

(2009) 08 AHC CK 0018
In the Allahabad High Court

Smt. Raman Pandey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Citation : (2010) 1 AWC 494 : (2009) 123 FLR 698

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties.

2. This petition has been filed by Smt. Raman Pandey claiming herself to be wife of deceased employee Jayanti Prasad Pandey. Son of Smt. Savitri Devi claimed appointment on compassionate ground on the basis that Smt. Raman Pandey, the second living wife of the deceased is not entitled to the benefits on compassionate ground under Dying-in-Harness Rules as she is not within the definition of family therein. In that context, the Court in Writ Petition No. 18397 of 2002, wherein present petitioner-Smt. Raman Pandey was a party as respondent No. 4 and had also filed counter-affidavit, held as follows:

In my opinion, if Smt. Raman Pandey is not legally wedded wife and the marriage of Smt. Raman Pandey is void. According to Hindu Marriage Act, she cannot claim the benefits to claim an appointment under dying-in-harness because she does not come under the definition of family. The judgment relied upon by the counsel for the petitioner fully supports the contention of the petitioner.

3. Now by means of this petition, Smt. Raman Pandey claims for a writ in the nature of mandamus commanding opposite party Nos. 1 to 3 to appoint the petitioner on compassionate ground according to eligibility on any suitable post. This prayer has not been pressed by the counsel for petitioner in the backdrop that Rajesh Kumar Pandey, elder son of the deceased employee has been

provided appointment under Dying-in-Harness Rules pursuant to order passed by the Court in the aforesaid Writ Petition No. 18397 of 2002.

4. Counsel for the petitioner has confined his arguments only in respect of prayer No. 2 which is for a writ of mandamus "commanding the opposite parties to make payment of G.P.F., Group Insurance and other dues in favour of the petitioner and family pension month to month towards the services rendered by her husband late Jayanti Prasad Pandey on consideration of the fact that she is only nominee of her husband in the service records."

Notices were issued vide order dated 4.5.2007 to respondent Nos. 4 to 6. His Lordship Hon. Mr. Justice Sabhajeet Yadav vide order dated 10.4.2008 directed the office to submit report about service upon aforesaid respondents and they were directed to file counter-affidavit within four weeks.

5. From the service report submitted by the office, it appears that neither acknowledge nor registered cover has been received back, therefore, in view of the High Court Rules, service is deemed to be sufficient upon respondents No. 4 to 6 who have not put in appearance in the matter.

6. Counsel for the petitioner has also submitted that respondent No. 6-Smt. Savitri Devi is now living with one Ramfer Yadav, resident of Pura Meharban Ka Purva, village Panchayat Gobari, Tehsil Sadar, Pratapgarh after death of her husband and has now six issues from him.

7. In support of his second prayer, the counsel for the petitioner has placed reliance upon the judgment of the Apex Court in Rameshwari Devi v. State of Bihar 2000 (1) ESC 577 : 2000 (1) AWC 817 (SC), wherein it was held that where a Government servant being a Hindu having two living wives, died while in service, then his second marriage was void under the Hindu law and as regards the status of second wife and children from second marriage is concerned, considering the question whether they were entitled to any share in the family pension and death-cum-retirement gratuity etc., the Apex Court ruled that second wife having no status of widow is not entitled for anything. However, children from the second wife would equally share the benefits of death cum-retirement gratuity and family pension till they attain their majority.

8. In the present case, it appears that first wife of deceased employee is now living with another person. Both her sons have attained majority. One of the sons has also been given appointment by the department on compassionate ground. While the present petitioner-Smt. Raman Pandey, who is said to be the second wife, is nominated in the service records by the deceased whereas first wife Savitri Devi is not so nominated.

9. The standing counsel on the basis of paragraph No. 4 of the counter-affidavit submitted that marriage of Smt. Raman Pandey-second wife, is void as has also been held in Writ Petition No. 18397 of 2002 referred to above, therefore, she is not entitled to any claim on retiral dues of the deceased Government employee.

The argument is fallacious and incorrect. The Court had not decided the status of Smt. Raman Pandey, the petitioner in the case as second wife nor had declared the marriage as void. The Court has laid emphasis that if Raman Pandey is second wife, even her marriage is void. Until and unless it is so declared, it cannot be said to be a void marriage unless it is so declared by a Court of competent jurisdiction. The claim in her petition was for compassionate appointment and not for any declaration or adjudication that Smt. Raman Pandey is not the wife of the deceased. However, even if the petitioner can be said to be the second wife, in that case also she may not have any status of widow and will be entitled to anything but progenies of the deceased Government employee through her, would equally share the benefits of death-cum-retirement gratuity and family pension till they attain majority in accordance with ratio laid down in Rameshwari Devi's case (supra).

10. In the present case, daughter of petitioner Priyanka Pandey (Petitioner No. 1/1), who had filed impleadment application, has also attained majority. But Deepak Pandey (petitioner No. 1/2) son of the deceased with the petitioner-Smt. Raman Pandey is still a minor being 13 years of age, therefore, he is entitled to retirement benefits of the deceased employee particularly in the backdrop that Smt. Raman Pandey had been nominated as wife by the deceased in the service records for receiving his benefits.

11. For all the reasons stated above, this petition is allowed. The respondents are directed to release retiral dues in favour of minor son Deepak Pandey in the form of Fixed Deposit in a nationalized bank earning maximum interest payable to him on his attaining majority, i.e., 18 years of age. The F.D. shall be made in the name of the minor Deepak Pandey, expeditiously within a period of two months from the date of presentation of a certified copy of this order and the petitioner who is natural guardian of the minor at present, will be entitled to draw interest half yearly on the deposit so made to meet expenses of education etc. of the children. No order as to costs.