
(2010) 05 CAL CK 0017

Calcutta High Court

Case No: Writ Petition No. 13487 (W) of 2006

Smt. Pratima Chaudhury

APPELLANT

Vs

Director of Pension and Others

RESPONDENT

Date of Decision: May 19, 2010

Acts Referred:

- Hindu Marriage Act, 1955 - Section 11, 5

Citation: (2011) 128 FLR 979

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Indrani Pal, for the Appellant; Tapabrata Chakraborty and Haridas Das, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.

The Petitioner in this Article 226 petition dated May 17, 2006 is aggrieved by the decision of the District Inspector of Schools (PE), Malda dated March 13,2006(at p. 50).

2. Facts of the case revealed by the pleadings and the documents produced with them are these. The Petitioner's husband, Gour Chandra Chowdhury, was a primary school teacher. He retired from service on February 28, 1985. On February 25, 1987 his first wife, Anita, died at the age of 42. Under a pension payment order dated August 27, 1987 he was granted pension as from March 1, 1985. He died on April 21, 1997. Claiming to be his second wife married to him before enactment of the Hindu Marriage Act, 1955 the Petitioner applied for family pension. By the impugned decision the claim has been turned down.

3. The District Inspector of Schools (in short DIS) held that the Petitioner failed to give any evidence in proof of her claim that she was married to Gour before enactment of the Hindu Marriage Act, 1955. In the process the DIS referred to an

Order No. 9388-F dated August 4,1983 to support his opinion that wife of a Hindu subject to the provisions of the Hindu Marriage Act, 1955 marrying at a time he has a spouse living is not entitled to family pension.

4. The thing No. 9388-F dated August 4, 1983 does not seem to be an Order of the Government. From the thing produced by Mr. Chakraborty, Counsel for the State, it is evident that under the number one S.K. Chakrabarti, Deputy Secretary to the Government of West Bengal Finance Department, Audit Branch, wrote a reply letter dated August 4, 1983 to the Accountant-General, West Bengal, Treasury Buildings, Kolkata-1 regarding "Admissibility of Family Pension to 2nd wife whose marriage took place after the Hindu Marriage Act, 1956 came into force."

Contents of the letter No. 9388-F dated August 4,1983 are quoted below:

I am directed to refer to your letter No. Pen/Co-ordn./IV/Vol III/347 dt. 10.11.1982 on the subject mentioned above and to say that this should be substituted by "The matter has been duly considered and the Govt. are advised" that the second wife of a Hindu Govt. Servant, whose marriage was solemnized after the coming into operation of the Hindu Marriage Act, 1955 and during the life-time of the first wife, is not entitled to get any family pension, as per Note to Rule 104 of W.B.S. (DCRB) Rules, 1971, as her alleged marriage was not a marriage at all, in the eye of law.

5. Rule 104 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 mentions the period during which pension is admissible under the rules, and Note (i)(a) to the rule provides as follows:

Note.-(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.

Other than this, there is nothing in the Note to Rule 104 of the rules concerning right of family pension of a person marrying a Hindu after enactment of the Hindu Marriage Act, 1955 at a time the Hindu has a spouse living. In this case the DIS was examining whether as Gour's second wife the Petitioner was entitled to family pension under the West Bengal Recognized Non-Government Educational Institutions Employees (Death-cum-Retirement) Benefit-Scheme, 1981.

Paragraph 45 of this Scheme provides as follows:

45. In respect of matters for which provision has not been made in this Scheme, the relevant provisions in the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (amended from time to time) shall apply mutatis mutandis subject the approval of the State Government.

Hence it cannot be said that the provisions of Rs. 104 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 and what was stated in the letter No. 9388-F dated August 4,1983 would, of course, apply to the Petitioner's case.

6. The provisions of Rs. 104 and the things stated in the letter dated 9388-F dated August 4, 1983, if they have at all the effect of a Government Order, would have been applicable to the Petitioner's case, if with respect to her claim for family pension no provision was made in the West Bengal Recognized Non-Government Educational Institutions Employees (Death-cum-Retirement) Benefit-Scheme, 1981. Hence it is to be seen whether any provision was made in this Scheme for deciding the Petitioner's claim for family pension.

