

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.373 of 2018

Smt.Nanbai Rathore, Wd/o-Late Shri Jairam Prasad Rathore, Aged About-50 years, R/o-Village Ratija, Thana-Deepika, Presently residing at A/55/550 Naya Colony, Delwadih, Tahsil and District Korba (CG)
 (Plaintiff)
 ---- Appellant

Versus

1. Smt. Meena Bai (Dead) through her LR's
 - 1(a) Ganesh Kunwar D/o Late Jairam Prasad Rathore, Aged about 38 years,
 - 1(b) Gauri Rathore, D/o Late Jairam Prasad Rathore, Aged about 38 years,
 - 1(c) Parvati Rathore D/o Late Jairam Prasad Rathore, Aged about 34 years,
 - 1(d) Ku. Rathore D/o Late Jairam Prasad Rathore, Aged about 32 years,
 - 1(e) Manmohan Singh Rathore, S/o Late Jairam Prasad Rathore, Aged about 30 years,
 All respondent No.1(a) to 1(e) are resident of Quarter No.SE 633 CSEB Colony, Korba-East, Tahsil and District-Korba, Chhattisgarh
2. Chief Engineer (Production), Dr.Shyama Prasad Mukherjee, Thermal Power Station, CSPGCL (Chhattisgarh State Power Generation Company Limited) Korba-East, Tahsil and District-Korba (CG)

(Defendants)
 ---- Respondents

For Appellant/Plaintiff	: Mr.Anil S.Pandey, Advocate
For Res.No.1(a) to 1(e)/	: Mr.Pallav Mishra, Advocate
Defendant NO.1	
For Res.No.2/Defendant No.2:	Mr.Apurv Goyal, Advocate
Amicus Curiae	: Mr.Hari Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

14/10/2019

1. The second appeal preferred by the plaintiff was admitted for hearing by formulating the following

substantial questions of law:-

"1. Whether first appellate court was justified in holding that appellant/plaintiff is not entitled for pension/retiral dues of her late husband Jairam Prasad Rathore, by recoding findings which is perverse to the record ?

2. Whether first appellate court was justified in holding that second wife Meena Bai (Now dead) will be entitled for the pension/retiral dues particularly when Jairam Prasad Rathore entered into second marriage with Meena Bai during period of his marriage with Nanbai (first wife), by recording a finding which is perverse and contrary to record ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2. Shri Jairam Prsaad Rathore while working in Chhattisgarh State Power Generation Company Limited as Supervisor died in harness on 26.6.2009. Plaintiff-Nanbai Rathore is admittedly first wife of the deceased servant, whereas defendant No.2- Meena Bai, who died during pendency of second appeal, married with deceased servant Jairam Prsaad Rathore on 15.5.1978 during subsistence of first marriage with Nanbai. It is admitted fact on record that dispute arose between the plaintiff (first wife) and defendant No.2 (second wife) with regard to all retiral dues except pension, which was settled amicably by entering into compromise between the parties vide Ex.P-1 and Ex.P-2, by which the plaintiff and defendant No.2 both are

entitled for 1/2 share in retiral dues of deceased servant Jairam Prsaad Rathore. Thereafter, the plaintiff filed a suit stating inter-alia that she being legally wedded wife of deceased servant Jairam Prsaad Rathore is entitled for entire pension in accordance with the Chhattisgarh Civil Services (Pension) Rules, 1976 (hereinafter called as "the Rules of 1976"), which the trial Court granted in her favour, but on appeal being preferred by defendant No.2, the first appellate Court reversed the finding of the trial Court and held that each of them i.e. plaintiff and defendant No.2 are entitled for 1/2 share in the amount of pension, against which, this second appeal under Section 100 of the CPC has been preferred by the appellant/plaintiff, in which substantial questions of law have been formulated and set-out in the opening paragraph of this judgment.

