
(2016) 02 KAR CK 0275

In the Karnataka High Court

Case No : Writ Petition Nos. 45392/2013 and 46991/2014 (S-CAT)

Union of India and Others

APPELLANT

Vs

Nithya S.E. and Others

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

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

Citation : (2016) 02 KAR CK 0275

Hon'ble Judges : Mohan M. Shantana Goudar and K.N. Phaneendra, JJ.

Bench : Division Bench

Advocate : N.S. Prasad, Advocate, for the Appellant; C.C. Thomas, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantana Goudar, J.—1. The order dated 30.10.2012 passed by the Central Administrative Tribunal ("CAT" for short), Bangalore in O.A. No. 160/2012 is called in question in these writ petitions.

2. The parties will be addressed as arrayed in W.P. No. 45392/2013. The records reveal that the first respondent herein is the second wife of the deceased S.N. Ethirajulu, who was working as Commercial Supervisor in Bangalore Division of South Western Railway. S.N. Ethirajulu expired while in service on 8.6.2010; S.N. Ethirajulu had married one Smt. Saraswathi and the said couple had four children; respondent No. 2 herein is one of the children of S.N. Ethirajulu and Saraswathi; during the subsistence of first marriage with Saraswathi, S.N. Ethirajulu married the first respondent herein second time on 13.12.1999 in a temple; two children are born out of the wedlock of S.N. Ethirajulu and the first respondent herein; the first wife Saraswathi of S.N. Ethirajulu also expired on 13.11.2006; the official records maintained by the Railways do not contain the names of either respondent No. 1 or two children born to her; on the other hand, the official records contain (P.F. nomination etc.) the names of Smt. Saraswathi and her four children; after the demise of S.N. Ethirajulu on 8.6.2010,

respondent No. 1 started claiming the pensionary benefits as well as the appointment on compassionate grounds. The prayer of the first respondent to grant the family pension and appointment on compassionate grounds have not been acceded to by the Department. Consequently, the first respondent approached the CAT in O.A. No. 160/2012, which came to be allowed by the impugned order observing that the first respondent is entitled for the benefit sought for by her inasmuch as she would be the only wife after the demise of the first wife. The CAT has directed the Department to consider the prayer of the first respondent herein including appointment on compassionate grounds and the family pension.

3. W.P. No. 45392/2013 is filed by the Department Railways whereas W.P. No. 46991/2014 is filed by one of the sons of first wife namely, S.E. Rajashekar (who is respondent No. 2 in W.P. No. 45392/2013 and respondent No. 4 before the CAT).

4. Following are the three reliefs sought for by the second wife Smt. Nitya S.E. (the private respondent in both the writ petitions):

"(a) Direct the respondents to release the half of settlement dues of late Sri. Ethirajulu to the applicant and half of the survivors in his first marriage.

(b) Direct the respondents to arrange Family Pension to this applicant-his widow.

(c) Direct the respondents to grant Compassionate Ground Appointment to late Sri. Ethirajulu's widow-this applicant."

5. The CAT has practically allowed all the three prayers of Smt. Nitya S.E. (the second wife of the deceased S.N. Ethirajulu).

6. Sri Prasad, learned Advocate appearing on behalf of the petitioners Railways in W.P. No. 45392/2013 and Sri Vighneshwar S. Shastri, learned Advocate appearing on behalf of the petitioner in W.P. No. 46991/2014 (son of the first wife Smt. Saraswathi) fairly submit that Smt. Nitya S.E. may be entitled for half of the settlement dues of Late S.N. Ethirajulu, inasmuch as the Rules of the Railways permit for grant of settlement dues in favour of the second wife also. Supplementary Circular No. 5 to Master Circular No. 16 vide Annexure-D filed along with W.P. No. 45392/2013 discloses that in the case of Railway employees dying in harness, etc. leaving more than one widow along with children born to the second wife, while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case. The very document further makes it clear that the appointments on the compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage, in special circumstances, taking into account the personal law, etc.

Thus from the aforementioned circular, it is amply clear that Smt. Nitya S.E. (second wife) is entitled to 50% of the settlement dues.

7. Insofar as the family pension is concerned, the parties are governed by the Family Pension Scheme for railway servants, 1964. The copy of which is produced at Annexure-E along with writ petitions. The relevant portion of the said scheme reads thus:

"(6) The period for which family pension is payable shall be as follows:

(i) in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier;

(ii) in the case of a son, until he attains the age of twenty five years; and

(iii) in the case of an unmarried daughter, until she attains the age of twenty five years or until she gets married, whichever is earlier;

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(7)(i)(a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares."

From the aforementioned relevant portion of the Scheme, it is clear that the widow of the deceased employee would be entitled for family pension upto her death or re-marriage, whichever is earlier. In case of a son, he is entitled for family pension till he attains the age of twenty five years and in case of an unmarried daughter, she is entitled for family pension till she attains the age of twenty five years or until she gets married, whichever is earlier. It is also clear from the said Scheme that where the family pension payable to more widows than one, the family pension shall be paid to the widows in equal shares. This portion of the Scheme will have to be read with Rule 21(1) of the Railway Servants Conduct Rules, 1966 ("the Rules" for short) which reads thus:

"Rule 21(1): No Railway Servant shall enter into, or contract, a marriage with a person having a spouse living and

(2) No Railway Servant, having a spouse living shall enter into, or contract, a marriage with any person,

(3) A Railway Servant, who has married or married a person other than of Indian Nationality shall forthwith intimate the fact to the Government.

