

(2015) 11 BOM CK 0049
In the Bombay High Court
Case No : Writ Petition No. 1251/2015

Chanda Hinglas Bharati

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 17, 5, 5(i)
Penal Code, 1860 (IPC) — Section 494, 495

Citation : (2016) 1 ABR 550

Hon'ble Judges : V.A. Naik and P.B. Varale, JJ.

Bench : Division Bench

Advocate : M. Ateeque, Advocate, for the Appellant; M.K. Pathan, AGP, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Naik, J.—Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

Whether a Hindu woman who marries a Hindu man during the subsistence of his marriage with his wife would be entitled to family pension under the Maharashtra Civil Services (Pension) Rules, 1982 is the question that falls for consideration in this writ petition.

Few facts giving rise to the petition are stated thus:--

2. Hinglas Bharati was in the services of the respondent Nos. 2 to 4 while he expired on 19.9.1999. Hinglas Bharati was married to Pushpa as per Hindu rites and custom and during the subsistence of the marriage of Hinglas Bharati with Pushpa and during the lifetime of Pushpa, petitioner Chanda claims to have entered into a wedlock with Hinglas Bharati on 3.4.1993. Ku. Sheetal was born from the wedlock between Hinglas Bharati and Smt. Pushpa whereas Ku. Diksha and Chetan were born from the alleged wedlock between the petitioner Chanda and Hinglas Bharati. Sheetal, Diksha and Chetan have attained the age of

majority. The petitioner approached the Civil Court after the death of Hinglas Bharati and sought succession certificate. The succession certificate was granted by the Civil Judge Senior Division, Amravati in favour of the petitioner, Ku. Diksha, Ku. Sheetal and Master Chetan. Smt. Pushpa had expired before Shri Hinglas Bharati was reported to be dead on 19.9.1999. On the basis of the succession certificate, the petitioner applied on 24.11.2011 for family pension by relying on the provisions of Rule 116(6)(a)(i) of the Maharashtra Civil Services (Pension) Rules. The application of petitioner Chanda was favourably considered and the respondents started paying family pension to Chanda from the year 2009. By the impugned order dated 24.6.2013, the respondent stopped releasing the pension as petitioner Chanda had married Hinglas Bharati during the subsistence of his marriage with Smt. Pushpa and the petitioner's marriage was void in view of the provisions of Section 5(i) of the Hindu Marriage Act. The order of the respondents is challenged by the petitioner in the instant petition.

3. Shri Ateeque, the learned counsel for the petitioner submitted that the State Government could not have denied family pension to the petitioner on the ground that she was not the legally wedded wife of Hinglas Bharati and the marriage between petitioner Chanda and Hinglas Bharati was void in view of the provisions of Section 5(i) of the Hindu Marriage Act. It is stated that though the provisions of Hindu Marriage Act consider the marriage between a party who marries during the lifetime of his spouse as void, Rule 116 (6)(a) (i) of the Maharashtra Civil Services (Pension) Rules provides for family pension to more widows than one in equal shares. It is stated that the provisions of the Hindu Marriage Act and a similar rule framed by the Railways that provides family pension to more widows than one was considered by the Division Bench of this Court in the judgment reported in Union of India and Others Vs. Jaywantabai, . It is stated that Rule 75 of the Railways Services Pension Rules which is analogous to Rule 116(6)(a)(i) of the Pension Rules was considered by this Court and this Court had held that the object of Rule 75 is to provide relief to a woman who is ensnared in a void marriage. It is submitted that it is held by the Division Bench in the said judgment that even if the Hindu Marriage Act treats the second marriage as void, the provisions of Rule 75 provide for pension to the second wife also. It is stated that the judgment reported in Union of India and Others Vs. Jaywantabai, is squarely applicable to the facts of this case, as Rule 75 of the Railway Services Pension Rules is akin to Rule 116 (6)(a)(i) of the Pension Rules. It is stated that this Court may take a sympathetic view in this matter.

