

(2024) 08 CAT CK 0006

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00467 Of 2023

Daisy, W/O. Late K. Sunny

APPELLANT

Vs

Southern Railway, Represented By Its General Manager, Park
Town, Chennai, Tamilnadu, Pin ? 600003 & Ors.

RESPONDENT

Date of Decision : 09-08-2024

Acts Referred:

Family Courts Act, 1984 — Section 7(1)(a)

Citation : (2024) 08 CAT CK 0006

Hon'ble Judges : Sunil Thomas, Member (J)

Bench : Single Bench

Advocate : K. Rajeev, Sreelakshmi Suresh, S.R.K. Prathap

Final Decision : Dismissed

Judgement

Sunil Thomas, Member J

1. One K. Sunny was a Loco Pilot in the Indian Railways. He had entered the Railway service on 15.12.1948. He took voluntary retirement on 2.11.1977. He was drawing pension from the Railways with effect from 31.5.2005. While so, he died on 25.6.2012. During his life time, he had married one Theresa and three children were born in the said matrimonial relationship. Marriage between Sunny and Theresa was dissolved by an order dated 28.9.2011 in OP No. 361 of 2011 of Family Court, Kozhikode. The applicant approached the Railways claiming that Sunny had married her on 15.12.2000. According to the applicant, she was entitled for family pension. She submitted a request claiming family pension. The Southern Railway rejected the request by Annexure A5 order on the ground that Sunny had married the applicant prior to the dissolution of the marriage between Sunny and Theresa and subsequent dissolution of marriage will not ratify the marriage allegedly entered into during the subsistence of previous marriage.

2. Aggrieved by the above, the applicant filed OA No. 613 of 2014 before this Tribunal seeking family pension. Railway Board appeared and contended that

Annexure R1 survival family membership certificate of Sunny of 2012 showed Theresa as wife and applicant as 2nd wife. However, another certificate issued by the same Village Officer one year thereafter relied on by the applicant showed the applicant alone as the 2nd wife. On that premise the Tribunal observed that the above certificate was not reliable. However, the applicant was directed to establish her relationship with Railway employee with valid document, so that legality of marriage can be established with an order of the competent court.

3. Accordingly, the applicant approached Family Court, Kozhikode in OP No. 274 of 2023 to declare her marriage dated 15.12.2000 with Sunny was legal and valid and that the petitioner was the legally wedded wife of Sunny. By Annexure A7 judgment and decree, Family Court allowed the OP and declared that petitioner was the legally wedded wife of Sunny whose marriage was solemnized 15.12.2000.

4. Armed with Annexure A7 decree and judgment, the applicant has approached this Tribunal seeking a direction to respondents Railways to grant her the family pension of deceased Sunny. The main reliefs sought in the OA are as follows:

"2. Issue a declaration that the applicant is entitled for the grant of family pension.

3. Issue an order directing the respondent to pay family pension to the applicant.

4. Issue an order directing the respondents to disburse the family pension benefits to the applicant withheld by the respondents after the death of the applicant's husband K. Sunny,

5. Issue an order directing the respondents to pay the arrears of Family Pension with 12% interest to the applicant."

5. Respondents Railways filed a detailed counter affidavit denying her claims and contending that her marriage with Sunny was not legal and no legal right had devolved on her. According to the Railways, during his life time Sunny had not nominated either his wife Theresa or the applicant herein as his nominee. The marriage with the applicant herein was not intimated to the Railways, it was contended. It was secondly contended that the applicant claimed that she had entered into a matrimonial relationship with Sunny by a registered document No. 430 of 2000 registered at SRO, Kozhikode. It was only a contract to live together. It was not a marriage as solemnized under the personal law applicable to the parties. It conferred no legal status, as laid down by the Supreme Court in *Rathnamma & Ors. v. Sujathamma & Ors.* (AIR 2020 SC 541), wherein it was held that the marriage solemnized in the office of Sub Registrar did not evidence a certificate of registration of marriage under the Special Marriage Act, 1954. Yet another contention advanced by the Railways was that even assuming that the above registered document conferred any status on her, it was entered into while the marriage of Sunny with Theresa was subsisting. Consequently, even entering into a contract of marriage was illegal and did not confer the status of wife.

Hence, she was not entitled to claim the benefits, it was contended.

6. Heard both sides and examined the records.

7. It was contended by the learned counsel for the respondents that the applicant had not made any nomination either of his 1st wife Theresa or the applicant herein as his 2nd wife nor had intimated the marriage with the applicant herein, during his life time. Hence, the applicant was not entitled for any benefit. However, this does not appear to be legally sustainable in the light of the settled legal position as laid down by the Supreme Court in *Smt. Violet Issaac & Ors. v. Union of India & Ors.* [1991 SCC (L&S) 551]. It was held therein that the family pension scheme under the Rules was designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The employee has no title or control over the family pension as he was not required to make any contribution to it. It was held that the family pension scheme was in the nature of a welfare scheme and does not form part of his estate enabling him to dispose of the same by a testamentary disposition. In the light of the above decision, the contention of the learned counsel for the applicant that the request of any of the legally sustainable heir to claim pension cannot be resisted by the Railways on the only ground that there was no nomination.

