

(2002) 03 MP CK 0047

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 253/99

Sitabai Sinodia and Others

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 5

Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 47(7), 47(8)

Citation : (2002) 94 FLR 1016 : (2002) 3 MPHT 277 : (2002) 3 MPLJ 116

Hon'ble Judges : Bhawani Singh, C.J.; K.K. Lahoti, J

Bench : Division Bench

Advocate : R.K. Thakur, for the Appellant; S.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.

Shri Balram Prasad Sinodia (deceased) married Bindra Bai. Out of this wedlock, they had no child. He married Sita Bai Sinodia. Out of this marriage, there are three children : two sons and a daughter. Sita Bai and her children filed petition claiming 2/3 share in the pension after the death of Shri Balram Prasad Sinodia. The petition has been dismissed by order dated 3-4-1999. Learned Single Judge came to the conclusion that Bindra Bai was entitled to the full family pension, while petitioner Sita Bai and her children were not. For coming to this conclusion, reliance is placed on Sub-rule (8) (i) of Rule 47 of the M.P. Civil Services (Pension) Rules, 1976 (for short, "the Rules"). Not satisfied with this order, the present appeal has been filed.

Shri R.K. Thakur, learned Counsel for the appellants submits that appellants are entitled to family pension under Sub-rule (7) (a) (i) of Rule 47 of the Rules which enjoins that where family pension is payable to more widows than one the family pension shall be paid to the widows in equal shares, while Shri S.C. Sharma, learned Counsel for Regional Provident Fund Commissioner, Regional Office,

Jabalpur, contends that this is not so. Submission of learned Counsel is that Sub-rule (7) (a) (i) of Rule 7 of the Rules applies in a case where the deceased could have legally wedded two wives and not where second marriage is prohibited. It covers the case of community which can have more than one wife and not the community which cannot have. In the latter case, it is Sub-rule (8) (i) of Rule 47 of the Rules which is applicable. Therefore, it is a case which falls under Sub-rule (8) (i) of Rule 47 of the Rules. Therefore, the appellants are not entitled to any share in the family pension.

Giving consideration to the submissions advanced by learned Counsel for both sides, we have no hesitation in accepting the contention advanced by Shri S.C. Sharma. Sub-rule 7 (a) (i) of Rule 47 of the Rules clearly mentions that where family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. This rule is to be read in the context of Law of Marriages, namely Hindu Marriage Act, 1955, Section 5 read with Section 11, which prohibits contracting of more than one wife and if one does so, the second marriage would be void. However, this prohibition is not applicable to marriages under the Muslim Law. Therefore, in the latter case, in the event of two widows living after the deceased, both will share the same equally, otherwise where there is only one member in the family, namely a wife, it is not to be paid to more than one wife.

Further contention of Shri R.K. Thakur that since the children of Smt. Sita Bai Sinodia are found entitled to 2/3 share in the estate of the deceased, therefore, estate would include pension, hence the pension is to be disbursed accordingly is not acceptable. Law of Succession would not be applicable in case where disbursement of pension is conditioned by Pension Rules. Our examination of the Pension Rules clearly negatives the contention of Shri R.K. Thakur. Therefore, it is rejected.

The result, therefore, is that there is no merit in this appeal and the same is dismissed.