Provided that the Government may permit a Railway servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that:-

(a) such marriage is permissible under the Personal Law applicable to such Railway servant and other party to the marriage; and

(b) there are other grounds for so doing."

8. The conjoint and homogeneous reading of Rule 21(1) of the Rules and Paragraph 7 of the Family Pension Schemes for railway servants would make it amply clear that the second wife is not entitled to family pension. Rule 21(1) of the Rules states that no Railway servant, having a spouse living shall enter into, or contract, a marriage with any person. However, the Government may permit a Railway servant to enter into such second marriage, if it is satisfied that such marriage is permissible under the personal law applicable to such Railway servant and other party to the marriage and if there are other grounds available for so doing. Therefore, as a general rule, the second marriage for a railway servant is impermissible. Only if his personal law permits to have second marriage, he can marry second time with the permission of the Railways. In the matter on hand, it is not in dispute that the deceased S.N. Ethirajulu was governed by the Hindu Law and consequently, the Hindu Marriage Act, 1955. The personal law governing S.N. Ethirajulu does not permit him to marry second time. He has not informed the Department while entering the second marriage. Section 11 read with Section 5 of the Hindu Marriage Act make it amply clear that the second marriage solemnized during the subsistence of the first marriage, after the commencement of Hindu Marriage Act shall be null and void. Paragraph-7 of the Family Pension Scheme for railway servants narrated supra would mean that family pension may be paid to two wives, if and only if, the second marriage has taken place as per the personal laws governing S.N. Ethirajulu, who has married second time. In the matter on hand, undisputedly S.N. Ethirajulu had not taken permission of the Department to have the second marriage and so also his personal law does not permit him to marry second time. Accordingly, family pension cannot be paid to the second wife.

9. Section 16 of the Hindu Marriage Act discloses that notwithstanding the fact that the marriage is null and void under Section 11 of the Act, any child of such void marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 and whether or not the decree of nullity is granted in respect of that marriage etc. Thus, the two children born out of the second marriage shall have to be treated as legitimate children and they may also be entitled for family pension.

10. Insofar as the appointment on the Compassionate grounds is concerned, the same is also not permissible in view of Supplementary Circular No. 5 of Master Circular No. 16 vide Annexure-D. The said Circular reads thus:

"It is clarified that in the case of Railway employees dying in harness, etc. leaving more than one widow along with children born to the second wife, while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case, appointments on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage, in special circumstances, taking into account the personal law, etc.

2. The fact that the second marriage is not permissible clarified in the terms and conditions advised in the offer of initial appointment.

3. This may be kept in view and the cases for compassionate appointment to the second widow or her wards need not be forwarded to Railway Board."

From the aforementioned, it is clear that the appointments on compassionate grounds to the second widow and her children are not to be considered unless the Administration has permitted the second marriage, in special circumstances, taking into account the personal law. As mentioned supra, the personal law of S.N. Ethirajulu or Smt. Nitya S.E. (second wife) does not permit them to marry second time. Therefore, Smt. Nitya S.E., being the second wife is not entitled for the appointment on compassionate grounds.

11. During the course of arguments, Sri Thomas, learned counsel appearing on behalf of Smt. Nitya S.E. submits that she was cheated by S.N. Ethirajulu, inasmuch as she did not know about the subsistence of first marriage at all.

The said submission cannot be accepted. Whether Smt. Nitya S.E. was cheated or not is a pure question of fact, which cannot be decided in writ proceedings or in the service matters. It is for Smt. Nitya S.E. to agitate the same before the appropriate forum.

12. In view of the above discussion made by us, the following conclusion is reached:

(i) Smt. Nitya and her children are entitled to half of the settlement dues of S.N. Ethirajulu and remaining half of the settlement dues should be paid in favour of the survivors in the first marriage.

(ii) Smt. Nitya S.E. is not entitled for family pension.

(iii) The survivors in the first marriage shall be considered for payment of family pension, if they are entitled for the same (having regard to their age) as per Rules.

(iv) It is open for the survivors in the first marriage to apply for family pension and appointment on compassionate grounds as per law and if such application is made, it is open for the Administration to consider the same as per Rules;

(v) We make it clear that neither Smt. Nitya S.E. or children born to her are not entitled for appointment on compassionate grounds.

(vi) The children of first wife Smt. Saraswathi (if are found within the prescribed age limit for getting the family pension as per the Rules) and the children of second wife Nitya S.E. (if are found within the prescribed age limit for getting family pension as per the Rules) shall be paid family pension. It is further made clear that the eligible children of Smt. Saraswathi (the first wife) and Smt. Nitya S.E. (the second wife) are entitled to family pension in equal proportion.

With these findings, these writ petitions are allowed to the said extent. The order

dated 30.10.2012 passed by the CAT in O.A. No. 160/2012 is modified accordingly.