

(2018) 04 BOM CK 0057

In the Bombay High Court

Case No : WRIT PETITION NO.6884 OF 2016

UNION OF INDIA THROUGH GENERAL MANAGER, CENTRAL
RAILWAY, MUMBAI CST AND ANOTHER

APPELLANT

Vs

SMT. USHA EKNATH PATIL

RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)(vii)

Citation : (2018) 04 BOM CK 0057

Hon'ble Judges : B.P. DHARMADHIKAR, J, ARUN D. UPADHYE, J

Bench : Division Bench

Advocate : N.P. Lambat, A.B. Bambal

Final Decision : Dismissed

Judgement

B.P. DHARMADHIKARI, J

1. Petitioner Â employer questions the order dated 30/9/2016 passed in Review Petition No.211/00003/2016 and order dated 27/11/2015 passed on

Original Application No.2195/2012. By these orders the petitioner â?" employer has been asked to extend benefit of family pension to respondent â?

daughter. Considering nature of controversy, we have issued Rule and head matter finally by consent by making it returnable forthwith.

2. Marriage of respondent â?" Usha took place in the year 1979 and it is claimed by her that because of dispute there was a customary divorce in

presence of Panchayat Members on 21/7/1992. Since then she started living away from her husband and with her mother. Her father Eknath

happened to be employee of petitioners and he expired on 16/2/1982. Widow of Eknath, i.e., mother of respondent, namely, Vatsala expired on

28/12/1999. Thus, respondent Â? Usha stayed as member of family of Eknath

with her widowed mother from 21/7/1992 till 28/12/1999.

3. Defence of petitioners before Central Administrative Tribunal was that in order to claim to be member of family of Eknath, divorce of Usha with

her husband should have been before death of Vatsala, i.e., before 28/12/1999. Here, legal divorce is given by 2nd Joint Civil Judge, Senior Division,

Jalgaon on 29/11/2010 in Hindu Marriage Petition No.501/2010. Thus, till 29/11/2010 Usha could not have been the member of family of Eknath.

4. On 29/1/2018 after hearing respective Counsel, we have passed following order : Â?

â??Heard Shri N.P. Lambat, learned counsel for the petitioner and Shri A.B. Bambal, learned counsel for the respondent, for some time.

2. The effort of Shri Lambat, learned counsel, is to demonstrate that here legal divorce has been pronounced by the

2nd Joint Civil Judge, Senior Division, Jalgaon, on 29.11.2010 in HMP No. 501 of 2010. On that day, neither the deceased government servant â?

Eknath nor his widow was alive. Eknath expired on 16.02.1982 and his wife i.e. mother of the respondent Usha expired on 28.12.1999. He

submits that a married daughter who gets divorced on 29.11.2010, therefore, cannot be treated as member of the family of deceased Eknath

or then dependent on said family.

3. Shri Bambal, learned counsel for the respondent submits that marriage of respondent No.1 Usha took place in the year 1979 and because of

matrimonial discord, customary divorce in presence of Panchayat members took place on 21.07.1992. She was thus residing with her

mother after that date till the death of mother on 28.12.1999. She was, therefore, very much dependent on pension of the

deceased Eknath and also member of his family.

4. We have perused the provisions of Rules 4 & 5 of R. B. E. No. 99 of 2013 and Office Memorandum dated 11.09.2013. Clauses 4 & 5 therein

prima facie fall for interpretation.

5. Both counsel state that there is no judgment either way delivered by any High Court. Shri Lambat, learned counsel is seeking last chance

to place on record and explain the concept of dependency.

6. List the matter on 12.02.2018 as a last chance.â??

5. Today, we have heard respective Counsel in furtherance of said order.
6. The above mentioned dates and events are not in dispute. Learned Counsel for petitioners has invited our attention to Division Bench judgment delivered by Kerala High Court on 29/7/2016 in O.P. (CAT) No.206/2016. He claims that there in identical facts, similar legal provisions have been construed against respondent. During hearing, he has also invited our attention to relevant provisions, defining "family" contained in Clause 19 (b) of Pension Manual. Office memorandum recently issued on 19/7/2017 is also produced and pressed into service by him today.
7. Learned Counsel for respondent submits that divorce between Usha and her husband is not in dispute. Court granting divorce was satisfied that parties before it were residing separately since 21/7/1992 and that finding cannot be questioned by petitioners in present proceedings.
8. Perusal of order dated 27/11/2015 in Original Application No.2195/2012 shows that in paragraph no.14 while recording findings, Central Administrative Tribunal has drawn from a joint pursis filed by Usha and her husband in Hindu Marriage Petition before civil Court. In that pursis civil Court was informed that parties were staying separately since last 18 years. Accepting that statement, on 29/11/2010, 2nd Joint Civil Judge, Senior Division, Jalgaon granted decree and dissolved marriage dated 10/5/1979.
9. Thereafter, petitioners filed review in Central Administrative Tribunal and in review effort was made to demonstrate that there was no divorce of Usha before 29/11/2010. The Central Administrative Tribunal has not accepted this contention and has rejected the review petition. Petitioners were directed to implement directions issued by Central Administrative Tribunal earlier.
10. Again in paragraph no.10 of this order Central Administrative Tribunal has found that Usha established the fact that she separated from her husband and secured customary divorce in presence of Panch Committee in the year 1992, i.e., before death of her mother.
11. Petitioners before us are not in position to place on record any evidence which will show incorrectness of this finding or expose falsehood in stand of Usha. Effort only is to urge that in law, before 29/11/2010 there was no divorce and Usha being married, did not form part of family of Eknath when widow of Eknath (Vatsala) had expired on 28/12/1999.
12. The relevant Clause 19 (b) defines family and on which petitioners have

placed reliance, reads as under :Â?

