
(2005) 03 AHC CK 0240

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 10811 of 2001 and 33212 of 2003

Smt. Laxmi Devi Gupta

APPELLANT

Vs

State of U.P., District Magistrate and Prabhari Adhikari
(Najarat), Km. Jyoti Gupta and Mukesh Kumar

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Hindu Marriage Act, 1955 — Section 11
Succession Act, 1925 — Section 370, 372

Citation : (2005) 5 AWC 4258 : (2005) 2 ESC 1145 : (2005) 105 FLR 787

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Siddheshwari Prasad, R.P. Srivastava and Someshwari Prasad, for the Appellant; V.K. Agrawal, S.C. Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner's husband was a stenographer in the Collectorate at Ghaziabad and died in harness on 4.2.1996. The petitioner alleged that she was the second wife of her husband. The first wife had died in the year 1993 and thereafter, the petitioner married her husband according to Hindu rituals and customs. Out of the first marriage of her husband, two children were born, namely, Km. Jyoti Gupta and Mukesh Gupta. Upon the death of here husband in 1996, the petitioner applied in June 1997 for an employment on compassionate ground under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules 1974 [hereinafter referred to as the Rules] The authorities by an order dated 12.3.1997 directed the petitioner to obtain a succession certificate so that her case for an employment on compassionate ground could be considered. Accordingly, the petitioner filed an application before the Civil Judge for a grant of a succession certificate. These proceedings u/s 370 and 372 of the Indian Succession Act, were opposed by the children of the deceased. The Civil Judge, after hearing all the parties, granted a succession

certificate dated 28.5.1999 holding that the petitioner and the two children were entitled each for 1/3rd share in the property of the deceased. The children of the deceased, being aggrieved by the aforesaid decision, filed an appeal before the District Judge, through their maternal guardian, as they were minors. This appeal was also dismissed by a judgement dated 28.2.2001.

2. Armed with the succession certificate dated 28.5.1999, the petitioner applied again for an employment vide application dated 31.5.99 on which, the District Magistrate, Ghaziabad issued an order dated 4.7.99, directing the Prabhari Adhikari to appoint the petitioner as a peon. Based on this order, the Prabhari Adhikari passed an order giving 1/3rd retirement benefits each to the petitioner and the two children. However, for reasons best known, the petitioner was not given an appointment letter. The petitioner has now filed the present writ petition alleging that inspite of the order of the District Magistrate, Ghaziabad, dated 4.7.99, the appointment letter has not been issued nor has she been allowed to join as a Class-IV employee and therefore, prayed for a mandamus directing the respondents to give her an appointment on compassionate ground.

3. Km. Jyoti Gupta and Mukesh Gupta had filed an impleadment application and were impleaded as respondent Nos. 4 and 5 in the writ petition. In the counter affidavit, they submitted that the petitioner was not the legally wedded wife of their father and that the second marriage. The respondents submitted, that the petitioner was previously married to one Ram Niwas and that a decree of divorce was granted by a judgment dated 7.10.1993 of the Judge Family Court, Bareilly. From a perusal of this judgment, it transpires that Smt. Laxmi Devi, the petitioner had contracted the second marriage sometimes in the year 1992 with their father. The first wife of the deceased was alive in 1992, therefore, the second marriage of the petitioner with the deceased in 1992 was void u/s 11 of the Hindu Marriage Act.

4. The District Magistrate, Ghaziabad, respondent No. 2 filed his counter affidavit and submitted that under the Dying in Harness Rules, only one member of the family could be given an employment. In the present case, there were two applicants, namely the daughter and the second wife of the deceased and submitted that the respondents are unable to take any steps, as the Rules are silent on this issue.

5. The respondent Nos. 3 and 4, namely, Km. Jyoti Gupta and Mukesh Gupta also filed Civil Misc. Writ Petition No. 33212 of 2003 before this Court, praying therein that a mandamus be issued to the District Magistrate, Ghaziabad to give an appointment to petitioner No. 1, namely, Km. Jyoti Gupta on compassionate ground under the Dying in Harness Rules, pursuant to the death of her father.

