
(2014) 04 MAN CK 0006
In the Manipur High Court
Case No : Writ Appeal No. 43 of 2012

Smt. S(O) Priyolata Devi

APPELLANT

Vs

The State of Manipur, Accountant General, Manipur, Executive Engineer, Project Stores Division and Smt. S(O) Parbati Devi

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

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

Citation : (2014) LabIC 2001

Hon'ble Judges : Laxmi Kanta Mohapatra, Acting C.J.; N. Kotiswar Singh, J

Bench : Division Bench

Advocate : R.K. Manikanta, Advocate for the Appellant; Y. Ashang, G.A., Mr. Kh. Tarunkumar, Advocate and Mr. C. Komol, CGSC, Advocate for the Respondent

Final Decision : Dismissed

Judgement

L K. Mohapatra, Actg. C.J.

1. This Writ Appeal is directed against the common judgment delivered by the learned Single Judge on 6.6.2012 in three writ petitions. The present appellant was the petitioner in the W.P.(C) No. 85 of 2011 whereas the respondent No. 4 in the appeal was the petitioner in W.P.(C) No. 146 of 2012. The other writ petition bearing WP(C) No. 697 of 2011 was filed by Km. S. Somila Devi who claims to be the daughter of late S. Brajakishore Singh through second wife who is the present appellant. The facts leading to filing of the three writ petitions are as follows:

Late S. Brajakishore Singh was serving as Section Officer Grade-I in the Irrigation & Flood Control Department, Govt. of Manipur and he retired from service on attaining the age of superannuation on 01.3.2000. Admittedly, the respondent No. 4, Smt. Parbati Devi (Petitioner in W.P.(C) No. 146 of 2012) is the legally married wife of late Brajakishore Singh. They had two sons, namely S. Lokendro Singh and S. Dinachandra Singh, who predeceased late Brajakishore

Singh. After retirement on superannuation, late Brajakishore Singh was receiving family pension till his death on 27.6.2010. However, during subsistence of his marriage with Smt. Parbati Devi, he married the present appellant and out of that marriage, Km. S. Somila was born. These facts are not disputed by any of the parties to the proceeding. After death of late Brajakishore Singh dispute arose as to who would get family pension. Accordingly, Smt. Parbati, respondent 4, who is admittedly the legally married wife of late Brajakishore Singh, filed W.P. (C) No. 146 of 2012 claiming family pension and the present appellant and Km. Somila Devi also filed two other independent writ petitions bearing W.P.(C) Nos-85 of 2011 and 697 of 2011 respectively claiming family pension.

2. The learned Single Judge clubbed all the three writ petitions and disposed of the same by the impugned common judgment. The learned Single Judge dismissed the writ application filed by the present appellant and allowed the writ petition filed by the respondent No. 4 as well as by Km. S. Somila Devi in part. It was directed that out of the family pension 2/3 shall be received by the present respondent No. 4 and 1/3 shall be received by Km. S. Somila Devi. This direction was issued by the learned Single Judge on the basis of the following findings-

(a) In view of Section 5 and Section 11 of the Hindu Marriage Act, 1955, the marriage between late Brajakishore Singh and the present appellant during the subsistence of the first marriage between late Brajakishore and the present respondent No. 4 is a void marriage;

(b) U/s. 16 of the Hindu Marriage Act, 1955 even if Km. S. Somila was born out of a void marriage, she is entitled to receive part of the family pension;

(c) As per Rule 54(8) of the Pension Rules, i.e. Manipur Civil Service (Pension) Rules, 1977, family pension cannot be paid to more than one member of the family at the same time and Rule 54(7)(a)(i) of the said Rule shall have no application to the person who claims to be widow by virtue of the second marriage when the first marriage was subsisting.

(d) In view of the Office Memorandum dated 21.6.94 issued by the Govt. Of Manipur, late Brajakishore Singh having died much after 28.1.91, the present appellant is not entitled to family pension.

