

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 5 of 2019

- Smt. Mano Bai, W/o Late G. R. Netam, Aged About 54 Years, Caste Gond, R/o Tikrapara, Kanker, P. S. Kanker, District North Bastar Kanker Chhattisgarh Civil and Revenue District-North Bastar, Kanker, Chhattisgarh.

---- Applicant

Versus

1. Indian Postal Department, Office Superintendent of Post Office Bastar Division-Jagdalpur, Bastar, Chhattisgarh.
2. Public in General, District-North Bastar, Kanker, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Raza Ali, Advocate.
For Respondent No.1	:	None.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

15/07/2021

1. The petition has been brought being aggrieved by the order of the appellate Court of District Judge North Bastar in civil appeal No.11/2018 decided on 10.9.2018 by which the order of the civil Judge Class-I North Bastar, Kanker dated 26.6.2018 passed in Succession case No.8/2017 was upheld.
2. It is submitted by the learned counsel for the applicant that the impugned orders suffers from grave infirmity. The petitioner is a member of aboriginal tribe and therefore she is not governed by the provisions of Hindu Marriage Act, 1955. This issue has been settled by the M.P. High Court in the case of ***Shakun Bai Wd/O Somnath Kushram v. Siya Bai Wd/O Somnath***, reported in (1999)2 MPLJ 307

in which the service benefit of deceased was equally distributed between his two wives, therefore, the applicant had entitlement to be certified as a successor of the deceased G.R. Netam. The learned Court of Civil Judge Class-I and the appellate Court both have committed error in passing orders against the applicant, therefore the impugned order and the order of the Civil Judge Class-I, Kanker, both are not sustainable, hence, the revision be allowed and the relief be granted in favor of the applicant.

3. I have heard both the parties and perused the documents on record.
4. The facts of the case are these, that G.R. Netam had retired as "Postman" from Department of Indian Postal Services, Branch-Post Officer Bastar, Division-Jagdalpur. Subsequent to that G.R. Netam expired on 6.10.2015. G.R. Netam was a member of aboriginal tribe. He had a first wife by name Sukhwati Netam. After the death of G.R. Netam, Sukhwati Netam was receiving the family pension. Sukhwati Netam has expired on 17.11.2016. Subsequent to which, the applicant applied to the department for grant of family pension then she came to know, that the name of the applicant was not mentioned in the official documents and, therefore, she was held as not entitled for grant of family pension. The application was then filed by her under Section 372 of Indian Succession Act, 1925 before the Court of Civil Judge Class-I, Kanker. The learned Court held that the marriage of the applicant with deceased G.R. Netam was void in view of the provision under Section 11 of Hindu Marriage Act, 1955, therefore, she was not entitled for family pension. In the appeal preferred against this order, the appellate Court decided the issue on the same ground holding, that the provision under Sections 5 & 11 of Hindu Marriage Act are

applicable and on that basis, the applicant has no entitlement for grant of family pension.

5. The M.P. High Court in case of Shakun Bai v. Siya Bai dealt with the case, in which, there were two widows of one government servant, all of them were members of aboriginal tribe, and it was held that the provisions under the Hindu Succession Act are not applicable in view of the provision under Section 2(ii) of the Hindu Succession Act, 1956 unless and until a notification to this effect has been published by the Central Government. As there is no such notification published, therefore, the members of aboriginal tribe shall be governed by the own custom. This judgment reveals about the inquiry that was made in the proceeding under Section 372 of Indian Succession Act, which was the basis of the conclusion drawn.
6. On perusal of the order of the Civil Judge Class-I and order of the District Judge, it appear that no such inquiry was made by the initial Court regarding the customary law applicable to the applicant according to her social status. As there is no enacted law present to govern marriage and the consequences of marriage of persons belonging to aboriginal tribe, therefore, there is a requirement in such cases to plead the existence of custom and practice and also to prove the same by bringing proper evidence in that respect. Hence, finding that there is such requirement present which was needed to be fulfilled before making any declaration of the status of the applicant, who has claimed to be the successor of deceased G.R. Netam, hence, I am of this view that the learned Civil Judge Class-I as well as the learned District Judge both have committed error in holding that there is applicability of the law under Hindu Marriage Act, 1955 with respect to

the applicant which is clearly erroneous and against the provisions of law.

7. Hence, the impugned order and the order of the Civil Judge Class-I both are erroneous, the civil revision is allowed the impugned order and the order of the learned Civil Judge Class-I both are set aside. The case is remanded back to the Court of Civil Judge, Kanker, with a direction to afford opportunity to the petitioner to plead and bring proof regarding the customary practice of succession in the aboriginal tribe to which the applicant belongs and then pass appropriate order in accordance with law.
8. Accordingly, the petition stand disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge