

(2015) 07 RAJ CK 0179

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6963/2012 and Civil Misc. Appeal No. 2807 of 2011

Mukesh Chand Pandey and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-07-2015

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 16, 5
Succession Act, 1925 — Section 372, 384

Citation : (2015) 07 RAJ CK 0179

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Vinod Singhal, Counsel, for the Appellant; Manvendra Singh Choudhary for Sunil Kumar Yadav, Deputy Government Counsel, Advocates for the Respondent

Judgement

Mohammad Rafiq, J—Writ Petition No. 6963/2012 has been filed by petitioner Mukesh Chand Pandey for quashment of order dated 07.02.2012 and for a direction to respondents to provide him appointment on compassionate ground in lieu of services rendered by his deceased father late Shri Umesh Chand Pandey, on the post of Lower Division Clerk as he possesses the qualification for that post, from 25.03.2003, on which date he submitted the application under the Rajasthan Government Recruitment of Dependents of Rajasthan Recruitment of Dependents of Government Servants Dying while in Service Rules, 1996 (for short, "the Rules of 1996")

2. Civil Miscellaneous Appeal No. 2807/2011 has been filed by Smt. Sunita, who claims to be wife of late Shri Umesh Chand Pandey, aggrieved by order dated 30.07.2009 passed by learned Additional District and Sessions Judge No. 2, Bharatpur, in Civil Misc. Case No. 121/2003 (183/2003), whereby her prayer for grant of succession certificate for the purpose of awarding her pension in lieu of services rendered by her husband late Shri Umesh Chand Pandey, has been declined.

3. On 27.10.2014 when the writ petition was listed before this court, learned Government Counsel submitted that second wife Sunita Devi has filed CMA No. 2807/2011 before this court against the order dated 30.07.2009 of learned Additional District Judge, granting succession certificate to petitioner Mukesh Chand Pandey, therefore, it was prayed that both the matters be heard together. The Deputy Registrar (Judl.) of this court was directed to obtain necessary orders for listing the writ petition along-with the civil miscellaneous appeal. The Hon''ble Acting Chief Justice, vide order dated 30.01.2015, ordered to lay/list the writ petition No. 6963/2012 along-with civil miscellaneous appeal No. 2807/2011.

4. These two matters in fact are outcome of dispute amongst two wives of deceased government servant Shri Umesh Chand Pandey. Writ petition has been filed by by his son from the first wife and civil miscellaneous appeal has been filed by his second wife.

5. Late Umesh Chand Pandey was serving with the Government on the post of Office Assistant in the Government Senior Secondary School, Halena, District Bharatpur. He died in harness on 15.12.2003. He had two sons and two daughters from his first wife Maya Devi. His son Mukesh Chand Pandey (writ petitioner) is one of them. He submitted an application before the respondents on 25.03.2003 requesting for appointment on compassionate ground under the Rules of 1996. An objection was raised by his second wife Sunita Devi (appellant in civil miscellaneous appeal) and demanded retiral benefits being the widow of government servant late Shri Umesh Chand Pandey. Writ petitioner Mukesh Chand Pandey, however, contested her claim on the premise that his mother Maya Devi was the only legally wedded wife of late Shri Umesh Chand Pandey. Appellant Sunita Devi had two issues; one son and another daughter. Writ petitioner Mukesh Chand Pandey earlier filed S.B. Civil Writ Petition No. 3005/2004 seeking appointment on compassionate ground and other retiral benefits on account of death of his father in harness. This court, vide order dated 14.11.2005, disposed of that writ petition with liberty to him to obtain succession certificate and make fresh application before the authority concerned. During pendency of the said writ petition, an application was filed by Smt. Sunita Devi and her children under Section 372 of the Indian Succession Act. Learned court of Additional District and Sessions Judge, vide order dated 30.07.2009, held the petitioner entitled for appointment on compassionate ground in place of his father late Shri Umesh Chand Pandey and directed that other retiral benefits be paid to the children of appellant Sunita Devi, widow of late Shri Umesh Chand Pandey. Petitioner Mukesh Chand Pandey submitted a fresh representation on 01.08.2009 along-with certified copy of order dated 30.07.2009, to the respondent authorities praying for appointment on compassionate ground.

6. The District Education Officer, Secondary-I, wrote a letter to respondent No. 3 - the District Education Officer-II, Bharatpur, on 15.12.2009, to ensure compliance of the order dated 30.07.2009 passed by learned Additional District & Sessions Judge No. 2, Bharatpur. The respondent No. 4 - the Principal,

Government Senior Secondary School, Halena, District Bharatpur, vide letter dated 30.11.2010, clarified that petitioner Mukesh Chand Pandey had submitted the application for appointment on compassionate ground on 25.03.2003, which is within time as his father Umesh Chand Pandey expired on 15.02.2003. Respondent No. 3 - District Education Officer-II, Bharatpur, on 12.01.2011 wrote a letter to respondent No. 2 - the Director, Secondary Education, Rajasthan, Bikaner, for deciding the case of petitioner Mukesh Chand Pandey for appointment on compassionate ground under the Rules of 1996. Petitioner Mukesh Chand Pandey sent legal notice for demand of justice on 17.01.2011 to the respondents. When grievance of petitioner Mukesh Chand Pandey was not remedied, he filed Writ Petition No. 8923/2011.

7. This court, vide order dated 18.07.2011, disposed of that writ petition with a direction to the respondents to decide the case of the petitioner within a period of two months. Petitioner Mukesh Chand Pandey submitted yet another application before the respondents praying for giving him appointment on compassionate ground. When the same was not decided, the petitioner filed Contempt Petition No. 54/2012 before this court and this court pleased to issue notices thereon. On receiving notices of contempt petition, the respondent No. 2, vide order dated 07.02.2012, rejected the claim of the petitioner Mukesh Chand Pandey on the ground that already on the death of his mother Smt. Maya Devi, who was also a government servant, his sister Smt. Manju Devi has been granted appointment on compassionate ground by order dated 05.04.1983. The succession certificate did not absolutely grant any relief for appointment on compassionate ground. It merely states that if the relevant Rules so permit, Mukesh Chand Pandey may be appointed on compassionate ground. Petitioner Mukesh Chand Pandey could not be appointed because he was only secondary school pass, whereas the requisite qualification for the post of LDC was senior secondary.

8. Appellant Sunita Devi, second wife of late Shri Umesh Chand Pandey, has filed Civil Miscellaneous Appeal No. 2807/2011 under Section 384 of the Indian Succession Act, 1925, challenging the order dated 30.07.2009 passed by the learned Additional District and Sessions Judge No. 2, Bharatpur, in Civil Misc. Case No. 121/2003 (183/2003).

9. Shri Vinod Singhal, learned counsel for petitioner Mukesh Chand Pandey, has submitted that at the time of death of his father, he was unemployed and solely dependent on his father. He passed the secondary school examination and also having basic knowledge in computer prescribed for the post of LDC. He was thus entitled to appointment on compassionate ground under the Rules of 1996. Petitioner submitted application to the respondent No. 4 contending that his mother Smt. Maya Devi was the only legally wedded wife of deceased employee late Shri Umesh Chand Pandey and that she died on 10.08.1982, so Smt. Sunita Devi has no relation with late Shri Umesh Chand Pandey and she is in illegal manner trying to get the retiral benefits, which are otherwise payable to Umesh

Chand Pandey. It is argued that petitioner Mukesh Chand Pandey submitted claim for appointment on compassionate ground in lieu of services rendered by his father late Shri Umesh Chand Pandey, who died in harness. At the relevant time, petitioner Mukesh Chand Pandey has claimed to have possessed requisite qualification for the post of LDC.

10. It is argued that appointment granted to Smt. Manju Devi, sister of petitioner Mukesh Chand Pandey, was in lieu of the services rendered by their mother Smt. Maya Devi, who died in 1983. The Rules of 1996, which contains restriction for granting appointment on compassionate ground to one family member of deceased employee, who is solely dependent on him, cannot be applied to the present case because at the time when Smt. Manju Devi, sister of petitioner Mukesh Chand Pandey, was provided appointment on compassionate ground, the Rules of 1996 were not invoked. Smt. Manju Devi got married long ago in 1987 and she has no concern with the family of petitioner Mukesh Chand Pandey. In the year 1987, petitioner Mukesh Chand Pandey was of tender age and could not be given appointment on compassionate ground.

