

(2005) 07 PAT CK 0078
In the Patna High Court
Case No : LPA No. 305 Of 2005

Purushottam Kumar @ Purooshattam Kumar	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 15-07-2005

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 16, 5

Citation : (2005) 3 PLJR 458

Hon'ble Judges : Nagendra Rai, Acting C.J.; S.N. Hussain, J

Bench : Division Bench

Advocate : Baban Sharma, for the Appellant; A.K. Singh For the State, for the Respondent

Final Decision : Allowed

Judgement

1. The short question which falls for consideration in this appeal is as to whether a son of a second wife whose marriage is void in terms of Section 5 read with Section 11 of the Hindu Marriage Act is entitled to compassionate appointment in terms of the Government Memo No. 3/C2-2067/ 90 Ka. 13293 dated 5th October, 1991. Appellant's claim was rejected by the District Compassionate Appointment Committee on the ground that the deceased employee has two wives and as the second marriage could not have been performed while the first marriage was subsisting the claim of the appellant, who is a son of the second wife, cannot be considered for compassionate appointment. The appellant moved before the learned Single Judge challenging the said decision which has been dismissed by him by order dated 28.2.2005 necessitating this appeal.

2. The factual aspects for considering the point involved are that the father of the appellant was appointed on 1.4.1977. While he was in service of the State Government, he died on 24.5.2002 leaving behind two wives and one son from the second wife, namely, the appellant. On 18.7.2003 the appellant filed an application for compassionate appointment before the competent authority. He also filed an affidavit from his step mother that she was issueless and with her

consent her husband married second time with the mother of the appellant Smt. Raj Kumari Devi from whom the appellant was born and he being the only son in the family, should be appointed on compassionate ground. On 8.7.2004, the District Compassionate Appointment Committee considered the matter and by letter No. 2008 dated 12.8.2004 rejected the claim of the appellant on the ground that he being the son of the second wife where marriage was void, cannot be appointed on compassionate ground.

3. Rule 23 of the Bihar Government Servant's Conduct Rules, contains a provision with regard to restrictions regarding marriages and sub-rule (1) says that no Government servant shall enter into or contract a marriage with a person having a spouse living and sub-rule (2) says that no Government servant, having a spouse living shall enter into or contract a marriage with any person.

4. Admittedly, the second marriage was performed with the mother of the appellant while the deceased was in Government service and as such it was a misconduct in terms of the Government Servant's Conduct Rules, but the first wife or any other person did not raise any objection during the life time of the father of the appellant. In that view of the matter, it is not relevant at all to decide the matter in controversy.

5. The Government has come out with a policy decision as contained in memo No. 3/C2-2067/90 KA. 13293 dated 5th October, 1991, as referred to above, providing employment in Class III and Class IV posts in case of death of a Government servant during service period. The said memo also lays down the categories/persons entitled to the said appointment and other procedure for the same. According to the Circular, only dependent will be given employment on compassionate ground and under the category of dependents are widow of the deceased employee, son, unmarried daughter and the widow of predeceased son and the order of preference would be, the widow of the deceased, son, unmarried daughter and the widow of predeceased son.

6. Admittedly, the appellant is the son of the deceased so according to the circular, his claim is permissible for appointment on compassionate ground, but the same, as stated above, has been rejected on the ground that he is the son of the second wife and as such the relevant question for consideration is as to what would be his status according to law; whether he is a legitimate child or illegitimate child.

7. Section 5 of the Hindu Marriage Act provides conditions for a Hindu marriage which is admittedly applicable in the case of the appellant and clause (i) of Section 5 provides that neither party has a spouse living at the time of the marriage and Section 11 provides inter alia that any marriage solemnised after the commencement of this Act shall be null and void.

8. Thus, in view of provisions of the aforesaid two sections, it is clear that the marriage of the mother of the appellant with the deceased employee was void marriage.

9. Section 16 of the Hindu Marriage Act however provides that notwithstanding that the marriage is null and void u/s 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act 1976 and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act. Subsection (3) of Section 16 provides that the child of a marriage which is null and void will have rights in or to the property of his parents only and not to the property of any other person.

10. Thus, from reading the aforesaid three sections, it is clear that though the marriage is void but the child born is a legitimate one and they will share the property equally with the legitimate children in their parents property. By a deeming provision illegitimate children of a second marriage have been treated to be legitimate and he will inherit the property in the same manner as a legitimate son of a valid marriage.

11. Under the provisions of the Hindu Succession Act, in the parents property, the son of the second wife will have the same right as the legitimate son of the first wife and no distinction and differentiation can be made with regard to share in the property of the parents. A similar question arose, though in different context, that is with regard to entitlement of pensionary benefits of children of a second wife in the case of Rameshwari Devi Vs. State of Bihar and others, and the Apex Court held in paragraph 14 that the children of the void marriage are legitimate and the property of a male Hindu dying intestate devolve firstly on heirs in Class 1 which include widow and son. A son of the second wife being legitimate son will be entitled to the property of the deceased in equal share alongwith the first wife and her sons.

12. So far the policy decision of the State Government is concerned, it speaks son only and as the son of the second wife is also legitimate son, as the policy stands he is entitled to appointment on compassionate ground and his claim cannot be rejected on the ground of his having been offshoot of void marriage. Thus, the sole ground for negating the claim of the appellant for compassionate appointment by the Committee as contained in Annexure-2 to the memo of appeal is not a valid ground. This aspect of the matter as appears was not placed before the learned Single Judge.

13. Accordingly, the order passed by the learned Single Judge is set aside. The decision of District Compassionate Appointment Committee as contained in Annexure-2 to the memo of appeal is also quashed and the matter is remitted to the authority concerned to consider the question of appointment of the appellant on compassionate ground within two months from the date of receipt/production of a copy of this order. In the result, the appeal is allowed.