3. Mr. Anil S. Pandey, learned counsel for the appellant/plaintiff, would submit that the first appellate Court is absolutely unjustified in holding that defendant No.2, who is admittedly second wife of deceased servant Jairam Prsaad Rathore is also entitled for 1/2 share in the amount of pension, which is contrary to sub-rule (1), (6) and (8) of Rule 47 of the Rules of 1976, therefore, the impugned judgment and decree

deserves to be set aside and that of the trial Court be restored.

4. Mr.Pallav Mishra and Mr.Apurv Goyal, learned counsel for the respondents/defendants, would support the judgment and decree of the first appellate Court. Mr.Pallav Mishra would further submit that since nomination was made in favour of defendant No.2 (now deceased) by deceased servant Jairam Prsaad Rathore, therefore, she is entitled for amount of family pension.

5. Mr.Hari Agrawal, learned Amicus, would submit that in view of the provisions contained in sub-rule (1), (6) and (8) of Rule 47 of the Rules of 1976, only legally wedded wife would entitle for family pension of the deceased, who was working with defendant No.1. He would also submit that now legal representatives of defendant No.2 have become majors, as such, they are not entitled for amount of pension in view of the provisions contained in sub-rule (6) of Rule 47 of the Rules of 1976.

6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

7. It is not in dispute that the Rules of 1976 is applicable for disbursement of the pension to the

employees working under defendant No.1. Rule 47 of the Rules of 1976 governs the grant of contributory family pension. Sub-rule (1), (2), (6), (7) (a) I), (8) and (14)(b)(i) of Rule 47 of the Rules of 1976 reads as under:-

"47. Contributory family pension. - (1) The provisions of this rule shall apply :

(a) to a Government servant entering service in a pensionable establishment on or after 1st April, 1966; and

(b) to a Government servant who was in service on 31st March, 1966 and came to be governed by the provisions of the Family Pension Scheme for State Government Employees, 1966 contained in Government of Madhya Pradesh Finance Department Memo No. 1963/C.R. 903-IV-R.II, dated 17th August, 1966 as in force immediately before the commencement of these rules.

(2) Without prejudice to the provisions contained in sub-rule (3), where a Government servant dies-

(a) while in service provided he had been medically examined and found fit for appointment under the Government.]

(b) after retirement from service and was on the date of death in receipt of a pension or compassionate allowance, referred to in Chapter V other than the pension referred to in rule 34, on the date of death,

the family of the deceased shall be entitled to a contributory family pension (hereinafter in this rule referred to as Family Pension) the amount of which shall be determined as follows :-

Pay of Government servant	Amount of monthly family pension
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(i) Below Rs.400.	30 per cent of pay subject to a minimum of Rs.60 and a maximum of Rs.100.
(ii) Rs.400 and above but not exceeding Rs.1200.	15 per cent of pay subject to a minimum of Rs.100 and a maximum of Rs.160.
(iii) Above Rs.1200.	12 per cent of pay subject to a minimum of Rs.160 and a maximum of Rs.250.

(6) The period for which family pension is payable shall be as follows:-

(i) in the case of a widow or widower, up to the date of death or remarriage whichever is earlier;

(ii) in the case of a son, until he attains the age of 21, years; and

(iii) in the case of an unmarried daughter, until she attains the age of 24 years or until she gets married, whichever is earlier :

(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.

(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.

(iii) If sons and unmarried daughters are alive, unmarried daughters shall not be eligible for family pension unless the sons attain the age of (25) years and thereby become ineligible for the grant of family pension.

(14) (b) "family" in relation to the Government servant means-

(i) Wife or wives in the case of a male Government servant or husband in the case of a female Government servant. Where a female Government servant or a male Government servant dies leaving behind widower or widow and eligible child or children and the widower or the widow, as the case may be, remarried before the death of the Government servant, the family pension payable to a child or children in respect of the deceased shall be payable to the surviving person provided he or she is the guardian of such child or children. Where the surviving person has ceased to be 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."

