

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 05.10.2021

Order Passed on : 03/12/2021

W.P.(227) No. 249 of 2021

Smt. Kamla Verma, Wd/o. Late Bharat Lal Verma, aged about 61 years,
R/o. Village- Arasnara, Post- Devada, Tahsil-Patan, District- Durg,
Chhattisgarh.

---- Appellant

Versus

1. Smt. Rahi Verma, W/o. Late Bharat Lal Verma, R/o. Village- Borsi, Bamleshwari Colony, Near Nar-Narayan Mandir, Tahsil and District- Durg, Chhattisgarh.
2. The Collector Durg, District- Durg, Chhattisgarh.
3. The Jail Superintendent Central Jail, Durg, Tahsil and District- Durg, Chhattisgarh.
4. The Divisional Joint Director, Treasury, Accounts and Pension, Durg, Tahsil and District- Durg, Chhattisgarh.
5. The Treasuring Officer, District - Treasury Office, Durg, Tahsil and District- Durg, Chhattisgarh.

---- Respondents

For Petitioner	: Mr. Goutam Khetrapal, Advocate
For Respondent No.1	: Mr. Manoj Paranjpe, Advocate
For Respondents/State No.2 to 5	: Mr. Alok Nigam, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

1. This petition has been filed being aggrieved by the order dated 22.03.2021, passed in Miscellaneous Civil Appeal No.13/2020,

passed by the Court of Fourth Additional District Judge, Durg dismissing the appeal of the petitioner and upholding the order of the trial Court.

2. It is submitted by the learned counsel for the petitioner that the petitioner is legally wedded wife of the late Bharat Lal Verma. The marriage of the respondent No.1 with late Bharat Lal Verma is not valid. After the death of Bharat Lal Verma, the petitioner filed a Civil Suit No.101A/2020 against the respondent No.1 and others for relief of service benefits of her deceased husband. The petitioner filed application under Order 39 Rule 1 and 2 of C.P.C., before the trial Court praying to pass restraint order regarding payment of pension to respondent No.1. The learned trial Court by order dated 02.11.2020 dismissed the application. The appeal preferred has also been dismissed by the impugned order.
3. It is submitted by the learned counsel appearing on behalf of the petitioner that the marriage of the petitioner with the deceased Bharat Lal Verma was performed on 06.03.1976. The petitioner was never divorced by the deceased Bharat Lal Verma and during the continuation of this marriage, B.L. Verma performed second marriage with respondent No.1, which has no validity. As the service records of the deceased show the name of the respondent No.1 as his nominee, therefore, the petitioner was refused grant of family pension by the respondents authorities. It is submitted that the respondent No.1 has pleaded in written statement that the marriage of the petitioner with the deceased Bharat Lal Verma was dissolved by the customary divorce, which is not acceptable and

further that requires proof. Placing reliance on the judgment of this Court in case of **Nanbai Rathore Vs. Meena Bai and others**, reported in **(2020) 3 CGLJ 308**, it is submitted that the marriage of the respondent No.1 with the deceased B.L. Verma is contrary to the Section 5 of the Hindu Marriage Act, 1995. It is similarly held in case of **Rameshchandra Rampratapji Daga Vs. Rameshari Rameshchandra Daga**, reported in **(2005) 2 SCC 33** that without any decree of divorce from the Court of law, the performance of second marriage is unlawful, therefore, the respondent No.1 has no entitlement for pension and the petitioner was entitled for grant of temporary injunction. The impugned orders are not sustainable. The petition be allowed and the relief be granted to the petitioner.

4. Learned counsel for the respondent No.1 opposes petition and the submissions made in this respect. It is submitted that the issue raised by the petitioner is present, before the trial Court, which can be decided only after the evidence is produced by both the parties. The respondent No.1 also challenges the claim of the petitioner that she is the legal wife of the deceased Bharat Lal Verma. It is submitted that the scope of Article 227 of the Constitution of India is very limited. Relying on the judgment in case of **Wander Ltd. & Anr. Vs. Antox India P. Ltd.**, reported in **1990 (Supp) SCC 727**, it is submitted that if the discretion has been exercised by the trial Court reasonably and in a judicial manner the fact that the appellate Court would have taken different view may not justify the interference with the trial Court's exercise of discretion. In the present case, the final decision of the trial Court is yet to come.

5. It is further submitted by the counsel for the respondent No.1 that B.L. Verma retired from service on 31.05.2017. He continued residing with respondent No.1. B.L. Verma died on 07.08.2020 and all the times, it was the respondent No.1 and her children, who were dependent on the deceased B.L. Verma. The petitioner was not dependent on him. It is submitted that the marriage of the petitioner with B.L. Verma was customarily dissolved, therefore, the petitioner and the deceased B.L. Verma both entered into compromise in the proceeding under Section 125 of Cr.P.C., in which the deceased transferred some land and house to the petitioner. B.L. Verma had nominated respondent No.1 as the person entitled for receiving family pension and the other benefits, on the basis of which, the respondent No.1 is enjoying the pension benefits. It is submitted that in case of **Champa Devi & Ors. Vs. Gulabi Devi** reported in **2013 (4) MPLJ 535**, it was held that the children from the second wife also have entitlement of family pension and gratuity and the estate of the deceased. Therefore, the impugned order does not suffer from any infirmity. No interference can be made in the same. The petition be dismissed and disposed off.
6. I have heard the learned counsel for the parties and perused the documents placed on record.
7. The learned trial Court and the appellate Court both have held that the respondent No.1 was cohabiting with the deceased B.L. Verma and having children and the petitioner has never objected to the nomination in favour of the respondent No.1. It may be a fact that

the petitioner never had any knowledge of the nomination for the pension, but all the same as the facts are present that B.L. Verma retired from service in the year 2017 and lived up to the year 2020. Till then the petitioner did not make any claim from the respondent No.1. The pensionary benefits to the widow of the deceased government service is certainly based on the validity of the marriage of the deceased government servant. The petitioner and the respondents both are challenging the validity of the marriage of the each other and this can be resolved only in the trial. Apart from that the respondent No.1 has started receiving pension from the authorities, which is continuing, therefore, there appears to be no reason to stop the pensionary benefit, which is already available to the respondent No.1. Hence, I do not find any valid reason to interfere with the impugned order.

8. In view of the aforesaid discussion, this petition is without any substance, which is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram