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Ramesh Chand Vs. Executive Engineer, Electricity Distribution Division-ii, U.P. Power Corporation Ltd. and ors.

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Court : Allahabad

Decided On : Oct-15-2003

Reported in : (2004)1UPLBEC794

Judge : Sunil Ambwani, J.

Acts : Uttar Pradesh State Electricity Board Appointment of Dependents of Employees of Board (Dying-in-Harness) Rules, 1975 - Rules 2 and 5; Hindu Marriage Act, 1955 - Sections 5, 11, 12, 16, 16(1), 16(2), 16(3) and 17

Appeal No. : Civil Misc. Writ Petition No. 10736 of 2003

Appellant : Ramesh Chand

Respondent : Executive Engineer, Electricity Distribution Division-ii, U.P. Power Corporation Ltd. and ors.

Advocate for Def. : Nripendra Misra, Adv.

Advocate for Pet/Ap. : Muralidhar and ;Ram Pratap Singh, Advs.

Disposition : Petition dismissed

Judgement :

Sunil Ambwani, J.

1. Heard Sri Muralidhar, Senior Advocate, assisted by Sri Ram Pratap Singh for petitioner, and Sri Nripendra Misra for respondents-Corporation.

2. Late Satai was employed as 'Petrol Man', in Electricity Distribution Division-II, Allahabad. His wife Smt. Satina Devi had no issue. It is alleged, that in the year 1978, with the consent of Satina Devi, he sought permission of the Executive Engineer, Electricity Distribution Division-II, Allahabad for second marriage, which was given to him on 24.10.1978, with the condition that as soon as a child is born, his relation with the second wife shall cease. With this permission he married one Kaushalya Devi. Petitioner was born to Kaushalya Devi on 30.12.1980. Sri Satai died in harness on 19.11.2000. It is alleged that there was a settlement between Smt. Satina Devi and Kaushalya Devi on 1.7.2002, under which Smt. Satina Devi was made entitled to and is receiving the retiral dues, and that petitioner shall be entitled to compassionate appointment, to which Satina Devi, will have no objection.

3. Petitioner applied for compassionate appointment under U.P. State Electricity Board Appointment of Dependents of Employees of Board (Dying-in-Harness) Rules, 1975. A favourable recommendation was made by the Executive Engineer. The General Manager (Distribution), Allahabad referred the matter to the Head Office at Lucknow. The Personnel Officer, U.P. Power Corporation has, by impugned order dated 25.2.2003 found, that compassionate appointment cannot be given on a settlement. The child born out of second marriage is not a legitimate child, and that the matter requires decision by the competent Court, after which it will be examined by the legal branch of the Corporation.

4. Sri Muralidhar, Senior Advocate, submits that late Satai married petitioner's mother, after taking permission from the employer, and that under Section 16 of the Hindu Marriage Act, 1955, a child born out of a marriage which is void or voidable, is a legitimate child. According to him, petitioner falls within the definition of 'family1 under Rules of 1975, and is entitled to be considered for compassionate appointment.

5. Sri Nripendra Misra appearing for Corporation, on the other hand, submits that petitioner is not a legitimate child, and that the compassionate appointment under Rules of 1975, cannot be given by way of a settlement between the widow and the other woman who is not legally wedded wife inasmuch as the second marriage was a void marriage under Section 11 of the Hindu Marriage Act, 1955. He submits that the object of compassionate appointment will not be served to maintain a person who is not a legally married wife of the deceased employee.

6. The Rules of 1975 define 'family' of the deceased employees of the Board to include, (i) husband and wife (ii) son, which will also include adopted son in respect of Hindu employee, and (iii) unmarried daughters and widowed daughters.

7. A second marriage during the life time of a living spouse, is void. Section 11 of the Hindu Marriage Act, 1955 declares such a marriage in contravention of Section 5(i) as null and void. The legitimacy of child is, however, protected under Section 16 of the Act which is quoted as below :

'16. Legitimacy of children of void and voidable marriages.--(1) Notwithstanding that marriage is null and void under Section 11, any child of such 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 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a viodable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in Sub-section (1) or Sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person other the parents, in any case where, but for the passing of this Act, such

child would have been incapable of possession or acquiring any such rights by reason of his not being the legitimate child of his parents.'

8. Section 16, deals with legitimacy of children of void marriages, and voidable marriages so declared by a decree under Sections 11 and 12 of the Act. This section was enacted to avoid bastardy. A decree of nullity of marriage does not affect the legitimacy of the child begotten or conceived before such decree. This section, however, does not save the marriage or extends the protection to the mother.

9. Though a child born out of marriage which is null and void under Section 16, quoted as above is legitimate, Sub-section (3) of Section 16 restricts his rights in or to the property of any person, other than the parents, in any case where, but for the amendment Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

10. Right to compassionate appointment is not a right to property of the deceased employee. The parents of a child referred to under Section 16(3) are his parents who have entered into a void or voidable marriage. We are concerned here with void marriage, for which no decree of annulment is required. Such a child does not have a right to property, of any person other than his parents. He, therefore, cannot claim compassionate appointment which is a statutory right of the family of the deceased. There are other reasons for reaching to the same conclusion. There can be a conflict of interest between wife and her children from first valid marriage and the child whose legitimacy is protected under Section 16 of the Hindu Marriage Act, 1955. A claim may be set up by persons alleging themselves to be children or strangers, causing litigation, delaying and thus, defeating the purpose of such appointment. The object of compassionate appointment is to provide immediate financial help to the family. The child out of void marriage will essentially support his mother who is not included within the definition of 'family', as she is not the widow of the deceased employee, her marriage to the deceased being a void marriage. Further, as found above, such child cannot defeat the right of other persons to the property such as retiral benefits and pension of the

deceased, and these other persons will include only the legally married wife and her children.

11. The permission given by competent authority, cannot grant any legal status to the second marriage which was void, being violative of Section 5(i) of the Hindu Marriage Act, 1955. The permission may have protected the deceased employee from the charge of misconduct, but that by itself will not make his second marriage to Kaushalya Devi a valid marriage, or include her and her children in the definition of the word 'family'.

12. A right flowing under the statutory rules cannot be curtailed or enlarged by settlement or compromise between the beneficiaries. The compromise entered into between Smt. Satina Devi and Kaushalya Devi is also a void document, which cannot be the basis of claim for compassionate appointment.

13. For the aforesaid reasons, I find that the petitioner is not entitled to thereliefs. The writ petition is, accordingly, dismissed.

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