

FMA 602 of 2024
with
IA No. CAN 1 of 2024
(Sujata Halder Vs. Kusum Halder & Ors.)

Mr. Siddhartha Banerjee
Mr. Lakshminath Bhattacharya
Mr. Rakib Hossain Khan
.... For the Appellant

Mr. Narayan Ch. Bhandary
**..... For the writ petitioner/
respondent no. 1**

Mr. Pinaki Dhole
Mr. Avishek Prasad
..... For the State

The present appeal has been preferred challenging an order dated 24th November, 2023 passed in a writ petition being WPA 20151 of 2022. By the said order, the single Judge directed that on and from 28th August, 2023 all the family pension etc. including the arrears from 28th August, 2023 must be paid to the writ petitioner/respondent no. 1 herein, namely, Kusum Halder (in short, Kusum) upon arriving at a finding that the marriage of the deceased teacher, namely, Rabindranath Halder (in short Rabindra) with the appellant herein, namely, Sujata Halder (in short, Sujata), was a void marriage.

Mr. Banerjee, learned advocate appearing for the appellant submits that in a series of orders, the appellant was not allowed to be represented by her learned

advocate. Even the initial interim order was passed in the absence of the learned advocate appearing for the appellant. Aggrieved thereby, Sujata preferred an appeal against the order dated 28th August, 2023.

Drawing our attention to the order passed by the coordinate Bench of this Court in the appeal being MAT 1730 of 2023, Mr. Banerjee submits that the coordinate Bench made a specific observation that *'it would be open for the learned single Judge to form an opinion about the legal status of the parties as we feel that the better course of action would be to decide the said issue in a properly instituted civil suit for declaration of status if such right is clouded'*. Without considering such observations of the Hon'ble Appeal Court, the learned single Judge passed the impugned order.

He further argues that all records pertaining to grant of family pension were executed in favour of Sujata. Being satisfied with the veracity of the documents, family pension was disbursed by the competent authority. In the backdrop of such facts, the learned single Judge ought not to have interfered with the decision towards grant of family pension in favour of Sujata. In support of such contention, reliance has been placed upon the judgments delivered in the cases of *'Katari Subba Rao Vs. Katari Seetha Mahalakshmi'*, reported in 1994 SCC OnLine AP 97 and *'Gaddam Ruth Victoria Vs. State of*

Andhra Pradesh, Rep. by its Principal Secretary and others' reported in 2023 SCC OnLine AP 1690.

Per contra, Mr. Bhandary, learned advocate appearing for the writ petitioner/respondent no. 1 submits that admittedly Rabindranath married Kusum on 13th March, 1974 and during subsistence of such marriage, Rabindranath entered into a relation with Sujata and married her on 9th March, 2007. In view thereof, Sujata cannot at all claim herself to be the legally married wife of Rabindranath as her marriage was void in terms of the provisions of Hindu Marriage Act, 1955. In view thereof, Sujata is not entitled to any benefit under the West Bengal Death cum Retirement Scheme, 1981 (hereinafter referred to as 1981 Scheme). As such, there is no infirmity in the order impugned warranting interference in the present appeal.

Mr. Dhole, learned advocate, assisted by Mr. Prasad, learned advocate, appearing for the State respondents submits that on the basis of the documents produced by Sujata, the decision towards grant of family pension was taken. Pursuant to an order passed in an earlier writ petition, Kusum's case was also considered and as she could not produce proper documents, the matter could not be proceeded with.

Answering our query, Mr. Dhole submits that in terms of the order passed by the learned single Judge, payment of family pension to Sujata has been stopped

and steps have been initiated for grant of the benefits in favour of Kusum and the same will be disbursed as expeditiously as possible.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The real question in the case is whether a wife, not legally married to the deceased employee, is a wife entitled to the benefits of 1981 Scheme. Section 5 of the Hindu Marriage Act, 1955 provides that a marriage will be solemnized by and between any two Hindus, if neither party has a spouse living at the time of the marriage. Section 11 of the said Act provides that any marriage solemnized after the commencement of the Hindu Marriage Act, 1955, shall be null and void.

Indisputably, Rabindranath married Kusum on 13th March, 1974. Rabindranath also filed a divorce suit seeking a decree of dissolution of marriage against Kusum but the same was dismissed. Subsequent thereto, he developed a relationship with Sujata and married her during subsistence of the first marriage with Kusum. The date of such second marriage was 9th March, 2007. It is, therefore, evident that Rabindranath had a wife living when he entered into the second marriage with Sujata. The said marriage being a void marriage, Sujata cannot even claim herself to be a legally married wife of Rabindranath. The judgments upon which reliance has

been placed on behalf of the appellant, are distinguishable on facts.

In our opinion, the provisions of 1981 Scheme do not admit of an interpretation that a wife whose marriage is void under the provisions of the Hindu Marriage Act will also be covered by the expression 'wife' entitled to get family pension under the 1981 Scheme. Such an interpretation, directly encouraging and perpetuating a nullity, is not permissible in law. The word 'wife' used in 1981 Scheme means only a legally married wife.

In view thereof, we are not inclined to interfere with the order impugned in the present appeal and the appellant's prayer is refused.

By the impugned order, we find that the learned single Judge also rejected Sujata's prayer for stay of operation of the order with a cost of Rs.10,000/- to be paid by Sujata. Costs are at the discretion of the Court. However, the same had been imposed without proper reasoning. In view thereof, the direction towards payment of costs is set aside.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)