4. Shri Pathan, the learned Assistant Government Pleader appearing on behalf of the respondents submitted that the impugned order is just and proper inasmuch as it is based on a correct position of law. It is stated that the issue whether a second marriage contracted by a Hindu employee during the subsistence of the first marriage would be void and whether the second wife would be entitled to pension fell for consideration before the Hon'ble Supreme Court in the case of Rameshwari Devi Vs. State of Bihar and others, . It is stated that it is held by the Hon'ble Supreme Court after considering the provisions of Bihar Government

Servants Conduct Rules that a marriage by a Hindu employee with a spouse living, would be void and the second wife would not be entitled to pension as her marriage would be in contravention of the provisions of Section 5(i) of the Hindu Marriage Act. It is submitted that though the law provides for pension to the issues born from a void marriage between a Hindu man and a woman with the spouse of either of the parties living, the law does not provide pension to a wife married to the man during the lifetime of his spouse. It is submitted that law is well settled in this regard and the petitioner cannot rely on the judgment reported in Union of India and Others Vs. Jaywantabai, to seek family pension on the death of Hinglas Bharti. It is submitted that in the decided case, this Court was considering the provisions of Railway Services (Pension) Rules and not Maharashtra Civil Services (Pension) Rules and the judgment of the Hon"ble Supreme Court was not considered by this Court while permitting pension to two widows of a Hindu man contracting marriage during the lifetime of his spouse after the coming into force of the Hindu Marriage Act on 18.5.1955. The learned Assistant Government Pleader relied on the judgment of the Hon"ble Supreme Court in the case of Rameshwari Devi Vs. State of Bihar and others, to substantiate the submission that the second wife of a Hindu employee would not be entitled to family pension.

5. To consider whether the petitioner would be entitled to family pension, it would be necessary to consider the provisions of the Hindu Marriage Act, 1955 and the provisions of the Maharashtra Civil Services Rules. The relevant provisions of the Hindu Marriage Act read thus:--

"Section 5 . Conditions for a Hindu Marriage. - A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely : -

(i) neither party has a spouse living at the time of the marriage;

.....

.....

.....

Section 11 . Void marriages. - Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5 .

Section 17 . Punishment of bigamy. - Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code shall apply accordingly."

It is clear from a combined reading of the provisions of Sections 5 , 11 and 17 of the Hindu Marriage Act that the Hindu Marriage Act considers a marriage by a

party with a spouse living at the time of the marriage to be void. Since the Hindu Marriage Act was brought into force on 18.5.1955, the marriage by a Hindu with a spouse living at the time of the marriage, is held to be null and void. Section 17 of the Hindu Marriage Act provides that the provisions of Sections 494 and 495 of the Penal Code pertaining to bigamy would apply to a marriage between two Hindus after the commencement of the Hindu Marriage Act on 18.5.1955, if on the date of such marriage, either party has a husband or wife living. It is, thus, apparent from the provisions of the Hindu Marriage Act as referred to herein above that a marriage between two Hindus where either party has a spouse living at the time of the marriage is void and punishable.

6. In the aforesaid background, it would be necessary to consider the relevant provisions of the Maharashtra Civil Services Rules. It would be worthwhile to refer to Rule 9 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, that applies to all members of services and holders of posts, whose conditions of services the Government of Maharashtra is competent to prescribe. It is not in dispute that the Maharashtra Civil Services Rules would apply to the services of Hinglas Bharati. Rule 9 of the Maharashtra Civil Services (General Conditions of Service) Rules defines several words and clauses that are used in the various sets of the Maharashtra Civil Services Rules. It would be necessary to consider the word "family", as defined in Rule 9 (16) of the Rules. Rule 9 (16) of the General Conditions of Service Rules reads thus:

"9 (16) "Family" means a Government servant's wife or husband, as the case may be, residing with the Government servant and legitimate children and step-children residing with and wholly dependent upon the Government servant. It includes, in addition, parents, sisters and minor brothers if residing with and wholly dependent upon the Government servant.