7. The provisions of para.23 of the 1981 Scheme provide as follows:

23. Family Pension.-(1) Family pension is admissible to the members of the family of an employee who dies while in service after rendering at least one year's service. (2) The benefit shall also be admissible in case of death of an employee after retirement if at the time of death he was in receipt of a compensation, invalid, retiring or superannuation pension or gratuity.

8. The word "family" used in the 1981 Scheme has been defined by clause (s) of para. 5 of the Scheme, and only sub-clause (2) of clause (s) of para. 5 being relevant it is quoted below:

(2) For the purpose of a family pension-

(i) wife in the case of a male employee

(ii) husband in the case of a female employee

(iii) minor sons including adopted sons

(iv) unmarried minor daughters including adopted daughters.

(v) dependent parents.

Note : Adoption or marriage after retirement will not be recognised for the purpose of family pension.

9. Paragraph 26 of the 1981 Scheme, quoted herein below, mentions the period during which family pension is admissible:

26. Period during which family pension is admissible.-Subject to the following conditions, the family pension shall be admissible-

(a) in the case of widow/widower upto the date of death or remarriage, whichever is earlier;

(b) in the case of minor son, until he attains the age of 18 years;

(c) in the case of unmarried daughter, until she attains the age of 21 years or marriage whichever is earlier;

(d) in the case of dependent parents up to the date of their death or remarriage, whichever is earlier.

Note : Where an employee is survived by more than one widow, the family pension shall be paid to them in equal shares. On the death of widow, her share of the pension shall become payable to her eligible minor children. If at the time of her death a widow leaves no eligible minor child, the payment of her share of the pension shall cease.

10. From the provisions of paras. 5(s)(2), 23 and 26 of the 1981 Scheme it is evident that necessary provisions regarding family pension have been made in the Scheme. Hence it cannot be said that since the provisions for dealing with family pension cases have not been made in the Scheme, the provisions of Rule 104 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 were applicable to the Petitioner's case. I am, therefore, of the view that the things stated in the letter of S.K. Chakrabarti, Deputy Secretary, Government of West Bengal No. 9388-F dated August 4, 1983 were not relevant for deciding the Petitioner's claim by the DIS.

11. It is, however, evident from the impugned decision that the DIS did not decide the Petitioner's claim solely on the basis of what was stated in the letter No. 9388-F dated August 4, 1983 that the DIS considered to be an Order of the Government. The DIS rather held that being GOUR'S second wife married to him after enactment of the Hindu Marriage Act, 1955 the Petitioner was not entitled to family pension under provisions of the 1981 Scheme.

12. Hence the question for decision in this case is whether the DIS was right in denying the Petitioner family pension on the ground that she was married to Gour after enactment of the Hindu Marriage Act, 1955.

13. Mr. Chakraborty has produced Gour's original service records. The records reveal that steps taken by Gour before the pension payment order dated August 27, 1987 was issued by the Director of Pension, Provident Fund & Group Insurance, West Bengal have not been disclosed by the Petitioner either before the DIS or before this Court. It appears that she rather made certain incorrect statements and claims regarding the date of her marriage. In the documents filed before the DIS the Petitioner claimed that she was married to Gour on April 22, 1954 (at p.44).

14. The original records, however, reveal the following facts. The DIS wrote a letter dated February 5, 1987, a copy whereof was sent to Gour, informing the Assistant Director of Pension, Provident Fund & Group Insurance, West Bengal that in case of Gour's death his two wives would equally share the family pension, as declared by Gour. By a letter dated April 3, 1987 the Assistant Director asked the DIS to give the exact date of Gour's second marriage. In response Gour submitted a letter stating that he married the Petitioner on June 7, 1957. With the letter he produced the death certificate dated May 16, 1987 recording Anita's death on February 25, 1987.