â??19 (b) â??familyâ??, in relation to railway servant, means Â?

(i) wife in the case of a male railway servant or husband in the case of a female railway servant;

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of

committing adultery;

(iii) unmarried son who has not attained the age of twenty-five years and unmarried or widowed or divorced daughter, including such son and

daughter adopted legally;

(iv) dependent parents :

(v) dependent disabled siblings (i.e. brother or sister) of a railway servants.â??

13. Clause nos.4 and 5 of office memorandum dated 11/9/2013, insofar as it is relevant for present purposes, read as under :Â?

â??4. It is clarified that the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or

his/her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be

dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time

of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family

pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes.

Similarly, family pension to a widowed/divorced daughter is payable provided she fulfils all eligibility conditions at the time of death/ineligibility of her

parents and on the date her turn to receive family pension comes.

5. As regards opening of old cases, a daughter if eligible as explained in the preceding paragraph, may be granted family pension with effect from 30

th August, 2004. The position is illustrated through an example. Shri A, a pensioner, died in 1986. He was survived by his wife, Smt. B, a son Shri C

and daughter, Kumari D, the daughter being the younger. Kumari D married in 1990 and got widowed in 1996. Smt. B died in 2001. Thereafter, Shri

C was getting family pension, being disabled, and died in 2003. Thereafter, the

family pension was stopped as Kumari D was not eligible for it at that time. She applied for family pension on the basis of O.M., dated 30th August, 2004. Since she was a widow and had no independent source of income at the time of death of her mother and on the date her turn came, she may be granted family pension. The family pension will continue only till she remarries or starts earning her livelihood equal to or more than the sum of minimum family pension and dearness relief thereon.â??

14. Perusal of Division Bench judgment delivered by Kerala High Court shows that the applicant daughter Sobhana had claimed that she was living separately from her husband since 18/11/1984. She had approached competent civil Court in 2001 alleging that her husband was not heard of for more than 17 years and therefore, sought appropriate declaration obviously in relation to his death. This proceeding was dismissed as she could not substantiate the same. Her mother (widow of employee) expired on 6/3/2008 and therefore finding is, on 6/3/2008 she could not have been treated as a divorcee daughter of a retired railway servant.

15. While recording this finding, provisions of the Hindu Marriage Act, 1955, particularly Section 13 (1) (vii) have been looked into in paragraph no.12.

In that paragraph Kerala High Court points out that family Court granted ex parte judgment to Sobhana under said provision on the ground that her husband had not been heard of as being alive for period of 20 years.

16. This divorce was granted in proceedings initiated in 2011 holding that marriage of Sobhana and her husband solemnized on 8/11/1981 stood dissolved with effect from the date of judgment i.e., 16/6/2012.

17. Relevant Rule, i.e., Sub Rule (6) of Rule 19 of Part III of Kerala Service Rules has been quoted in paragraph no.13 of the said judgment and there, the divorced daughters/widowed disabled daughters of employee are made eligible for payment of family pension.

18. Thus, it is on facts that Kerala High Court found Sobhana not entitled to family pension as she was not the dependent of deceased employee.

19. Here, fact of customary divorce is not in dispute. The competent civil Court has on 29/11/2010 in recognition of customary divorce and separate stay from 21/7/1992 dissolved marriage. Thus, fact that daughter Â Usha was not residing with her husband since 21/7/1992 has been accepted by competent Court. The Central Administrative Tribunal in Original Application on

27/11/2015 has accepted this finding of civil Court. The petitioner â? railways could not displace that finding even during review proceedings.

20. Today, our attention has been drawn to office memorandum dated 19/7/2017. This memorandum clarifies the earlier office memorandum dated 11/9/2013 mentioned supra. The office memorandum stipulates that daughter, if eligible may be granted family pension, provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents.

21. There cannot be any debate about this proposition. Here, Clause 19 (b), mentioned supra, includes not only a widowed or divorced daughter but also unmarried daughter. The said clause also entitles adopted son or daughter to family pension. Clause therefore is wide and looks after welfare of family of deceased employee. Clauses 4 and 5 (highlighted portion, supra) of office memorandum dated 11/09/2013 show the intention of Railways not to leave a destitute woman without any means of livelihood. This object and intention can not be defeated in present facts.

22. In present facts, though customary divorce on 21/7/1992 may not be legally recognized, facts show that from said date Usha was not residing with her husband and was therefore member of family of her deceased father. She was therefore a destitute residing with her mother Vatsala who expired on 28/12/1999. When the provision entitles unmarried or a divorced or a widowed daughter to family pension, we find that Usha is definitely covered thereunder.

23. We therefore do not see any jurisdictional error or perversity in the order passed by Central Administrative Tribunal. No case is made out. Writ Petition is therefore dismissed. Rule stands discharged. No costs.