3. Mr. R.K. Manikant, learned counsel appearing for the appellant assails the impugned judgment on the following grounds-

(a) the three writ applications involve different issues and therefore they could not have been clubbed together for hearing;

(b) The learned Single Judge having described appellant as a widow of late Brajakishore Singh could not have come to a conclusion that Rule 54(7)(a)(i) of the Pension Rules of 1977 has no application to the case of the appellant;

(c) the learned Single Judge ignored family settlement under which both the widows had agreed to share the family pension.

(d) The Office Memorandum dated 21.6.94 is only a scrap of paper and cannot take away the effect of Rule 54(7)(a)(i) of 1977 Rules.

On the above grounds, the learned counsel for the appellant prayed for remitting the matter back to the learned Single Judge for reconsideration.

4. Mr. Tarunkumar, learned counsel appearing for the respondent No. 4 submitted that the marriage between late Brajakishore Singh and the appellant having taken place during subsistence of the first marriage between late Brajakishore Singh and the respondent No. 4, was rightly held to be a void marriage and accordingly the appellant was not entitled to family pension. It was further contended that Rule 54 (7)(a)(i) of the Rules can only be made applicable when there are more than one widow and marriages are legally sustainable. The learned counsel also submitted that the Office Memorandum dated 21.6.94 based on the Govt. Of India's D.O. letter No. 16.2.87 is not inconsistent with the provisions contained in the Pension Rules, 1977 and therefore it cannot be treated to be a scrap of paper. Paragraph 4 of the said Office Memorandum dated 21.6.1994 specifically provides that widows more than one shall be entitled to equal share of Family pension where death of the Govt. Employee occurred before 28.1.1991, i.e. the date of adoption of Govt. Of India's clarification. Therefore, late Brajakishore Singh having expired on 27.6.2010, the present appellant cannot claim for payment of family pension as a widow of late Brajakishore Singh.

5. Mr. Y. Ashang, learned Addl. G.A. reiterated the argument advanced by Mr. Kh. Tarunkumar and Mr. C. Komol, learned CGSC also reiterated the submission made by Th. Tarunkumar.

6. So far as the first ground of challenge is concerned, it relates to clubbing of three writ petitions filed by the appellant, respondent No. 4 and Km. S. Somila Devi. Undisputedly, the present respondent No. 4 is the legally married wife of late Brajakishore Singh. The present appellant also undisputedly married late Brajakishore Singh during subsistence of first marriage. It is also not in dispute that Km. S. Somila Devi was born out of the marriage between late Brajakishore Singh and the present appellant. The common prayer in all the three writ petitions was for payment of family pension after death of late Brajakishore Singh on 27.6.2010. Therefore, the issue involved in the three writ petitions was connected to each other and therefore, it cannot be said that issues were different and as such the three writ petitions could be decided separately. Moreover, there is nothing on record to show that at any point of time, any objection was raised by parties to the proceeding with regard to clubbing of the three writ petitions for hearing. Therefore, we do not find any substance in the first ground taken by the learned counsel for the appellant.

In this connection, the learned counsel for the appellant places reliance on the decision of the Apex Court in the case of R.S. Pandey Vs. State of U.P. and others, . In the said reported case the appellant therein was working as

Registration Clerk on daily wage basis, appointed as Peon. Despite recommendation of the District Registrar to the Inspector General of Registration for extension of service period of the said appellant, his appointment was discontinued. The said writ application of the appellant was considered by the High Court along with other writ petitions for regularisation of service of daily wagers as Registration Clerk. Under these circumstances, the Apex Court held that linking of the case of the appellant with other cases in which prayer for regularisation was made, was an error on the part of the High Court and accordingly remitted the matter back for reconsideration. The facts of the above reported decision are completely different from the present case. The common issue in all the three writ petitions out of which this appeal arises is with reference to payment of family pension after death of late Brajakishore Singh. We are, therefore, of the view that there was nothing illegal in clubbing all the three writ petitions and disposing of the same by the common judgment.

