

(2000) 09 CAL CK 0009**Calcutta High Court****Case No:** W.P.C.T. No. 258 of 1999

Bharat Prosad

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Sept. 5, 2000**Citation:** (2001) 1 ILR (Cal) 121**Hon'ble Judges:** Satyabrata Sinha, J; Hrishikesh Banerji, J**Bench:** Division Bench**Advocate:** Indranath Mukherjee, for the Appellant; Uttam Kumar Majumdar and O.K. Chatterjee, for the Respondent**Judgement**

Satyabrata Sinha, J.

This application is directed against an order dated June 17, 1999, passed by the Central Administrative Tribunal, Calcutta Bench, in O.A. 639 of 1998 whereby and whereunder the application filed by the private Respondent herein was disposed of directing:

On due consideration I am of the view that the Petitioner is entitled to get the retrial dues as prayed for on the death of her husband in harness which took place on 8.10.97. The Respondent authorities had no reason to deny such payments to the Petitioner and I am also of the view that for such delay the Petitioner is entitled to get the interest @ 18% from the date the amounts fall due till such payments are made. The O.A. is allowed and the Respondent authorities are directed to fix the family pension of the Petitioner and to release the arrear amount bearing 18% interest on the same from the date it fell due till the date of payment along with the Provident Fund money, DCRG, leave salary, Group Insurance and unpaid bonus if any with the same interest of 18% from the date those fell due till the payments are actually made. Such payments are to be made within 3 months from the date of communication of this order. Considering the facts and circumstances on record I award cost Rs. 2000/- to be paid to the Petitioner by the Respondent-authorities within a fortnight from this date.

2. The Petitioners herein claim themselves to be the heirs and legal representatives of one Baijnath, who was a lorry driver, Grade-I of Howrah Division, Eastern Railway of Union of India. An application had been filed by one Sm. Sitamoni Debi claiming herself to be the legally married wife and in whose favour nomination had been made by late Baijnath in respect of provident fund, group insurance etc. The Petitioners herein filed an application for intervention, which was allowed. However, having regard to the fact that not only the name of the aforementioned Sm. Sitamoni Debi found place in the service book of late Baijnath as his legally married wife, but also having regard to the nomination in her favour in respect of the provident fund and group insurance scheme, as also other documents, the learned Tribunal opined:

All those documents coupled with the entries made in the service book as noted above go to show that the nominations stands in favour of the Petitioner and her 2 sons and a daughter as named there. There was no reason on the part of the Respondent-authorities to refuse payments of retiral dues to the Petitioner on the basis of such declarations, nominations and the entries in the service book. So far as the subject matter of the title suit is concerned this Tribunal has no jurisdiction to enter into the dispute raised there that is to be decided by the civil court and this Tribunal refrained to make any comment which may be prejudicial to the parties therein.

3. Learned Counsel appearing on behalf of the Petitioners submits that the learned Tribunal failed and/or neglected to consider various other documents, from a perusal whereof, it would appear that their mother Uasoda Devi was declared to be a legally married wife of late Baijnathli. In fact, she had obtained an order of maintenance from a competent court of law against the aforementioned late Baijnath. Learned Counsel points out that in terms of Clause 74 of the Railway Rules, nomination could be made only in favour of a member and thus, if it was proved that the aforementioned Sm. Sitamoni Debi was not the legally married wife of late Baijnath, the question of acting upon the said nomination would not arise. It has been pointed out that in fact with regard to the status of the aforementioned Sm. Sitamoni Debi, a suit has been filed by the Petitioners herein in the Court of the Third Civil Judge, Junior Division at Howrah, being Title Suit No. 185 of 1998, wherein on an application filed by the Petitioners, interim order of injunction directing the parties to maintain status quo with regard to all monetary transaction and/or realization from the railway administration has been passed. Learned Counsel, in support of his aforementioned contention, has strongly relied upon a decision of the Supreme Court in (1999) 5 SCC 237, G.L.Bhatia v. Union of India , wherein the Apex Court having regard to the Central Civil Services (Pension) Rules upon considering the definition of "family" stated:

3. Under Rule 54 Sub-rule (14)(b)(i) the expression "family" has been defined thus:

54(14)(b)(i) Wife in the case of a male government servant, or husband in the case of a female government servant.....