6. Since both the writ petitions are connected and interlinked, the same are being decided together.

7. Heard Sri Siddheshwari Prasad, the learned Senior Counsel assisted by Sri Ravi Prakash Srivastava for the petitioner and Sri V.K. Agarwal, the learned

counsel appearing for the respondents.

8. From the aforesaid, the admitted facts as culled out is, that the first wife died in the year 1993, Sri Bishan Swarup Gupta, the deceased, in question, had died on 4.2.1996. The first marriage of Smt. Laxmi Devi with her first husband Ram Niwas was dissolved by a decree of divorce dated 7.10.1993. At the time of the death of Sri Bishan Swarup Gupta on 4.2.1996, his children Km. Jyoti Gupta and Mukesh Gupta were minors. According to the school certificate the date of birth of Km. Jyoti Gupta was 23.8.1982 and the date of birth of Mukesh Kumar Gupta has not been given but it has been admitted that he was also a minor at the time of the death of his father.

9. The learned counsel for the respondent Nos. 3 and 4 submitted that the second marriage of Smt. Laxmi Devi with the father of respondent No. 3 was a void marriage and further the petitioner did not get the status of a legally wedded wife and therefore, she would not be included in the definition of the word "Family" as contemplated under the Dying in Harness Rules 1974.

10. The learned counsel for the respondent further submitted that the succession certificate did not confer any irrevocable title upon the petitioner nor it proved that she was the legally wedded second wife of the deceased and, therefore, she was not entitled to claim any employment on compassionate ground under the Dying in Harness Rules.

11. In support of his submission the learned counsel for the respondents has placed relied upon a judgment of this Court in the case of Pooran Devi (Smt.) Vs. Chief Engineer, Electricity Board and Others, in which it was held that the second wife, not being the legally wedded wife of the deceased, was not entitled for an employment under the Dying in Harness Rules.

12. In my view, the submission of the learned counsel for the respondents cannot be accepted. The judgment dated 7.10.93 in the divorce proceedings is an exparte judgment passed against the petitioner. The judgment only refers to the allegation that the petitioner had contracted the marriage in the year 1992. This allegation has not been proved nor does the judgment indicate that the petitioner had married the deceased in 1992. Therefore, no reliance of this fact can be taken from the aforesaid judgment. The children have denied the marriage of the petitioner with the deceased. They have made the allegation and, therefore, the burden to prove this fact was upon them, which they have failed. Apart from the aforesaid judgment, the children have not placed any other documentary proof showing that the marriage of the petitioner with the deceased was void u/s 11 of the Hindu Marriage Act.

13. On the other hand, there exist a succession certificate, which was issued to the petitioner after hearing all the parties and, the court held that the petitioner was entitled to 1/3rd share of the properties of the deceased. Even though, these proceedings are summary in nature and does not confer irrevocable title upon the petitioner, nonetheless, the findings of the Civil Judge in his judgment and

the issuance of the succession certificate are binding interse between the parties. Consequently, till such time, as the succession certificate stands, the petitioner has a right to be considered for an employment under the Dying in Harness Rules, being a member of the family of the deceased.

14. In view of the aforesaid, the petitioner is entitled to be considered for an employment under the Dying is Harness rules. The District Magistrate, Ghaziabad, respondent No. 2, had rightly issued the order dated 4.7.99 directing the Prabhari Adhikari to appoint the petitioner on a Class-IV post. Consequently, the petitioner is entitled to the relief claimed. The writ petition is allowed and a mandamus is issued to the district Magistrate, Ghaziabad, to implement its order dated 4.7.99 and to give and employment to the petitioner under the Dying in Harness Rules. Since, at the time of the death of the deceased, the children were minors, consequently, they could not be considered for employment, even though, they have become major as on date. The petitioner having applied earlier, was entitled to be considered first. Accordingly, the children of the deceased are not entitled for any relief and their writ petition fails and is dismissed. In the circumstances of the case, there shall be no order as to cost.