8. A conjoint reading of the above-stated rules would show that where a Government servant dies, while in service, the family of the deceased shall be entitled to contributory family pension (Rule 47(2) of the Rules of 1976). Rule 47(7)(a)(i) provides that where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

9. Based on Rule 47(7)(a)(i) of the Rules of 1976, Mr. Mishra, learned counsel for respondent No.1 (second wife) would submit that the Rules provides for payment of pension to more widows than one, therefore, she and plaintiff both being widows of deceased Jairam Prsaad Rathore would be entitled for grant of pension equally and the first appellate Court is justified in granting family

pension to respondent No.1.

10. At this stage, it would be appropriate to notice the provision contained in Section 5 of the Hindu Marriage Act, 1955 (hereinafter called as 'the Act of 1955') which states as under:-

"5. 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) to (v) xxx xxx xxx."

Section 5(i) of the Act of 1955 introduces monogamy which is essentially the voluntary union for life of one man with one woman to the exclusion of all others. It enacts that neither party must have a spouse living at the time of marriage. The expression "spouse" employed herein means a lawfully married husband or wife. Before a valid marriage can be solemnized, both parties to such marriage must be either single or divorced or a widow or widower and only then they are competent to enter into valid marriage.

11. Consequence of contravention of the conditions laid down in Section 5(i) of the Act of 1955 has been enumerated in Section 11 of the Act of 1955, which states as under:-

"11. Void marriages.-Any marriage solemnized after the commencement of this Act shall be null and void and may, on a

petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clause (i), (iv) and (v) of section 5."

This provision declares that a marriage solemnised after commencement of the Act of 1955, in contravention of any of the conditions specified in clauses (I), (iv) & (v) of Section 5 of the Act of 1955 shall be null and void in respect of such marriages, it is provided that application for declaration of nullity can be filed.

12. The Supreme Court in the matter of **Smt.Lila Gupta v. Laxmi Narayan and others**¹ held that Section 5(i) of the Act of 1955 ensures monogamy and any marriage solemnized after the commencement of the Act of 1955 shall be null and void by virtue of Section 11 of the Act and may, on a petition presented by either party thereto be so declared by decree of nullity if it contravenes any one of the conditions specified in clause (i), (iv) & (v) of Section 5 of the Act of 1955.

13. Similarly again in the matter of **Smt.Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav**² Their Lordships of the Supreme Court have held that a marriage in contravention of Section 5(i) of the Act of 1955 is null and void. It was further held

1 (1978) 3 SCC 258

2 AIR 1988 SC 644

that marriages covered by Section 11 are void ipso-jure, that is void from the very inception and have to be ignored as not existing in law at all and when such question arises, although Section permits a final declaration to be made on presentation of a petition. It is not essential to obtain in advance such a final declaration from a court in a proceeding specifically commenced for the purpose. Similar is proposition laid down by the Supreme Court in A. Subash Babu v. State of Andhra Pradesh and another³ and M.M. Malhotra v. Union of India and others⁴.

14. Rule 22 of the Chhattisgarh Civil Services (Conduct) Rules, 1965 (hereinafter called as 'the Rules of 1965') also prohibits bigamous marriage which states as under:-

"22. Bigamous marriages.- (1) NO Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him."

A careful perusal of Rule 22(1) of the Rules 1965 would show that Government servants have been prohibited to perform second marriage during the lifetime of his spouse living without obtaining permission from the Government and the said

3 (2011) 7 SCC 616

4 (2005) 8 SCC 351

prohibition is absolute and unconditional and even if personal law of Government servant permits such a marriage, then also, second marriage is prohibited without the leave of the Government. In other words, applicable statutory rule will prevail over the personal law applicable to the concerned Government servant.

