
(2012) 05 MP CK 0039

In the Madhya Pradesh High Court

Case No : Writ Petition No. 17466 of 2010

Surendra Shrivastava

APPELLANT

Vs

The General Manager and Others

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Hindu Marriage Act, 1955 — Section 11, 5(1)
Succession Act, 1925 — Section 372

Citation : (2012) ILR (MP) 1244

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : J. Tiwari, for the Appellant; Indira Nair with Anoop Nair, for the respondents No. 1 and 2. and R.S. Yadav, for the respondents No. 3 and 4., for the Respondent

Final Decision : Allowed

Judgement

Sanjay Yadav, J.

Heard.

1. Being aggrieved by non settlement of terminal dues in lieu of death of Mahesh Shrivastava employed as Timber man with the respondents Western Coal fields limited last posted at Damua Colliery Chindwara, petitioner has preferred this petition, alleging that despite of her being the legally married wife all dues have been settled in favour of respondents no. 3 and 4. Facts unfurled from respective pleadings reveals that Mahesh Shrivastava died on 19.11.2006. The respondents no. 1 and 2 on the basis of nomination in favour of respondents no. 3 and 4 settled all the terminal dues in their favour. The petitioner filed a succession case which though was dismissed because of disbursement of retiral due however a specific finding in regard to issue no. 1 as to whether the petitioner is a legally wedded wife of Mahesh Shrivastava was recorded in favour of the petitioner by the succession Court vide order dated 8.4.2010. The issue no. 1 answered in favour of the petitioner is

The Succession Court answers it that :

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2. These findings having not been questioned by the respondents have attained finality. That during pendency of succession case respondent No. 4 filed a petition W.P. No. 9334/08 (s) seeking direction to the authorities of the Western Coalfields Ltd. to accord him compassionate appointment in lieu of the death of said Mahesh Shrivastava which was denied by order dated 6.2.08. The petitioners herein were not impleaded as respondents in said writ petition.

3. The order which was challenged in W.P. No. 9334/08(s) had declined to extend any retiral benefits for the reason that the petitioner i.e. respondent No. 4 in this petition was not a legitimate child. It was said "in this regard this is to inform that the matter was placed before competent authority who observed that ex-employee had two wives i.e. Smt. Shobha and Smt. Maya. The claimant is the son of the second wife. Ex-employee had married the second wife, without legal separation from first wife. The second marriage being void u/s 5(1) and Section 11 of the Hindu Marriage Act, 1955 competent authority has not agreed for offering employment to Shri Manish Shrivastava son of second wife of ex-employee."

4. The petition was finally decided on 19.3.10 with the direction:

The aforesaid provision specifically provides that even if the second marriage is null and void, even then the child born out of the second marriage shall be legitimate and shall be entitled to rights in the property of his father. In view of the special provision as contained in Section 16 (supra), the claim of the petitioner was wrongly turned down by the respondents while order is not sustainable under the law and is hereby quashed. The matter is remanded back to the respondent No. 2 who shall re-examine the case of the petitioner in the light of the provisions as contained u/s 16 of the Hindu Marriage Act and to decide the application of the petitioner for compassionate appointment in accordance with law and the policy of the respondents for compassionate appointment expeditiously as far as possible within a period of 90 days from the date of communication of this order.

5. That besides settling the terminal dues to the tune of Rs. 9,50,000/- in favour of respondents No. 3 and 4 and appointment on compassionate ground was also accorded to the respondent under the shelter of order dated 19.3.10 passed in W.P. No. 9334/08 (S).

6. Question is, in view of the specific finding recorded by the Sectional Court that the petitioner No. 1 is the legitimate wife and successor to Mahesh Shrivastava whether respondents No. 1 and 2 were justified in settling the dues in favour of respondents No. 3 and 4 alone.

7. "Employment of dependant of the worker who dies while in service in SECL is governed by the provisions contained in National Coal Wage Agreement-VI. It is

not disputed by either of the parties that the provisions contained in NCWA-VI is binding on the management and the workmen. Chapter IX of NCWA deals with social security whereunder clause 9.3.0 stipulates provision regarding employment to dependants.

8. Clause 9.3.2, 9.3.3, 9.3.4 and 9.5.0 of the NCWA-VI respectively provides for :-

9.3.2 Employment to one dependant of the worker who dies while in service in so far as female dependants are concerned, their employment/payment of monetary compensation would be governed by para 9.5.0.

9.3.3 the dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased may be considered to be the dependant of the deceased.

9.3.4 the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause 9.5.0 in so far as male spouse is concerned, there would be no age limit regarding provision of employment.

9.5.0 Employment/Monetary compensation to female dependant

Provision of employment/monetary compensation to female dependants of workmen who die while in service and who are declared medically unfit as per Clause 9.4.0 above would be regulated as under:

(i) In case of death due to mine accident the female dependant would have the option to either accept the monetary compensation of Rs. 4,00/- per month or employment irrespective of her age.

(ii) In case of death/total permanent disablement due to cause other than mine accident and medical unfitness under clause 9.4.0 if the female dependant is below the age of 45 years she will have the option either to accept the monetary compensation of Rs. 3,000/- per month or employment.

In case the female dependant is above 45 years, she will be entitled only to monetary compensation and not to employment.

