
(2015) 08 KAR CK 0026

In the Karnataka High Court

Case No : RSA No. 100354/2015 (Decln. and Mandatory Injunction)

The Union of India and Others

APPELLANT

Vs

Mahaboobi and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Citation : (2015) 08 KAR CK 0026

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

**Advocate : Ajay U. Patil, Advocate, for the Appellant; Hemalekha K.S.,
Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

B. Veerappa, J.—This is a defendants' second appeal filed against the judgment and decree dated 23.3.2015 made in RA No. 2/2015 on the file of the I additional Senior Civil Judge, Hubli, confirming the judgment and decree dated 5.11.2014 made in O.S. No. 683/2013 on the file of the IV Addl. Civil Judge, Hubli, decreeing the suit of the plaintiffs, declaring that plaintiffs are the sole legal heirs of deceased Mumtaz Begum who died on 13.01.2012 and directed defendants 1 and 2 to make payment of service benefits to the plaintiffs in respect of deceased Mumtaz Begum.

2. The respondents/plaintiffs filed O.S. No. 683/2013 for declaration and mandatory injunction contending that Mumtaz Begum who was in service as Helper in the Office of Railways at SE/W/Hubli under the administrative control of the defendants expired on 13.01.2012 leaving behind the plaintiffs as successors to her estate. It is also their case that one B.K. Shetty, a Hindu Brahmin, who was employed as Khalasi under IOW/Hubli, married one Hyderbi- a muslim lady after his conversion to Muslim faith named as Bashasab Magare and later on married the deceased mother of plaintiffs on 21.2.1979 since Hyderbi did not beget children. He expired on 9.4.1987 while in service and Smt. Hyderbi got appointed as a Waiting Room Attendant on compassionate grounds on 6.10.1987

at Hubli Railway Station and she is still in service. The plaintiffs further contend that, they approached the officials/officers of railway department personally and by written representations after the death of their mother Mumtaz Begum requesting for release of service benefits of deceased Mumtaz Begum and appointment of plaintiff No. 3 on compassionate grounds and their request was turned down by defendant-railways. Therefore, the plaintiffs got issued a legal notice dated 10.8.2013 to the defendants, who have acknowledged the same on 12.8.2013, but the said legal notice was neither replied nor arranged the payment of service benefits due to their deceased mother to the plaintiffs. Hence, the plaintiffs were constrained to file the suit.

3. Upon service of summons, the defendant/appellants filed written statement denying the entire plaint averments inter alia contending that the suit is false, frivolous, vexatious and not tenable in law and contended that on due investigation by the Welfare Inspector with the staff of SSE/W/UBL and Smt. Hyderbi, it has been found that Smt. Mumtaz Begum is the first wife of one B.K. Shetty who was working as Khalasi under IOW/M/UBL and since Mumtaz Begum had no issues, he married another lady by name Hyderbi during the subsistence of the first marriage and got three children from the said wedlock. It is further contended that B.K. Shetty expired on 10.4.1987 while he was in service and his second wife Hyderbi got appointed on compassionate grounds by suppressing the fact that she is the second wife of deceased Sri. B.K. Shetty. Therefore, defendants contended that the plaintiffs have misled the court by concealing these material facts with an ulterior motive and filed the present suit for gaining unintended benefits. As per the CG (Compassionate Grounds) Rules and Pension Rules, the dependent spouse/children of the deceased employee who constitute a family are eligible to claim pensionary benefits and appointed on compassionate grounds. Since the plaintiffs are not the children of Mumtaz Begum, they are not entitled to the relief sought for, etc. Accordingly, defendants sought for dismissal of the suit.

4. Based on the pleadings, the trial court framed the following issues:

"1. Whether the plaintiffs prove that they are the only legal heirs of deceased Mumtaz Begum, who died on 13.01.2012 while in service?

2. Whether the plaintiffs are entitled for the service benefits of Mumtaz Begum?

3. What order or decree?"

5. In order to establish their case, plaintiff No. 3 got examined himself as PW.1 and got marked 19 documents as Ex. P.1 to Ex. P.19. On behalf of defendants, Staff and Welfare Inspector of defendant No. 2 Sri. T. Subbarao has been examined as D.W.1 and got marked 7 documents as Ex. D.1 to Ex. D.7.

