per sub-section (2) of Section 2 of the Act of 1956, but the question is whether respondent No.1 has proved custom pertaining to more than one marriage in Halba Tribe.

13. The application filed by respondents No.1 and 2 for succession and evidence on record nowhere suggests remotely that respondent No.1 has proved on record that in aboriginal tribe second marriage is permissible. In absence of that and in view of the provisions contained in Section 16 of the Act of 1956, I am unable to sustain the order passed by the Appeal Court granting succession in favour of second wife/respondent No.1.
14. As a fallout and consequence of the above-stated discussion, the impugned order passed by the Appeal Court is set aside and order passed by the trial Court is hereby restored.
15. The civil revision is allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-