
(2011) 04 SHI CK 0101
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 10923 of 2008

Hameera Devi and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0101

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Petitioner is seeking release of the family pension and other pensionary benefits including ex-gratia payment, D.C.R.G., leave encashment, G.P.F. after the death of Shri Raj Kumar on 18th April, 2004.

2. Material facts necessary for the adjudication of this petition are that late Shri Raj Kumar was working as Agriculture Extension Officer in the Respondent-department. He has solemnized marriage with Respondent No. 4 in the year 1992. According to the Petitioner No. 1, Shri Raj Kumar has also solemnized the second marriage with her on 01.12.2001 and Petitioner No. 2 was borne from the said wed-lock. From the averments contained in the petition, Respondent No. 4 was working as Female Health Worker and was living away from the matrimonial house with Respondent No. 5.

3. Mr. Naresh Kaul, learned Counsel for the Appellant has strenuously argued that since his client has solemnized marriage with Shri Raj Kumar on 1st December, 2001, she is entitled to family pension and other retiral benefits.

4. Mr. R.P. Singh, learned Assistant Advocate General and Mr. Vinod Gupta, learned Counsel for Respondent No. 3 have vehemently argued that Shri Raj Kumar has only solemnized marriage with Respondent No. 4, Satya Devi and Petitioner No. 1 has not placed any tangible evidence on record to establish marriage with late Shri Raj Kumar.

5. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

6. It is not in dispute that Shri Raj Kumar has solemnized marriage with Respondent No. 4 in the year 1992. Respondent No. 5 was born out of the said wed-lock. Raj Kumar has died on 18th April, 2004. Petitioner No. 1 has placed strong reliance on Annexures A-1, A-2, A-3 and A-5 to prove the marriage with late Shri Raj Kumar. In Annexure A-1, there is over-writing, as far as the name of Petitioner No. 1 Hameera Devi is concerned. This document, i.e. Annexure A-1, Mother-Child Protection Card, will not establish the marriage of Petitioner No. 1 with late Shri Raj Kumar.

7. Annexure A-2, dated 29.04.2004 only speaks of the marriage of Raj Kumar with Respondent No. 4 in the year 1992 and it is further mentioned in this certificate that for the last four years, Smt. Satya Devi is not coming to her in-laws. Thus, this document does not prove the factum of marriage of Petitioner No. 1 with late Shri Raj Kumar. This certificate has been issued by the Pradhan, Gram Panchayat Bharari, Development Block, Ghumarwin. Annexure A-3, dated 25.05.2004 has been issued by the Pradhan, Gram Panchayat, Jach, Tehsil Dodra Kwar. It only certifies that Shri Raj Kumar was employed as A.E.O. in Sub Division Dodra Kwar and was married with Kumari Hameera Devi, D/o Shri Gita Ram, who was a permanent resident of Gram Panchayat Jakha, on 1st December, 2001. According to the certificate, they used to live as husband and wife. Annexure A-4 has been issued by Pradhan, Gram Panchayat Kwar, Tehsil Dodra Kwar. According to this certificate, Petitioner No. 1 was married to Shri Raj Kumar. However, this certificate is without date. Annexure A-5 has been issued by Up-Pradhan, Gram Panchayat, Dodra on 01.06.2004. According to this certificate, Shri Raj Kumar had married Smt. Hameera Devi from Gram Panchayat Jakha and he was having one daughter from Smt. Hameera Devi and they lived as husband and wife. These are the documents placed on record by Petitioner No. 1 to establish her marriage with late Shri Raj Kumar.

8. The Court is of the considered view that these certificates cannot be treated as substantive piece of evidence to establish that Raj Kumar had married Petitioner. Petitioner has not placed on record copy of the Parivar register or marriage certificate issued by the competent authority. The members of the family are recorded in the Parivar register and there is a settled procedure, the manner in which marriage certificate is issued. Now, the Court will advert to the evidence led by the Respondents to establish that Respondent No. 4 was the legally wedded wife of Raj Kumar. In Annexure R-3, Respondent No. 4 has been made as nominee No. 1 and Respondent No. 5 has been made as nominee No. 2. In Annexure R-1, issued by the Executive Magistrate, Respondent No. 4 has been shown as legally wedded wife of Shri Raj Kumar. The name of Respondent No. 5 also finds mention in the L.Rs. certificate. As per Annexure R-4, Shri Raj Kumar has solemnized only one marriage. Respondent No. 4 has also relied on Legal Heirs' Certificate issued by the Executive Magistrate on 1st July, 2004 and also

the marriage certificate Annexure R-4/1 issued by the competent authority on 29.04.2004.

9. Thus, it is conclusively proved that Respondent No. 4 was the legally wedded wife of late Shri Raj Kumar and Respondent No. 5 is the daughter of late Shri Raj Kumar. Respondent No. 4 Satya Devi has been nominated in G.P.F. vide Annexure R/3 and her name also finds mention in the service-book. In the Legal Heirs' Certificate, issued vide Annexure R-1, the name of Respondent No. 4 finds mention with Kiran Saroia. In the marriage certificate, Respondent No. 4 has been shown as wife of late Shri Raj Kumar.

10. Petitioner No. 1 Hameera Devi has failed to prove by leading any tangible evidence that Raj Kumar has solemnized marriage with her. Annexures A-1, A-2, A-3 and A-5 do not establish the marriage of Petitioner No. 1 with Raj Kumar. Petitioner ought to have placed on record the copy of Parivar register, as noticed above or marriage certificate, duly issued by the competent authority. Petitioner No. 1 has failed to supply the legal heirs' certificate to the Respondents. Since the Petitioner No. 1 has failed to prove her marriage with late Shri Raj Kumar, the ratio of the judgment rendered by the Hon'ble Supreme Court in Rameshwari Devi Vs. State of Bihar and others, cited by Mr. Naresh Kaul, learned Counsel for the Petitioners, cannot be applied. In that case, inquiry was got conducted by the State Government and it was amply established on the basis of oral and documentary evidence that the deceased employee and the second spouse were living as husband and wife. In the instant case, the Petitioner has not placed any tangible material on record to establish her marriage with late Shri Raj Kumar. The marriage cannot be proved merely on the basis of certificate issued by the Gram Panchayat concerned.

11. Accordingly, in view of the discussions and observations made hereinabove, there is no merit in this petition and the same is dismissed. The interim order dated 19.07.2004 is vacated forthwith. Respondents No. 1 to 3 are directed to release the pensionary and other retiral benefits to Respondent No. 4 within a period of four weeks from today. No costs.