6. On considering the entire material on record, the trial court has recorded a finding that the plaintiffs have proved that they are legal heirs of deceased Mumtaz Begum who died on 13.01.2012 while in service and plaintiffs are

entitled to receive service benefits of late Mumtaz Begum. Accordingly, the trial court decree the suit.

7. Against the said judgment and decree of the trial court, the appellants filed appeal before the lower appellate court in RA. No. 2/2015 before the I Addl. Senior Civil Judge, Hubli, who after hearing both parties by his impugned judgment and decree dated 23.03.2015 dismissed the appeal and confirmed the judgment and decree of the trial court.

8. Against the said concurrent finding of facts, the present Regular Second Appeal is filed.

9. I have heard the learned Counsel for the parties to the lis.

10. Sri. Ajay U. Patil, learned Counsel for the appellants has contended that, the plaintiffs are not the children of late Mumtaz Begum and they are not entitled to any service benefits and also contended that as per Rule 21 of the Railway Service (Conduct) Rules, 1966, no railway servant shall enter into or contract a marriage with a person who is having spouse living and no railway servant having a spouse living shall enter into, or contract a marriage with any person. Therefore, according to the learned Counsel for the appellants, the plaintiffs are children of Hyderbi and they are not entitled to service benefits and he also relied upon the judgment of the Jharkhand High Court in support of his case, in the case of Union of India (UOI) Vs. Basanti Devi and Bijay Rabidas, . In the said case, during the life time of first wife the deceased employee contacted a 2nd wife. The first wife was issueless and the applicant No. 1 was born through the second wife. After the death of employee, son of 2nd wife sought for compassionate appointment on the ground that he was son of deceased employee and the said application was rejected on the ground that in terms of Railway Board Circular dated 2.11.1992 the child of the 2nd wife cannot be given compassionate appointment. On all these grounds learned Counsel for the appellants sought to set aside the judgments of the Courts below. He also sought to rely on Ex. D.4 produced by defendants to show that plaintiffs are children of Hyderbi and therefore, they are not entitled to relief sought for.

11. Per contra, Smt. Hemalekha K.S., learned Counsel for respondents sought to justify the impugned judgment and decree of the courts below and strenuously contended that Hyderbi is the second wife of deceased B.K. Shetty, and plaintiffs are the children of the second wife and therefore, they are entitled to service benefits of deceased Mumtaz Begum. The plaintiffs have produced Ex. P.2 to P.5 birth certificates, which clearly depicts that they are the children of Mumtaz Begum and not Hyderbi. She also relied upon Ex. D.3 which clearly depicts that plaintiffs are children of Mumtaz Begum. Therefore, she sought to justify the impugned judgment and decree of the courts below.

12. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties to the lis and perused the entire material on record.

13. The entire case of plaintiffs in substance is that they are children of Mumtaz Begum who was in service of Railway department and died during the course of employment on 13.1.2012. The said fact of Mumtaz Begum was in service is not in dispute. The only dispute is, whether the plaintiffs are the children of deceased Mumtaz Begum or Hyderbi.

