

Jayawantabai and Another Vs. Union of India, Through General Manager and Another

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Court : Central Administrative Tribunal CAT Mumbai

Decided On : Jan-28-2014

Judge : The Honourable Mrs. Chameli Majumdar, Member (J)

Appeal No. : Original Application No. 2094 of 2006

Appellant : Jayawantabai and Another

Respondent : Union of India, Through General Manager and Another

Judgement :

Chameli Majumdar, Member (J).

1. The applicant, being the second wife of the deceased railway employee, filed this Original Application challenging the order dated 23.04.2006, wherein, it is mentioned that after the death of railway employee on 10.12.85, his first wife Smt. Saraswatabai was sanctioned family pension payable through Post Office, Amgaon. The second wife intimated the authorities that the first wife expired on 23.08.1986 and on her death, she would be entitled for sanction of family pension. The Post Master Amgaon was requested to send the particulars of actual payment of family pension to Smt. Saraswatabai. This Tribunal, at the admission hearing stage of this Original Application on 08.11.2006, directed the Welfare Officer to personally visit the applicant and the Sectional Personal Inspector at Gondhia and

thereafter get the pension papers finalised and necessary payments be made within a period of two months thereafter.

2. By the order dated 08.11.2006 this Tribunal directed to get the pension papers finalised after the Welfare Officer personally visited the applicant. This Tribunal also directed to make necessary payments within a period of two months thereafter. Thereafter, on 11.7.2007, this Tribunal passed an order. Learned counsel for the respondents on 11.07.2007 assured the court that he would make efforts to comply with the direction of this Tribunal before the next Thursday and submit a report to the Tribunal on 19.07.2007. Learned counsel for the applicant requested that while making enquiry, the statement of the wife and her two children must be recorded and produced before the court.

3. The applicant annexed the report of the Staff and Welfare Inspector dated 17.07.2007. The contents of the said report is setout herein below:

œPursuant to the Hon'ble Tribunal's orders dt 11/7/2007 and Competent authorities directives on the above subject, a detailed Inquiry was conducted on 13/07/2007 to ascertain the status of family members left behind by late Ramrao Kewoo, Ex MDM/Gondia, Expired on 10.12.1985.

The Village Nawargaon (Kala) of Distt : Gondia was visited on 13/7/2007 and the Inquiry conducted with Smt Jaiwantibai, her married daughter Smt Prabha and married son Shri Chandreshekar. Their written statements obtained and enclosed herewith. The youngest daughter Smt Shobhabai had gone to outstation for labour work with her husband and hence her statement could not be recorded. The statements were recorded in presence of fellow villagers and their witnesses also obtained on the statements. The said investigation revealed as under:

1. Late Ramrao Kewoo, was working as MDM under SSE(works)/ Gondia and expired on 10.12.85. Consequent to his death, the family pension was paid to Smt. 1st Saraswatibai -wife. Smt Saraswatibai expired on 23.8.86. Late Ramrao Kewoo was having one daughter viz Shakunbai born out of wedlock with Smt Saraswatibai. It is further stated that Smt Shakunbai born out of wedlock with smt Saraswatibai. It is further stated that Smt Shakunbai predeceased Smt

Saraswatibai (about 10-12 yrs prior to death of Smt Saraswatibai).

2. Late Ramrao Kewoo performed PAT with Smt Jaywantabai in the year 1979 i.e. during the lifetime of 1st wife Smt Saraswatibai. Smt Saraswatibai also attended the PAT. The said 'PAT was Smt Jaiwantabai's 2nd marriage as she had earlier married one Sri to Harichand Bramhankar from whom she is having one daughter Dwarkabai. She was divorced by Harichand Bramhankar through customary divorce taken place in front of community. From the PAT with late Ramarao Kewoo, Smt Jaiwantibai gave birth to 3 children 1. Prabhbai Dau 2. Sri Chandrashekar son and

3. Shobhabai Dau. At present all the three children are married. The details are summarised below. SR Name DOB Date of Marriage Remarks:

1. Smt Prabhabai 05/03/81 17/05/1987

2. Sri Chandrashekar 15/10/83 10/05/05

3. Smt Shobhabai 02/04/85 11/04/03"

3. It was specifically asked to Smt Jaiwantibai as to why she has not applied earlier for family pension. She replied that at the time of death of Smt Saraswatibai, she was suffering from Paralysis and residing at her maternal place Nawargaon (Kala) with her brother Shri Somaji Kore. Shri Dashrath Bhandarkar, who is a distant relative has assured her that he is making claim as Guardian on behalf of her children and he will further induct her name in the settlement papers. However, the said claim could not materialise owing to the reports of the then Inspector that the natural guardian is alive.