Note 1. - Not more than one wife is included in the term "family" for the purpose of these rules."

The Maharashtra Civil Services (Conduct) Rules 1979 and specially Rule 26 thereof relates to contracting of marriages by the Government servant. Rule 26 (1) and (2) of the Maharashtra Civil Services (Conduct) Rules 1979 is reproduced hereunder:--

"26. Contracting of marriages.--(1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant, having a spouse living, shall enter into or contract, a marriage with any person:

Provided that the Government may permit a Government servant to enter into, or contract, any such marriage as it referred to in clause (1) or clause (2), if it is satisfied that -

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing."

It is manifest from the provisions of Rule 26 of the Maharashtra Civil Services (Conduct) Rules that a Government servant is prohibited from contracting a marriage with a person having a spouse living unless such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage and there are other grounds for doing so. On a reading of the Rules, it appears that if a Government servant contracts a marriage during the life time of his spouse, the Government Servant is considered to have misconducted himself/herself and is entitled to disciplinary action under the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

7. In the aforesaid background, it would be necessary to consider the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 and specially Rule 116 (6) (a) (i) thereof. The relevant Rule, on which the petitioner has relied while seeking family pension for petitioner Chanda, reads thus:

"Rule 116 (6) (a) (i). Where the Family Pension is payable to more widows than one, the Family Pension shall be paid to the widows in equal shares."

The Maharashtra Civil Services (Pension) Rules were brought into force in the year 1982. Rule 116 (6) (a) (i) opens with the clause, "Where the Family Pension is payable to more widows than one". The provisions of Sub Rule 6 (a) (i) of Rule 116 of the Rules would apply only in a case where the family pension is payable to more widows than one. The primary question would be, whether the family pension is payable to more widows than one. When would a second widow or more than one widows be entitled to pension. In our considered view, more widows than one would be entitled to pension only if the Hindu employee has married the woman (widow) before the coming into force of the Hindu Marriage Act on 18.5.1955 and in case of employees where such marriage is permissible under the personal law applicable to the said employee or Government servant and the other party to the marriage. It appears from the provisions of the Maharashtra Civil Services (Conduct) Rules that the marriage during the life time of a spouse could be accepted only if the marriage is permissible under the personal law applicable to both the parties to the marriage. For example, Rule 116 (6) (a) (i) could be made applicable to more than one Mohammedan widows or also to more than one Hindu widows where the marriage between the Hindu male Government servant and the women (widows) was performed before the coming into force of the Hindu Marriage Act on 18.5.1955. Pension is liable to be paid to the widows in equal shares under Sub Rule (6) (a) (i) of Rule 116 of the Rules only where the family pension is payable to more widows than one. The said Rule was framed with an intention to provide pension to more widows than one, in the cases akin to the aforesaid categories of cases only. In our considered view, family pension cannot be made payable to more than one Hindu widows in equal shares, if the marriage between the male Hindu Government servant and the woman (widow) was performed after the coming into force of the Hindu