8. It was pointed out by the learned ACGSC appearing for the Railways that the admitted case of the applicant herein was that the matrimonial relationship claimed by her was essentially based on a registered document No. 430 of 2000 registered at SRO, Kozhikode. It was contended that the Supreme Court in *Rathnamma's case* (supra) had held that legally valid matrimonial relationship cannot be created on the basis of a registered document. It was not a marriage under the Special Marriage Act, nor under the personal law applicable to the parties. Evidently that document cannot confer status of wife to the applicant.

9. The learned ACGSC further pointed out that even Annexure A4 order show that the matrimonial relationship with Theresa was dissolved only on 28th September, 2011. Evidently, the matrimonial relationship of Sunny with Theresa was subsisting till 28th September, 2011, the date of Annexure A4 order. Evidently, Sunny could not have legally entered into a matrimonial relationship with any other person during the subsistence of that marriage. Hence, it was vehemently contended by the learned ACGSC that even the claimed marriage of applicant in 2000 with Sunny while his marriage with Theresa was subsisting was legally unsustainable on that ground also. That contention is legally sustainable also.

10. However, it is pertinent to note that the Family Court, Kozhikode in OP No. 274 of 2023 after considering the facts placed before it and even after noticing

that the claim of marriage of the applicant was based only on a registered document, that too entered into during the subsistence of a legally valid marriage which continued till 2011, proceeded to declare the marriage of the applicant with Sunny as valid. It was rightly contended by the learned counsel for the applicant that once a court of competent jurisdiction has passed an order, this Tribunal cannot sit in appeal over it, nor can adjudicate on the legality and correctness of an order passed by a competent Court, which had exercised its jurisdiction on a subject matter within its domain. Evidently, this Tribunal has no jurisdiction to entertain such an objection on a judicial order of competent court, unless that order is a nullity.

11. However, there is yet another ground advanced by the learned counsel for the Railways which appears to be sustainable. The learned ACGSC invited my attention to the pleadings in the reply statement wherein it was pointed out that in OP No. 274 of 2023 of the Family Court, Kozhikode only the children of Sunny through Theresa alone were made parties. It was contended at paragraph 15 of the reply statement that the respondents arrayed in that Original Petition were the children of late Sunny who had no legal right to become respondents. It was contended that the children of late Sunny had no role in determining the matrimonial status of the applicant. In the said OP applicant had sought for a declaration that she had legally married Sunny and she alone was entitled for pension. Her claim was for a declaration of marriage during the subsistence of marriage with Theresa. Evidently she claimed status of the wife of Sunny during the subsistence of marriage of Sunny with Theresa. Thus, Theresa was the most essential party to such a proceeding. However, Theresa was not made a party to OP No. 274 of 2023. It was contended by the learned ACGSC that to invoke Section 7(1)(a) of the Family Courts Act, the essential and proper party must be in the party array. In the absence of such a proper party in the array, Annexure A7 has no legal value. Hence, the judgment passed in OP No. 274 of 2023 was not passed on merit, it was contended.

12. It is evident that the applicant had sought for a declaration of her marriage with Sunny solemnized on 15.12.2000 as legal and valid. Admittedly, Theresa was the wife of Sunny during that period. Evidently in such a declaratory proceeding where applicant set up a rival claim as against Theresa, she ought to have been in the party array. Without arraying her in the party array, she arrayed the children born in her matrimonial relationship and a decree was obtained. It seems that the respondents therein appeared and submitted that they have no objection in declaring that the applicant was the legally wedded wife. The applicant has no case that Theresa was not alive during the relevant period. Under what circumstance, the necessary party to such a proceeding was excluded from an adjudication is not evident from the proceedings.

13. Relying on the decision of the Supreme Court in *Sunder Dass v. Ram Prakash* [1977 (2) SCC 662] at paragraph 3 it was contended that a suit obtained in such a manner is null and void, and not sustainable. It was also contended that in a

case where the decree was obtained by not impleading the appropriate person in the party array, the matter is not legally sustainable. To supplement this contention the learned ACGSC relied on the decisions in *Kiran Singh v. Chaman Paswan* (AIR 1954 SC 340), *Seth Hiralal Patni v. Sri Kali Nath* (AIR 1962 SC 199) and *Deena (dead) through LRs v. Bharath Singh (dead) through LR's* [(2002) 6 SCC 336].

14. Evidently, applicant is relying on Annexure A7 decree and judgment of the Family Court. The most essential party to such a declaratory suit was not made a party. Hence, it seems that either the decree obtained was a collusive one or apparently null and void as one obtained without impleading the necessary party to the proceeding. Hence, I feel that it will not be legally justifiable to rely on such a document and to grant relief to the applicant. No relief can be granted to the applicant in the above circumstances.

15. Original Application thus fails and is accordingly, dismissed. No order as to costs.