

Gowramma Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Sep-12-2012

Judge : The Honorable Mr. Justice N. Kumar & H.S. Kempanna

Appeal No. : Writ Petition No. 18485 of 2010 (S-KAT)

Appellant : Gowramma

Respondent : State of Karnataka and Others

Judgement :

N. Kumar, J.

1. This writ petition is filed challenging the order passed by the Karnataka Administrative Tribunal declining to entertain the application of the petitioner for appointment on compassionate grounds.

2. The case of the petitioner is she married the deceased Guddappa after he obtained divorce from his first wife on 17.1.1983. Guddappa died on 27.12.1996. She filed an application on 30.7.1997 for compassionate appointment on the ground that she is the legally wedded second wife. The authorities issued an endorsement on 14.9.1988 stating that she should obtain a succession certificate as Lingaraju, son through the first wife is denying here marriage. Subsequently, the said endorsement came to be withdrawn on 14.11.2000 but she was not given appointment. Therefore, she filed the application seeking for setting aside the endorsement as well as for a direction to consider her representation for

compassionate appointment. The Tribunal has declined to entertain the said application and dismissed the same. In coming to the said conclusion the Tribunal has taken note of the fact that the appointment on compassionate grounds is made to tide over the sudden crisis caused by the death of a bread winner who leave the family in penury without any means of livelihood and that such a provision is really in the nature of an exception to the general principle of equality in the matter of recruitment. Such a provision made by way of an exception to the general rule cannot subsume the main principle. As nearly sixteen years have elapsed from the date of his death, the Tribunal was of the view that the petitioner is not entitled to compassionate appointment. Moreover it also took note of the fact that she was also paid family pension. That was also a ground for rejecting the application. Aggrieved by the said order, the present writ petition is filed.

3. The learned Counsel of the petitioner assailing the impugned order contends that according to the Rules governing the compassionate appointment wife is preferred to the son. Therefore, Lingaraju cannot have any claim. The rules specifically states in considering the financial position of the application, the family pension should not be taken into consideration. Thirdly, he submits that the application was filed in time and even before the Tribunal the application is filed in time and therefore, the Tribunal was in total error in rejecting her request.

4. We have gone through the file. What emerges from the said records is the deceased K. Guddappa had married Dyamma. Lingaraju the fourth respondent is the son born to them. He filed a petition for divorce in M.C.No.9/1982 which ended in a compromise decree on 17.1.1983. The case of the petitioner is that she married the deceased Guddappa on 27.4.1983 after the divorce therefore, she is the legally wedded wife. However, the material on record shows that the petitioner gave birth to child by name Renuka on 16.11.1981. It is not in dispute that the daughter was born to deceased Guddappa and the daughter was born during the subsistence of the first marriage. The registration certificate issued by the Sub-Registrar only denotes that the persons mentioned therein are husband and wife. It is not a proof of marriage. It is only a record of marriage. Normally, marriage takes place and then the child is born. If the petitioner gave birth to a child on 16.11.1981 the marriage is anterior to the said date and on that date, the first wife

was very much alive and the relationship of husband and wife was very much in existence. Therefore, the marriage of the petitioner is void. As such she is not entitled to claim as the second wife and seek appointment on compassionate grounds.

5. For the reasons stated, we do not see any merit in this petition. Accordingly, it is dismissed.

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