Marriage Act. We find that the object of Sub Rule 6 (a) (i) is to provide family pension to more widows than one only in certain contingencies and a woman contracting a marriage with a man during the life time of his wife would not be entitled to family pension, unless such marriage is permissible under the personal law applicable to such person and also the other party to the marriage. Admittedly, in the instant case, petitioner Chanda and Hinglas Bharati are Hindus and the marriage was solemnized between Hinglas and petitioner Chanda in the year 1993 during the subsistence of the marriage of Hinglas Bharati with Smt. Pushpa and during the life time of Pushpa. In view of the provisions of various Laws, pension is payable to the issues or children born from the illegal or void marriages but pension is not payable, at least under the Maharashtra Civil Services (Pension) Rules to a woman whose marriage with the Government servant is void ab initio. Some weightage would also be required to be given to the word "widows" as expressed in Rule 116 (6) (a) (i) of the Maharashtra Civil Services (Pension) Rules, 1982. According to the Black's Law Dictionary, a widow would be a woman whose husband has died and who has not remarried. As per the Oxford English Dictionary, the widow would be a woman who has lost her husband by death and has not married again. It appears from the dictionary meaning of the word "widow" that a widow would be a woman who is married and has lost her husband. As the marriage between a Hindu male Government servant during the life time of his wife is void, the marriage between the said Government servant and the second wife would not be a marriage in the eye of law. The woman performing the so called "marriage" with a Hindu Government servant during the life time of his wife cannot be said to be his widow. Rule 116 (6) (a) (i) of the Rules makes the pension payable only to widows and a woman claiming to have married a Hindu man during the life time of his wife cannot be said to be either his wife or his widow. On a reading of the provisions of the Maharashtra Civil Services (Pension) Rules, the Maharashtra Civil Services (Conduct) Rules, the Maharashtra Civil Services (General Conditions of Services) Rules as also the provisions of the Hindu Marriage Act and Hindu Succession Act, it appears that Rule 116 (6) (a) (i) of the Maharashtra Civil Services (Pension) Rules, 1982 does not provide pension to a woman who marries a Hindu male Government servant during the subsistence of his marriage with his wife and during her life time. Even according to the Hindu Succession Act, a woman like the petitioner does not fall within the ambit of the term "heir" and is not entitled to inherit the property of a Hindu male dying intestate, though the issues born to the said woman from a void wedlock would be entitled to inherit the personal property of the Hindu male dying intestate. We have already mentioned herein above, few of the circumstances in which the provisions of Rule 116 (6) (a) (i) of the Rules could provide pension to more widows than one. The circumstances mentioned by us may not be exhaustive and there may be other circumstances under which more widows than one could be entitled to family pension. However, suffice it to state that family pension would not be payable to a woman who marries a Hindu Government servant during the subsistence of his marriage and during the life time of his wife, after 18.5.1955.

8. The Hon''ble Supreme Court has held from time to time that a woman marrying a Hindu male during the subsistence of his marriage and during the life time of his wife would not be entitled to family pension after the coming into force of the Hindu Marriage Act on 18.5.1955. It would be worthwhile to refer to the decision reported in Rameshwari Devi Vs. State of Bihar and others, in this regard. In our considered view the judgment reported in Union of India and Others Vs. Jaywantabai, would not be applicable to the case in hand. In the said judgment, this Court was considering the provisions of the Railway Services Pension Rules, 1993. We also find that the law laid down by the Hon''ble Supreme Court in the judgment in the case of Rameshwari Devi Vs. State of Bihar and others, that was followed in the case of Vidyadhari and Others Vs. Sukhrana Bai and Others, was not brought to the notice of this Court. While deciding the present case we have considered the provisions of various enactments and Rules that were not considered in the judgment reported in Union of India and Others Vs. Jaywantabai, . If the claim of the woman like the petitioner is allowed, it would give a go-bye to the provisions of the Hindu Marriage Act and various Civil Services Rules. We cannot show any sympathy to the petitioner, as sought, in the circumstances of the case. Showing sympathy to a woman like the petitioner would result in depriving a legitimate wife of her right to receive full family pension. If a Hindu man performs a void marriage several times, the legitimate wife may get a miniscule part of the family pension and her position cannot be made so vulnerable, despite a valid marriage. The submission that the State would not be burdened if more widows than one receive pension and hence it has nothing to lose, would not be relevant while considering the entitlement of the woman or women entering into a void marriage. The issue is not about the burden on the State exchequer but is about the entitlement of more widows than one to receive pension under the Rules and the prejudice that may be caused to the legally wedded wife.

Since we do not find any illegality in the impugned order denying pensionary benefits to the petitioner, the writ petition is dismissed with no order as to costs. Rule stands discharged.