15. Their Lordships of the Supreme Court in the matter of Khursheed Ahmad Khan v. State of Uttar Pradesh and others⁵ have relied upon Javed and others v. State of Haryana and others⁶ held that contracting second marriage during subsistence of first marriage without obtaining leave from Government in terms of applicable Rule is misconduct and held as under:-

"13. The matter is no longer res integra. In Javed vs. State of Haryana (supra), this Court dealt with the issue in question and held that what was protected under Article 25 was the religious faith and not a practice which may run counter to public order, health or morality. Polygamy was not integral part of religion and monogamy was a reform within the power of the State under Article 25. This Court upheld the views of the Bombay, Gujarat and Allahabad High Courts to this effect. This Court also upheld the view of the Allahabad High Court upholding such a conduct rule. It was observed that a practice did not acquire sanction of religion simply because it was permitted. Such a practice could be regulated by law without violating Article 25.

16. This Court also in the matter of Radha Devi v.

5 (2015) 8 SCC 439

6 (2003) 8 SCC 369

Chief General Manager, SECL and Ors.⁷ dealing with the similar issue has held that family pension is statutory scheme of employment and it is not based on nomination and further held that retiral dues and family pension are payable in accordance with rules & regulations and second wife of deceased service holder is not entitled for family pension.

17. The Supreme Court in the matter of Rajkumari and another v. Krishna and others⁸ has held that family pension is payable in accordance with the Rules & Regulation. It was observed as under:-

"13. Normally, pension is given to the legally wedded wife of a deceased employee. By no stretch of imagination can one say that the plaintiff, Smt. Krishna was the legally wedded wife of late Shri Atam Parkash, especially when he had a wife, who was alive when he married to another woman in Arya Samaj temple, as submitted by the learned counsel appearing for the appellants. We are, therefore, of the view that the High Court should not have modified the findings arrived at and the decree passed by the trial court in relation to the pensionary benefits. The pensionary benefits shall be given by the employer of late Shri Atam Parkash to the present appellants in accordance with the rules and regulations governing service conditions of late Shri Atam Prakash."

18. Reverting to the facts of the present case in the light of statutory provisions contained in the aforesaid Rules and the judgments of the Supreme Court in the above-stated judgments (supra), it is quite vivid that the plaintiff is only legally

⁷ MANU/CG/0841/2017

⁸ (2015) 14 SCC 511

weeded wife of deceased servant Jairam Prsaad Rathore and admittedly, said Jairam Prsaad Rathore married with defendant NO.2-Meena Bai during subsistence of first marriage with the plaintiff in contravention of Section 5(i) of the Act of 1955 and therefore, marriage of deceased servant Jairam Prsaad Rathore with defendant NO.2 was void by virtue of Section 11 of the Act of 1955 and defendant No.2 cannot be held to be legally weeded wife and the plaintiff is only legally wedded wife of deceased servant Jairam Prsaad Rathore in terms of sub-rule (14)(b)(i) of Rule 47 of the Rules of 1976 and therefore, the plaintiff being legally wedded wife of deceased servant would only be entitled for family pension.

19. The first appellate Court has committed grave legal error in holding that second wife of deceased servant Jairam Prsaad Rathore is also entitled for family pension.

20. Accordingly, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is hereby restored. The substantial questions of law are answered in favour of the plaintiff and against defendant NO.1.

21. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

22. A decree be drawn-up accordingly.

23. This Court appreciates the valuable assistance rendered by Mr.Hari Agrawal, Advocate on short notice and same is placed on record.

Sd/-
(Sanjay K. Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.373 of 2018

Petitioner

Smt.Nanbai Rathore

Versus

Respondents

Smt. Meena Bai (Dead)
through her LR's and others

(Head-note)

(English)

Second wife of deceased employee of Chhattisgarh State Power Generation Company Limited (CSPGCL) is not entitled for family pension.

(हिन्दी)

छत्तीसगढ़ राज्य विद्युत उत्पादन कम्पनी लिमिटेड (सी.एस.पी.जी.सी.एल.) के मृत कर्मचारी की द्वितीय पत्नी परिवार पेंशन प्राप्त करने की हकदार नहीं है।