4. Conclusion: 1. Smt Jaiwantibai is the 2nd wife of Late Ramarao Kewoo, whose PAT was performed during the lifetime of the 1st wife Smt Saraswatibai.

2. Late Ramarao Kewoo was having 3 children born out of PAT with Smt Jaiwantibai viz. Prabha-Dau, Chandreshekar son and Shobha Dau and all of whom are married as indicated above.?

4. Therefore, from the report, it will be evident that the present applicant was married to the deceased railway employee in the year 1979, when his first wife Smt. Saraswatabai was alive. The Enquiry Officer further observed that the applicant was first married with one Shri Harishchandra Bramhankar and from the marriage wedlock, she was having one daughter Dwarkabai. Deceased railway employee was having one daughter Shakunbai borne out of the wedlock with the first wife. The daughter predeceased her mother. The deceased railway employee performed PAT with the present applicant. After divorce from Shri Harishchandra Bramhankar through customary divorce, in front of the community. The applicant got married to the deceased railway employee. After the PAT with the deceased railway employee, the applicant gave birth to three children. The applicant was asked, why she did not apply earlier for family pension? She said that Shri D.N. Bhandarkar, a distant relative assured her that he would make claim as guardian on behalf of her children and thereafter, he will induct the applicant's name in the settlement papers. The conclusion arrived at by the Reporting Officer was that the applicant was the second wife of Shri Ramarao Kewoo, whose PAT was performed during the lifetime of the first wife and Shri Ramarao Kewoo was having three children borne out of the PAT with the applicant. From the records, it is further evident that in the O.A. No. 778/1999 filed by Shri D.N. Bhandarkar, this Tribunal disposed of the O.A. vide order dated 21.09.2001, with a direction to the respondents to make an enquiry and thereafter accord to the applicant the pensionary benefits with arrears within a period of three months from the date of receipt of a copy of the order. Pursuant to the said order dated 21.09.2001 an enquiry report was submitted which is enclosed to this Original Application. I have also gone through the said report. The Enquiry Officer stated that the Enquiry Officer was reported that the applicant was the widow of late ex-railway employee. The Enquiry Officer confirmed from the electoral roll 1998, in which the name of the applicant was shown as widow of Ramarao Kewoo. The neighbours also informed that the three children namely Prabhabai, Shobhabai and Chandrashekhar were borne from the applicant Smt. Jayawantabai, widow of late Ramarao Kewoo. A written statement was also given to this effect. One co-worker of the deceased railway employee also confirmed the above facts and also gave a written statement, which was also enclosed to the report. He informed that the

daughter borne from the first wife Smt. Saraswatabai, named Shakunbai, expired during the lifetime of the deceased railway employee. Thereafter, the first wife was not having any other children and so Ramarao married the applicant Smt. Jayawantabai, who was a divorcee. The three children were not borne from his first wife as claimed by Shri D.N. Bhandarkar, but they were borne from the second wife namely Smt. Jayawantabai.

5. Thereafter, in paragraph (b), the names of the family members were given as under :

"1. Smt. Jaiwantabai wd/o late 2nd Ramarao Kewoo, wife, aged 44 years,

2. Smt. Prabhabai w/o Gpichand Shivankar, married daughter, aged about 21 years borne from IInd wife

3. Shri Chandrashekhar s/o Ramrao Kewoo, aged about 19 years, born from IInd wife.

4. Ku. Shobhabai u/m/daughter of late Ramarao Kewoo, aged about 17 years born from IInd wife (Posthumous child)."

6. The facts narrated in the two above mentioned reports in different spells of times appeared to be similar. Under such circumstances, I do not find that the respondents can deny the claim of the applicant for her share in the pension of the late deceased railway employee.

7. I have gone through the Railway Services Pension Rules 1993. Rule 75 deals with family pension for railway servants, 1964. In Railway Services Pension Rules, sub rule 5 of Rule 70 says as follows :

"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."

8. Rule 75 deals with Family Pension Scheme for Railway Servants, 1964. Sub Rule 7(i)(a) of Rule 75 stipulates that where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

Therefore, from these rules it appears that rule making authorities made provision for the second wife, being aware of the situation where the railway employee may perform a second marriage during the lifetime of the first wife. Sub Rule 7(i)(a) stipulates that where there are more widows of a deceased railway employee, family pension shall be paid to the widows in equal share.

9. In view of the admitted position that the first wife of the child begotten from the said first wife were no more surviving and there is no other claimant for the family pension, I direct the respondents to release the family pension to the applicant within eight weeks from the date of receipt of a copy of the order.

10. The applicant will be at liberty to file representation for payment of arrears of pension with interest as well as death compensation, to the respondents and the respondents will consider the said representation within eight weeks from the date of receipt of such representation, in accordance with law.

11. The Original Application is disposed of with the above direction. No order as to cost.

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