7. The second ground taken by the learned counsel for the appellant is that the learned single Judge having described the appellant as widow of late Brajakishore Singh, could not have come to the conclusion that Rule 54 (7) (a) (i) of the above Rules of 1987 has no application. Manipur Civil Services (Pension) Rules provide for payment of family pension. Rule 54(7) (a) (i) provides that where family pension is payable to more widow than one, the family pension shall be paid to the widows in equal share. Rule 54(8) (i) provides that except as provided in sub rule (7) the family pension shall not be payable to more than one member of the family at the same time. It further provides that if a deceased Government servant or pensioner leaves behind a widow, the family pension shall become payable to the widow failing which to the eligible child.

The Govt. Of India issued D.O. letter No. 16.2.87 clarifying that second wife will not be entitled to family pension as the legally wedded wife under the Hindu Marriage Act. With reference to the above, Govt. Of Manipur issued a Memorandum on 21.6.1994 clarifying that widows more than one shall be entitled to share family pension for the death of the Govt. Employee provided death occurred before 28.1.1991, i.e. the date of adoption of Government of India's clarification.

The learned Single Judge referred to not only Rule 54 (7)(a)(i) but also Rule 54 (8)(i) as well as the Office Memorandum dated 21.6.1994 and came to the conclusion that the appellant is not entitled to family pension for the reasons that her marriage with late Brajakishore Singh was void, having taken place during subsistence of the marriage of late Brajakishore Singh with respondent No. 4 and that late Brajakishore Singh died after 29.1.1991. As per the office Memorandum dated 21.6.1992, she was also otherwise not entitled to family pension. In this connection, the fourth ground taken by the learned counsel for the appellant becomes relevant. It was contended by the learned counsel for the appellant that the Office Memorandum dated 21.6.1994 is only a scrap of paper and cannot take away the effect of Rule 54 (7)(a)(i) of the Pension Rules. Reference, in this

connection, be made to a decision of the Apex Court in the case of State of Maharashtra Vs. Jagannath Achyut Karandikar, . It was held in the said judgment that executive instructions may supplement but cannot supplant statutory Rules. It was further held that Government cannot restrict operation of statutory rules by issuing executive instruction. The above decision has been affirmed in later decisions of the Apex Court.

No doubt, Rule 54 (7)(a)(i) of the Pension Rules provides that where family pension is available to more widows than one, the same can be paid to the widows in equal share but at the same time Rule 54 (8)(i) provides that except as provided in sub rule of the pension Rules shall not be payable to more than one member of the family at the same time.

The D.O. letter of the Govt. Of India dated 16.2.1987 has been issued with reference to widow who was legally married wife of the Govt. Employee under the Hindu Marriage Act. In the said D.O. letter dated 16.2.1987 it was clarified by Govt. Of India that second wife of a Govt. Employee will not be entitled to family pension as the legally wedded wife under the Hindu Marriage Act. Adopting the above clarification issued by the Govt. Of India, the State Govt. Of Manipur had also issued the Office Memorandum dated 21.6.1994. The D.O. letter of the Govt. Of India dated 16.2.1987 and the consequential Office Memorandum issued by the Govt. Of Manipur on 21.6.1994 only supplement the provisions contained in the Pension Rules and do not supplant the provisions contained therein. In case of a Hindu second marriage during subsistence of the first marriage is to be treated as void. There is no dispute about this proposition of law provided under the Hindu Marriage Act. Admittedly, late Brajakishore Singh having married the present appellant during the subsistence of his marriage with the respondent No. 4, the marriage between late Brajakishore Singh and the present appellant was a void marriage. Therefore, the learned Single Judge correctly placed reliance on the provisions of the Hindu Marriage Act, provisions of the Pension Rules as well as the Office Memorandum issued by the State Government as stated above while coming to the conclusion that the appellant is not entitled to family pension. We do not find any justification for interfering with the above finding of the learned Single Judge.

