

Court No. - 38

Case :- SECOND APPEAL No. - 1115 of 2012

Appellant :- Smt. Ramphali

Respondent :- Union Of India Thru G.M. Northern Railway And Others

Counsel for Appellant :- Prabhakar Awasthi

Counsel for Respondent :- Sudhir Bharti, Arvind Kumar Goswami, S.C.

Hon'ble Salil Kumar Rai, J.

This is a plaintiff's second appeal challenging the judgement and decree dated 5.12.2011 passed by the Additional Civil Judge (Senior Division), District-Shahjahanpur dismissing Original Suit No. 637 of 2001 as well as against the judgement and decree dated 10.10.2012 passed by the Additional District Judge, Court No. 8, District-Shahjahanpur dismissing Civil Appeal No. 4 of 2012 filed against the decree of the trial court.

The relevant facts of the case are that one Dwarika Prasad was employed as Guard Class-I in Northern Railway, Shahjahanpur and retired from service on 31.7.1995. Dwarika Prasad died on 3.12.1996. At the time of his death the defendant No. 3 Man Singh, who is the son of Dwarika Prasad was less than 25 years of age and, therefore, the family pension of Dwarika Prasad was paid to Man Singh till he attained 25 years of age. Subsequently, the appellant instituted Original Suit No. 637 of 2001 claiming herself to be the legally wedded wife of Dwarika Prasad and sought a decree declaring her to be entitled to the family pension of Dwarika Prasad.

It transpired that the service records of Dwarika Prasad indicated that the appellant was the first wife of Dwarika Prasad but their marriage was later dissolved through a decree of divorce and Dwarika Prasad entered into a second marriage with Vidyawati who was the mother of Man Singh, i.e., defendant No. 3. In the service records of Dwarika Prasad Vidyawati and defendant No. 3 were shown as wife and son of Dwarika Prasad and were also entered as nominee of Dwarika Prasad. In the aforesaid background, issues were framed by the trial court to the effect as to whether the plaintiff-appellant was the first legally married wife of Dwarika Prasad and whether the marriage was dissolved by a decree of divorce and further whether the plaintiff-appellant was entitled to the family pension of Dwarika Prasad.

The trial court after considering the evidence on record held that even though the plaintiff-appellant was the first wife of Dwarika Prasad but the service records showed that the marriage was dissolved by a court through a decree of divorce

and, therefore, she was not mentioned as nominee in the service records. It was also held by the trial court that in view of Section 28 of the Administrative Tribunals Act, 1985 (hereinafter referred to as, 'Act, 1985') the civil court had no jurisdiction to decide the issue regarding entitlement of the plaintiff-appellant for family pension of Dwarika Prasad. Consequently, the trial court vide its judgement and decree dated 5.12.2011 dismissed Original Suit No. 637 of 2001 and the said findings and decree have been affirmed by the lower appellate court through its judgement and decree dated 10.10.2012.

The findings of the trial court that the marriage between the plaintiff-appellant and Dwarika Prasad was dissolved through a decree of divorce is based on the entries in the service records of Dwarika Prasad and are findings of facts based on evidence on record. There is no perversity in the aforesaid findings.

Section 28 of Act, 1985 prohibits the civil court from exercising jurisdiction regarding service matters concerning members of any Service or persons appointed to any Service or post. Section 3(q) of Act, 1985 defines service matters as all matters relating to the conditions of service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation owned or controlled by the Government **as respects remuneration, pension and other retirement benefits.**

Apparently, by virtue of Section 28 read with Section 3(q) of Act, 1985 the civil court had no jurisdiction to consider the issue framed regarding entitlement of the appellant for family pension of late Dwarika Prasad.

There is no error in the findings recorded by the courts below in their impugned judgements. No substantial question of law arises in the present second appeal.

The appeal is ***dismissed.***

Order Date :- 8.2.2023

Anurag/-