11. Shri Bipin Gupta, learned counsel for appellant Smt. Sunita Devi, has argued that Smt. Sunita Devi had filed the civil miscellaneous appeal against the order dated 30.07.2009 granting succession certificate to petitioner Mukesh Chand Pandey. It is argued that the learned court below decided the issues No. 1 and 2 partly in favour of appellant Smt. Sunita Devi, and held that she is legally wedded wife of late Shri Umesh Chand Pandey and out of the said wedlock she has two children, namely, Shailesh and Shalini. The learned court below further held that when late Shri Umesh Chand Pandey was alive, no decree of divorce was granted by the court of competent jurisdiction in favour of Smt. Sunita Devi to divorce his first husband Pyarelal, therefore, Smt. Sunita is not legally entitled to receive pension as her marriage was not valid marriage under the Hindu Marriage Act. While, on the one hand, appellant Smt. Sunita Devi has been declared legally wedded wife of late Shri Umesh Chand Pandey, on the other side, the marriage has not been held to be valid for pension purposes. Learned court below has failed to appreciate the evidence produced on record in right perspective. It has nowhere been proved that alleged petition under Section 13 of the Hindu Marriage Act was filed by Smt. Sunita Devi for divorce from his first husband Pyarelal.

12. Heard learned counsel for the parties and perused the material on record.

13. Question that arises for consideration is whether the order of respondents State dated 07.02.2012 in refusing to grant appointment to petitioner Mukesh Chand Pandey on compassionate ground is justified. In the facts and circumstances of the case mentioned above, the order dated 07.02.2012 appears to be justified because as per the Rules of 1996, where already a member of the family of the deceased government servant is in government service, another member of the family cannot be given appointment on compassionate ground. In this case, when already such appointment was granted to Smt. Manju Devi in

lieu of service rendered by her moth Smt. Maya Devi, in view of Rule 5 of the Rules of 1996 another member (petitioner Mukesh Chand Pandey) cannot be granted appointment on compassionate ground in lieu of services rendered by his father late Shri Umesh Chand Pandey. Such a prayer cannot be said to be justified in the Rules of 1996. The argument that when appointment was given to Smt. Manju Devi under the Rajasthan Recruitment of Dependents of Government Servants Dying while in Service Rules 1975 on account of death of her mother Smt. Maya Devi, who also happens to be mother of petitioner Mukesh Chand Pandey, the bar contained in the Rules of 1996 would not be applicable to the case of petitioner Mukesh Chand Pandey for grant of appointment on compassionate ground, cannot be accepted. What is crucial for deciding the case of petitioner Mukesh Chand Pandey is whether any of his family member is in government service. It was his sister Smt. Manju Devi, who was granted appointment on compassionate ground on account of death of their mother Smt. Maya Devi and therefore another member of the same family could not be considered for appointment on compassionate ground.

14. Purpose of granting compassionate appointment is to help the family at the time of crises when its sole bread earner has passed away and the dependents are not in a position to maintain themselves. In the present case, death of the deceased employee took place on 15.02.2002. Though, petitioner Mukesh Chand Pandey filed the application for appointment on compassionate ground, but after a lapse of more than thirteen years and keeping in view that earlier his sister Smt. Manju Devi has already been given appointment on compassionate ground, though on account of death of their mother late Smt. Maya Devi, who was also in government service, the stand of the respondents State not to grant him appointment on compassionate ground on account of death of his father late Shri Umesh Chand Pandey, cannot be said to be wholly unjustified. The writ petition deserves to be dismissed.

15. In so far as appeal filed by Smt. Sunita Devi is concerned, the findings recorded by learned court below indicates that her first husband Pyarelal was alive when she claims to have contacted second marriage with late Shri Umesh Chand Pandey. Pyarelal had appeared as a witness NAW-2 on behalf of defendants Mukesh and Others, and has proved this fact. This has been decided as issue No. 1 that Smt. Sunita Devi was not lawfully married by Umesh Chand Pandey. The voter-list of assembly dated 01.01.1988 has been produced, in which name of Sunita has been mentioned at serial No. 795 as wife of Shri Pyarelal. The voter list has been examined as Exhibit A-19. In the voter list, name of mother of Pyarelal is shown as Vidhya Devi, name of his father is shown as Shreya, name of his brother is shown as Khubi Ram, name of his sister is shown as Janki Devi and name of his another brother is shown as Bhagwan. Name of Sunita Devi has been mentioned in the voter list along-with these persons. The learned court below, in view of the above, has recorded that Sunita Devi is the wife of Pyarelal and there was no decree of divorce between them. Having recorded that finding, learned court below, in view of Section 5 of the

Hindu Marriage Act, held that even if marriage of parents of children is declared illegal or is voidable, their children, in view of Section 16 of the Hindu Marriage Act, are legal heirs of their father. In view of above, the findings recorded by the court below cannot be said to be perverse or erroneous. The appeal also therefore deserves to be dismissed.

16. In the result, the writ petition as also the civil miscellaneous appeal are dismissed. A copy of this order be placed in the file of Civil Miscellaneous Appeal No. 2807/2011.