4. Sub-rule (8)(ii) of Rule 54 states that:

54. (8)(ii) if a. deceased government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or Widower, failing which to the eligible child.

5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even through they might be staying separately, the Appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities therefore, committed error in not granting family pension to the Appellant relying upon the nomination made by the deceased wife of the Appellant. The impugned order is, accordingly, set aside and this appeal stands allowed.

6. It appears that even in the Pension Rules applicable to the railway servants, "family" has been defined in Sub-rule (5) of Rule 70 which is in the following term:

(5) For the purposes of this rule, Rules 71, 73 and 74 "family", in relation to railway servant, means-

(i) Wife or wives including judicially separated wife or wives in the case of a male railway servant;

(ii) husband including judicially separated husband in the case of a female railway servant;

(iii) sons including step-sons and adopted sons ;

(iv) unmarried daughters including step-daughter and adopted daughter;

(v) widowed daughters including step-daughters ;

(vi) Father including adoptive parents in the case of individuals

(VII) Mother whose personal law permits adoption ;

(viii) brothers below the age of eighteen years including step brothers ;

(ix) unmarried sisters and wide wed sisters including step sisters ;

(x) married daughters, and

(xi) children of pre-deceased son.

7. There cannot be any doubt that the words "wife" or "wives" would mean legally married wife. It has further been brought to our notice that from the application filed by the Respondent before the Central Administrative Tribunal itself it would appear that she had an unmarried invalid/handicapped daughter aged about 31

years. Her age on the date of filing of the application, that is in 1998 was stated to be 40 years only. *Prima facie*, the contention of the learned Counsel to the effect that there is great anomaly with regard to her age vis-a-vis the age of her daughter, is correct.

8. Having regard to the fact that a civil suit has been filed, we are of the opinion that the learned Tribunal committed an error in passing the impugned order without arriving at a finding of fact that the original applicant was the legally married wife of late Baijnath. It may be that a *prima facie*, case had been made out having regard to the various documentary evidences which had been produced, but the question as to whether she was legally married wife or not, having been raised by the Petitioners herein and further in view of the fact that a civil suit with regard to the status of the Petitioners vis-a-vis the said Sm. Sitamoni Debi is pending before a competent court of law, the impugned order ought, not to have been passed. The learned Tribunal has taken note of the fact that the said civil suit had been pending, but it was held:

The subject matter of the civil suit cannot be decided in this OA. It is only to be seen whether as per nomination and declaration the Petitioner is entitled to get the retrial benefits of the deceased Rly. employees.

9. Having held so, we are of the opinion the Tribunal ought not to have passed the impugned order as a result whereof not only the civil suit shall become in fructuous but also the order of injunction passed by a competent court of law shall stand violated. The doctrine of judicial comity should have been applied by the learned Tribunal in this case, and by passing the impugned order which is in violation of the order of injunction passed by the civil court, the principles laid down in the said doctrine have clearly been violated. We are, having regard to the facts and circumstances of this case, therefore, of the opinion that the railway administration may deposit the entire retrial benefits in the Court of the Learned 3rd Civil Judge, Junior Division at Howrah, in Title Suit No. 185 of 1998 and the learned Munsif may invest the said amount in a short term fixed deposit in a nationalized bank and the interest accrued thereupon shall ensure to the benefit of the successful party. We, however, having regard to the statements made in the original application to the effect that the aforementioned Sm. Sitamoni Debi is in dire need of the amount of the terminal benefits payable in relation to late Baijnath, direct the learned 3rd Civil Judge, Junior Division, Howrah, to dispose of the aforementioned Title Suit No. 185 of 1998 as expeditiously as possible and preferably within a period of 3 months from the date of the communication of this order. We may place on record that we have not gone into the merit of the matter and the learned Civil Judge, Junior Division, shall dispose of the matter without in any way being influenced by any observation made herein. We further direct that it would be open to any party to apply before the learned Munsif for any other interim order or orders for which they may be advised in this regard.

10. The application is disposed of.

11. Urgent xerox certified copy of the order be supplied on priority basis.

Hrishikesh Banerji, J.

12. I agree.