Serial No. 10
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 90 of 2018 Date of Order: 09.12.2020

Miss Rita Singh Vs. Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.D. Upadhaya, Adv.

For the Respondent(s) : Dr. N. Mozika, Sr. Adv. with
Mr. J.I. Nongrum, Adv. (For R2,4,7&8).

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

Oral:

1. The brief facts of the case is that the petitioner is the unmarried daughter of one Shri. Gopal Singh Bist, who retired from the Assam Rifles in the year 1977 and subsequently on re-employment with the Respondents No. 2, 4, 7 and 8 (Atomic Minerals Directorate N.E. Region, Shillong) had then retired on 31.10.2008. Shri. Gopal Singh Bist expired on 12.04.2011. The grievance of the petitioner as set out by way of this writ application is that, though she is the daughter of the deceased employee, the family pension to which she claims she is entitled to has not been granted to her till date.

2. Mr. S.D. Upadhaya, learned counsel for the petitioner submits that the petitioner, is the daughter of the second wife of the deceased Shri. Gopal

Singh Bist, and that after the death of her father she had her made her claim for family pension, which however, has been resisted by the respondents 2, 4, 7 and 8 (Atomic Minerals Directorate N.E. Region, Shillong), on the ground that the marriage of the deceased employee to the petitioner's mother is not documented, whereas the marriage of the deceased employee with the respondent No. 9, and of her being the legally wedded first wife is on record. He further submits that inspite of service of notice on the respondent No. 9, who is the first wife, and is enjoying the family pension from the Assam Rifles, she has chosen not to appear, and as such it seems she has no interest in staking any claim to the family pension due from the respondents No. 2, 4, 7 and 8. Learned counsel submits that there is no dispute as to fact that she is the daughter of the deceased employee, which lawfully entitles her to a share of the family pension, even if she be considered an illegitimate offspring of the second marriage. Learned counsel lastly prays that in view of the facts as placed, a mandamus be issued to the respondents No. 2, 4, 7, and 8, that she be granted the family pension as payable.

3. Dr. N. Mozika, learned senior assisted by J.I. Nongrum, learned counsel appearing for respondents No. 2, 4, 7 and 8 in reply, submits that it is not a case whereby the respondents have arbitrarily deprived the petitioner from any legitimate dues, but they are only concerned with the fact that the first wife is still alive and as such, the first wife along with the issues if any, have first claim to the pension, after which only, the claim of the petitioner would arise for computation as also the question whether the children of the second wife are legitimate or illegitimate. Learned senior counsel has placed reliance on the judgment of *Rameshwari Devi vs. State of Bihar & Ors. reported in (2000) 2 SCC 431*, which speaks of entitlement of children of the second marriage. He has drawn the Court's attention to para-9 of the said judgment, whereby it has been held that even though if a second marriage is void, the children, however, would be entitled to claim the share in the family pension and death-cum-retirement gratuity and other benefits of the deceased employee along with legitimate children of the first wife.

4. Having heard the learned counsels for the parties, the issue at hand, as appears is with regard to the nature and status of claim of the petitioner to the

family pension of the deceased employee, who had retired in the year 2008, and expired in the year, 2012 from service under the respondents No. 2, 4, 7 and 8. It is also important to note that, it is undisputed that the petitioner is the daughter of the deceased employee. Though the respondent No. 9 as submitted by the learned counsel for the respondents being the legally recorded wedded wife will be entitled or have a claim upon a portion of the family pension, she has however, refrained from being part of the proceedings before this Court. This fact is reflected from the records which shows that she had been duly served notice and is therefore, well aware of the instant case. The factum of service of notice has also been indicated by an affidavit filed by the petitioner. However, inspite of service of notice the respondent No. 9, has chosen not to enter appearance nor contest the instant matter.

5. Faced with this situation, this Court has no alternative but to proceed ex-parte against respondent No. 9, and as such all the statements and submissions made by the petitioner in the writ petition will stand unrebutted as far as respondent No. 9 is concerned. The only issue that remains to be adjudicated upon, is the right of the petitioner to the family pension of the deceased employee as claimed. As per, the judgment of the Hon'ble Supreme Court in *Rameshwari Devi vs. State of Bihar & Ors* (supra) cited by the learned senior counsel, it has been clearly laid down that though a second marriage may be void the children would be legitimate and would be entitled to claim a share in the family pension. Paragraph – 9 which is relevant is reproduced herein below:

> *"9. Now, when the first order was cancelled by the State Government and the second passed depriving Yogmaya Devi and her children of any right in the pensionary benefits of Narain Lal, she filed writ petition in the High Court, which, as noted above, was allowed by the learned Single Judge and later appeal filed by Rameshwari Devi against that was dismissed by the Division Bench of the High Court which is impugned. Learned Single Judge referred to Section 16 of the Hindu Marriage Act, 1955 holding that even though the marriage of Narain Lal with Yogmaya Devi was void their children would be legitimate and thus would be entitled to*

claim share in the family pension and death-cum-retirement gratuity of Narain Lal but only till they attained majority. Learned Single Judge accordingly issued direction to the State Government to issue fresh sanction order for payment of arrears of family pension and death-cum-retirement gratuity to the minor children born from the wedlock between Yogmaya Devi and Narain Lal till they attained majority but nothing would be payable to Yogmaya Devi."

6. The law being clear on this aspect, the entitlement of the petitioner, to the family pension of the deceased employee therefore, cannot be denied. However, with regard to the proportion which is to be determined or any other entitlement that the first wife may have, the same on the non-appearance of the respondent No. 9 can be safely said to have been forfeited and the petitioner entitled to the family pension payable by the respondents No. 2, 4, 7 and 8. The respondent No. 9 cannot be said to have been deprived totally, as from the records available it is noted that, she is drawing her family pension from the respondent No. 3/Assam Rifles.

7. For the facts and circumstances as aforestated, the respondents are therefore directed to initiate the process for release of the family pension as admissible, to the petitioner within a period of 4 (four) months from the date of receipt of a certified copy of this order. It is made clear that the grant of family pension is confined to the amount payable by the respondents No. 2, 4, 7, and 8 (Atomic Minerals Directorate N.E. Region, Shillong) and not from the respondent No. 3/Assam Rifles.

8. With the above noted directions this petition is allowed and disposed of.

Judge

Meghalaya
09.12.2020
"D.Thabah-PS"