8. The third ground taken by the learned counsel for the appellant is that the learned Single Judge ignored the family settlement under which both the widows had agreed to share the family pension. Reliance was placed by the learned counsel for the appellant on one of the annexure filed by the present appellant in the writ petition (c) No. 85 of 2011. The said document is found at page 21 of the writ petition. On perusal of the said document, we find that it is a letter written to the Sr. Dy. Accountant General of Manipur requesting for sharing the family pension half and half between the appellant and the respondent No. 4. The letter also appears to have been signed by both of them. Similarly, another letter addressed to the District Treasury Officer, Imphal West is available at page 22 of the writ petition. Relying on these documents, it was contended by the

learned counsel for the appellant that there was settlement between the appellant and the respondent No. 4 to share the family pension which has been ignored by the learned Single Judge. Though these documents were attached to the writ petition, we find from the counter affidavit filed on behalf of the respondent No. 4 that the said claim of the appellant has been completely denied. It is stated that in paragraph 11 of the counter affidavit filed by the respondent No. 4 that the appellant approached her by bringing a typed paper to put her signature and when the respondent No. 4 inquired about the matter, the appellant told her that the typed paper is for withdrawal of some arrear amount left by late Brajakishore Singh and accordingly in good faith she had put her signature. Once the above claim of the appellant is denied by the respondent in her counter affidavit, it becomes a disputed question of fact which cannot be decided in a writ petition. Therefore, the learned single Judge has rightly not taken note of such family settlement which has been disputed by the respondent No. 4 in her counter affidavit filed in the said writ petition of the appellant. We, therefore, do not find any substance in the said ground taken by the learned counsel for the appellant.

9. Before parting with the case, we must take note of the fact that the learned counsel appearing for the appellant cited as many as 21 (twenty one) decisions in course of his argument. We examined each and every judgment relied upon by the learned counsel for the appellant and found that at least Sixteen judgments relied upon by the learned counsel for the appellant have absolutely no relevance for deciding the issue involved in this appeal. Those sixteen judgments are as follows:

- 1) State Bank of India Vs. Anjan Sanyal and Others,
- 2) Green View Tea and Industries Vs. Collector, Golaghat, Assam and Another,
- 3) Narinder Singh Vs. State of Haryana and Others,
- 4) Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others,
- 5) D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others,
- 6) Arundhati @ Harshana Vs. Iranna @ Veerendra,
- 7) GlaxoSmithKline Pharmaceuticals Limited (Formerly known as SmithKline Beecham Pharmaceuticals (India) Limited) Vs. Union of India (UOI) and Others,
- 8) State of Uttar Pradesh Vs. Singhara Singh and Others,
- 9) A. Subash Babu Vs. State of A.P. and Another,
- 10) A.L. Ranjane Vs. Ravindra Ishwardas Sethna and Others,
- 11) South Eastern Coalfields Ltd. Vs. State of M.P. and Others,
- 12) S. Ramanathan Vs. Union of India and Others,

- 13) C. Antony Vs. K.G. Raghavan Nair,
- 14) Nathuram Rakhabdas and Others Vs. Ramesh Chand,
- 15) Ravi Vs. State rep. by Inspector of Police,
- 16) Bachan Singh and Others Vs. State of Punjab,

10. At the time of hearing, we reminded the learned counsel for the appellant time and again not to cite irrelevant judgments, but he went on insisting that all the judgments referred to above are relevant for the purpose of this case. Since we find that the above judgments are absolutely irrelevant for the purpose of the case, we could impose cost for wasting valuable time of the Court. However, we have refrained from imposing cost considering the fact that the appellant is a lady without much of means. For the reasons stated above, the appeal is dismissed being devoid of merit.