15. Ms. Pal, Counsel for the Petitioner, has argued that it will appear from Gour's declaration in writing given to the DIS that Gour married the Petitioner in 1957 for the reason that his first wife Anita had been suffering from mental disorder.

According to Ms Pal, considering the humanitarian aspect of the whole thing the State ought to have taken a lenient view that in the interest of justice the Petitioner should be given family pension.

16. It is, therefore, evident that the employee concerned himself gave the declaration in writing to the pension sanctioning authority that the Petitioner was married to him after enactment of the Hindu Marriage Act, 1955 and at a time when he had a spouse living.

17. Mr. Chakraborty has argued that since the marriage was void, the Petitioner was not entitled to claim family pension under the Scheme. He has relied on [Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another, Rameshwari Devi Vs. State of Bihar and others, Savitaben Somabhai Bhatiya Vs. State of Gujarat and Others](#), and an unreported Single Bench decision of this Court dated November 10, 2003 in W.P. No. 12346 (W) of 2003.

18. I am unable to accept the argument that the Petitioner could claim family pension on humanitarian ground. The provisions of the 1981 Scheme do not provide for grant of family pension on humanitarian ground or in the interest of justice. They specifically provide who will get family pension and for determining whether a person claiming family pension is entitled to the benefit the provisions of paras.5(s)(2), 23 and 26 are to be examined. These provisions provide that wife of a deceased employee is entitled to family pension, and that if the employee is survived by more than one wife, then the wives shall equally share the family pension.

19. Thus the real question in the case is whether a wife, not legally married to the deceased employee, is a wife entitled to the benefits under the Scheme.

20. Section 5(i) of the Hindu Marriage Act, 1955 provides that a marriage will be solemnized between any two Hindus, if neither party has a spouse living at the time of the marriage. Section 11 of the Act provides that any marriage solemnized after the commencement of the Hindu Marriage Act, 1955 shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity, if it contravenes anyone of the conditions specified in clause (i), (iv) and (v) of Section 5.

21. It is, therefore, evident that the Petitioner's marriage with Gour solemnized after the commencement of the Hindu Marriage Act, 1955 at a time when Gour had his first wife living was a void marriage. It was solemnized in contravention of the condition specified in clause (i) of Section 5 of the Hindu Marriage Act, 1955. As has been held by the Supreme Court in the above-noted three decisions such a marriage as the one of the Petitioner is of no consequence at all.

22. True it is that the Petitioner lived with Gour as his second wife till Gour's death. Gour's first wife, Anita, pre-deceased him enjoying the status of a legally married

wife. Though in his letter to the DIS in response to the letter of the Assistant Director dated April 3, 1987 he stated that Anita was suffering from mental disorder, the fact remains that he did not divorce Anita before marrying the Petitioner. Under the circumstances, the Petitioner did not acquire the status of a legally married wife.

23. In my opinion, the provisions of the 1981 Scheme do not admit of interpretation that a wife whose marriage is void under the provisions of Section 11 of the Hindu Marriage Act, 1955 will also be covered by the expression "wife" entitled to get family pension under the Scheme. Such an interpretation of the provisions of paras. 23 and 26 of the Scheme, directly encouraging and perpetuating a nullity, is not permissible in law. The word "wife" used in the Scheme must mean only a legally married wife. A concept of brazen illegality cannot be inserted into the fold of the word in the name of humanitarian consideration and interest of justice.

24. In my opinion, where an employee to whom the West Bengal Recognized Non-Government Educational Institutions Employees (Death-cum-Retirement) Benefit-Scheme, 1981 is applicable is survived by more than one wife, all the wives will be entitled to share the family pension only if they all were legally married to the deceased employee. Under the circumstances, I am unable to accept the Petitioner's contention that the DIS was wrong in denying her the benefit of family pension under the Scheme. Since her marriage to Gour was a void marriage u/s 11 of the Hindu Marriage Act, 1955, she was not entitled to any family pension under the provisions of the Scheme.

25. For these reasons, I dismiss the petition. No costs. Certified xerox.