(iii) In case of death either in mine accident or for other reasons or medical unfitness under Clause 9.4.0 if no employment has been offered and the male dependant of the concerned worker is 12 years and above in age, he will be kept on a five roster and would be provided employment commensurate with his skill and qualifications when he attains the age of 18 years. During the period the male dependant is on live roster, the female dependant will be paid monetary compensation as per rates at paras (i) and (ii) above. This will be effective from 1.1.2000.

(iv) Monetary compensation wherever applicable, would be paid till the female dependant attains the age of 60 years.

(v) The existing rate of monetary compensation will continue. The matter will be further discussed in the Standardisation Committee and finalised.

Note : In the case of TISCO, the matter would be settled at bipartite level.

9. No other provisions, than the clauses above are brought on record, nor shown during the course of hearing which governs employment to dependants."

10. Clause 9.3.3 delineate the line of succession being wife/husband, as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available than brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased and almost wholly dependant on the earnings of the deceased.

11. The petitioner being the legally wedded wife and legitimate son have the priority right over others in respect of employment in lieu of the death of the employee.

12. The question next is whether the finding recorded by the succession court in respect of the marriage would have a binding effect.

13. Section 372 of the Act of 1925 makes a provision regarding grant of succession certificate, procedure therefor as provided u/s 373 which is in the nature of a summary proceedings as it stipulates:

373: Procedure on application :-(1) If the District Judge is satisfied that there is ground for entertaining the application, he shall fix a day for the hearing thereof and cause notice of the application and of the day fixed for the hearing -

(a) to be served on any person to whom, in the opinion of the Judge, special notice of the application should be given, and

(b) to be posted on some conspicuous part of the Court-house and published in such other manner, if any, as the Judge, subject to any rules made by the High Court in this behalf, thinks fit, and under the day fixed, or as soon, therefore, as may be practicable, shall proceed to decide in a summary manner the right to the certificate.

(2) When the Judge decides the right thereto to belong to the applicant, the Judge shall make an order for the grant of the certificate to him.

(3) If the Judge cannot decide the right to the certificate without determining question of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless, grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.

(4) When there are more applicants than one for a certificate, and it appears to

the Judge that more than one of such applicants are interested in the estate of the deceased, the Judge may, in deciding to whom the certificate is to be granted, have regard to the extent of interest and the fitness in other respects of the applicants.

14. The question is while dwelling upon the limited issue of succession whether the succession Court is precluded from answering the issue set up regarding nullity of a marriage if one of the claimant has set up the claim on the basis of her being the widow.

15. In the considered opinion of this Court that though the proceedings are of summary nature to decide the right of the applicant(s) for certificate, the succession Court is not expected of first directing the party to seek a declaration as to validity of marriage, as the nullity thereof, as the case may be, and then set on to grant certificate. The said view finds support from a decision by learned single Judge, Madras High Court in *Nevilee P. Mehta v. Mrs. Dolly Mehta* : AIR 1976 Madras 138, wherein it is held :-

13. The question that arises for my determination is whether it is necessary for the plaintiff to obtain a declaration of nullity of the marriage before he could succeed and whether this Court sitting on the testamentary side cannot have jurisdiction to decide whether the wife, the dependant, is also a legal heir, in the absence of such a declaration. In other words, whatever may be said of the other cases, on the admitted facts in this case, the question is whether I cannot decide the validity of the marriage for the limited purpose of deciding as to who is the heir of late Pheroze Mehta. In *Paramsami v. Sornathammal*, AIR 1989 Mad 124=(81 Mad LW 460) it laid down that "resort to a court is necessary to declare a marriage null and void". Again it is observed that "even in a case where the marriage is a nullity, it would be necessary for the party complaining nullity of the marriage to get a declaration of nullity from court." These are the two passages on which, as I stated above, Mr. G. K. Damodar Rao relies on strongly. But, I do not think that as an axiomatic proposition, it could be said that in every case the moment a party sets up the nullity of marriage, or illegitimacy of the children, the testamentary could must direct the party to the ordinary civil court to obtain the necessary declaration. Such a procedure would be opposed to both public policy and expediency that are required from the court sitting on the testamentary side. It would and must have jurisdiction to decide the limited question of nullity of marriage on which decision alone the ultimate result depends. This would be more so in view of Section 387 of the Indian Succession Act which states that the proceedings are summary in character. If later on the party obtains a declaration of nullity, certainly the necessary result will flow from it and it may have a bearing on the testamentary proceedings also.

16. In the case at hand, the succession court answered the issue no. 1 which was regarding legitimacy of petitioner No. 1 "s marriage with Mahesh Shrivastava in her favour, the petitioner gets priority right for appointment on the compassionate ground. The appointment given to respondent no. 4 in lieu of

death of Mahesh Shrivastava is illegal.

17. The petition is thus, allowed with a direction to the respondents no. 1 and 2 to consider the claim of the petitioner no. 1 for appointment on compassionate ground in lieu of the death of his father.

18. Regarding share in terminal benefits since the same has already been disbursed the petitioners would be at liberty to recover their share of retiral dues from respondents no. 3 and 4 in accordance with law. In the result, petition is allowed to the extent above. No costs.