14. In order to establish the case, the plaintiff No. 3 got examined himself as PW.1 and got marked 19 documents as Ex. P.1 to Ex. P.19 and stated on oath that plaintiffs are children of Mumtaz Begum who is 2nd wife of deceased Bashasab Magare and documents produced clearly indicates that they are children of Mumtaz Begum. In order to disprove the case of claimants, 2nd defendant was examined as D.W.1, who has stated on oath that Hyderbi is second wife and Mumtaz Begum is first wife and plaintiffs are children of the second wife and therefore, they are not entitled to any relief. In support of his contention, he has produced Ex. D.1 to D.7. The document at Ex. D.3 and D.4 produced by defendants clearly indicates that plaintiffs name is shown that they are LR's of both Hyderbi and Mumtaz Begum. To justify the said fact, plaintiffs produced Ex. P.5 family composition certificate produced by defendants in terms of Ex. D.3 which clearly indicates that plaintiffs' mother is Mumtaz Begum. Apart from the said documents, Ex. P.2 to P.4 birth certificates issued by Hubli Dharwad Municipal Corporation on 4.6.12 and entry made in Ex. P.2 to Ex. P.5 on 25.2.1981, 21.11.1982, 3.1.1995 respectively, which are public documents clearly indicates that plaintiffs are children of Mumtaz Begum. The said documents have not been disputed by defendants. Thus, considering the both oral and documentary evidence on record, the trial court recorded a specific finding that plaintiffs proved that they are heirs being children of deceased Mumtaz Begum and they are entitled to her service benefits of deceased Mumtaz Begum. Accordingly, suit is decreed.

15. It is also worthwhile to mention here that, Ex. D.1 produced by DW.1 reveals, since there is difference in the father's name in the school records which are not tallying with their records, it has been opined action would be taken to call for the documents in support of their claim that they are children of Mumtaz Begum. Against the said report, defendants have not produced any contra material to prove that plaintiffs are not the children of deceased Mumtaz Begum. On re-appreciation of entire material on record, the lower appellate court has recorded a finding as under:

"Ex. P.5 is the family composition certificate, which are clearly demonstrate that the name of the plaintiffs mother is Smt. Mumtaz Begum. The Ex. P.2 to 4 are the birth certificate issued by the HDMC Hubli on 04.06.2012 and the entry made in the Ex. P.2 to 4 on 25.02.1981, 21.11.1982, 3.1.95 respectively i.e. prior to the death of Smt. Mumtaz Begum. Ex. P.2 to 4 are the public document and it is not the case of the defendant that Ex. P.2 to 4 are created one and Ex. P.5 the family composition certificate, it is also discloses the name of the mother of the plaintiff as Smt. Mumtaz Begum, therefore, on the basis of Ex. P.2 to 5 it is

clearly goes to show that the plaintiffs are the children of Smt. Mumtaz Begum, and husband name of Smt. Mumtaz Begum is Bashasab Magare."

16. That the documents Ex. D.2 to D.7 does not demonstrate that plaintiffs/respondents are not children of late Mumtaz Begum. On the other hand, plaintiffs have produced Ex. P.2 to P.4 which are birth certificates of plaintiffs and Ex. P.5 is the family composition certificate which clearly demonstrates the name of plaintiffs' mother as Mumtaz Begum. Ex. P.2 to 4 are birth certificates issued by the public authority during the course of their employment which clearly indicates that the plaintiffs are children of deceased Mumtaz Begum and her husband's name is Bashasab Magare. Accordingly, appellate court dismissed the appeal and confirmed the judgment and decree of the trial court.

17. So far as contention raised by the learned Counsel for the appellants with regard to rule 21 of the Railway Service (Conduct) Rules, 1966, it is not the case of defendants that Mumtaz Begum got appointment contrary to rule 21 of the said Rules and therefore, the plaintiffs claiming to be children of Mumtaz Begum are not entitled to service benefits since the appointment itself is in violation of Rule 21 of the Conduct Rules. The judgment relied upon by the learned Counsel for the appellants is not applicable to the facts of the present case. That is a case where the son of second wife has filed application for compassionate appointment before the High Court of Jharkhand and it was held that in view of the Railway Board circular dated 2.1.1992 the child of 2nd wife cannot be given compassionate appointment which is not the case in the present case. The present case is only with regard to service benefits accrued to deceased Mumtaz Begum who was in service and died during the course of service and defendants never disputed the fact that Mumtaz Begum has served in the railway department and it is not their case that she obtained her appointment by playing fraud on the department. Therefore, entire case putforth by defendants/present appellants is contrary to records. Both the courts below concurrently held based on the cogent and legal evidence on record that plaintiffs are the children of Smt. Mumtaz Begum and they are entitled to receive her service benefits. The same is in accordance with law.

Hence, no substantial question of law involved in the present case. Accordingly, RSA is dismissed.