VERDICTUM.IN

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 35291 of 2017

Between:
Gaddam Ruth Victoria

.....PETITIONER

AND
The State of Andhra Pradesh,
Rep.by its Principal Secretary,
Social Welfare Department,
Secretariat, Velgapudi,
Guntur District and 4 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **18.08.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

Dr. K. MANMADHA RAO, J

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! Counsel for the Petitioner : Sri Sreemannarayana Vattikuti

Counsel for the Respondents No.1 to 4: GP for Services-II

Counsel for Respondent No.5 : Sri Satish Kumar

< Gist :

> Head Note:

? Cases Referred:

1. (2008) 2 SCC 238
2. 2020 SCC OnLine SC 283
3. (2014) 1 SCC 188

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE Dr. JUSTICE K. MANMADHA RAO

WRIT PETITION No. 35291 of 2017

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Sreemannarayana Vattikuti, learned counsel for the petitioner, learned Govt. Pleader for Services-II, appearing for respondents Nos.1 to 4 and Sri Satish Kumar, learned counsel for the 5th respondent.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner challenging the order of the Andhra Pradesh Administrative Tribunal (in short 'APAT/Tribunal') in O.A.No.1726 of 2015, dated 25.04.2017.

3. The case of the petitioner is that her husband Sri late Gaddam Danam worked as Warden in the Office of the District Social Welfare-3rd respondent and retired on 30.06.2011 and later expired on 17.10.2014 leaving behind the petitioner (Gaddam Ruth Victoria) as his legally wedded wife and only son as his legal heirs. The petitioner approached the official respondents No.1 to 4 claiming the retirement and other terminal benefits, such as pension, medical reimbursement etc., and came to know that the present 5th respondent, namely, Smt. G. Padma, was also claiming family pension etc., being nominee of late Gaddam Danam in his service register. The petitioner's further case is that her marriage with late Gaddam Danam took place on 09.06.1975 as per Christian rites and customs. Out of the said wedlock, a son was born. The

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petitioner's husband never married any other woman. The petitioner was neglected in maintenance. So, she filed FCOP No.151 of 2010 against her husband and pending such case, he retired from service. Then the petitioner filed FCOP No.232 of 2011 to attach an amount of Rs.3,60,000/- on which a conditional order of attachment in I.A.No.1197 of 2011 in FCOP No.232 of 2011 was passed on 08.09.2011, against which, the husband filed CRP No.1024 of 2012, which was allowed on 04.12.2012, remanding the matter to the trial Court for fresh consideraton, but with direction that the said amount shall be withheld till the matter was decided by the trial Court, subject to Section 60(g) of Code of Civil Procedure (CPC).

4. Late Gaddam Danam had filed FCOP No.228 of 2011 in the Family Court, Nellore seeking divorce against the petitioner and during its pendency, he died on 17.10.2014, resulting into the dismissal of the divorce case. Even in divorce petition, any marriage with 5th respondent was not mentioned. The petitioner's case therefore is that her marriage with late Gaddam Danam was subsisting till his death and she was the only legally wedded wife and only widow entitled to receive all the service benefits on the death of her husband. The 5th respondent was not entitled for any such benefit also because in the personal law of the parties any second marriage during the continuance of the first marriage is not permissible. The petitioner's husband also never obtained any permission from the competent authority in the service department, for the alleged second marriage with the 5th respondent at any time as per the Andhra

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Pradesh Civil Services (Conduct) Rules, 1964, so the so called second marriage is null and void and the 5th respondent did not acquire any status of wife.

5. On the aforesaid averments, *inter alia*, the petitioner initially filed W.P.No.3692 of 2015, for releasing the family pension and other related benefits consequent to the death of Gaddam Danam, which was dismissed on 09.03.2015, holding that the service matters have to be got resolved at the first instance by Tribunal and thereafter only a judicial review can be exercised. Liberty was granted to the petitioner to approach the Tribunal.

6. Thereafter, the petitioner filed O.A.No.1728 of 2015 before the APAT questioning the inaction of the official respondents No.1 to 4, with direction to release the pending and all other benefits and amounts payable to the petitioner due to death of her husband Gaddam Danam.

7. The petitioner's claim was contested by the official respondents by filing counter that they have informed the Accountant General Officer vide Lr.Rc.No.A4/595/2005, dated 08.12.2015 with regard to disbursement of pension between the petitioner and the 5th respondent. They further submitted that Gaddam Danam retired on 30.06.2011. At the time of pension proposals late Gaddam Danam submitted the family members details, in which Smt G. Padma, the 5th respondent was shown as wife along with three daughters, and after the receipt of the pension proposals, the same were sent to the Accountant General Office for sanction of pension, which was sanctioned, vide Order dated 10.03.2014, to late Gaddam Danam. They also submitted that the department did not nominate the 5th respondent as nominee in the service

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register of late Gaddam Danam, and they were also not aware if he had married the petitioner Smt. G. Ruthu Victoria on 09.06.1975, as he joined service on 12.08.1980. After the death of Gaddam Danam, the claim was submitted by the petitioner and the unofficial 5th respondent for sanction of the service benefits of late Gaddam Danam, upon which the Deputy Director of Social Welfare, SPSR Nellore District issued a notice vide Rc.No.A4/595/2005, dated 03.03.2015 to both the parties for producing succession certificate, but none of them submitted any succession certificate.

8. The 5th respondent also filed her counter stating that she is the legally wedded wife of late Gaddam Danam, her marriage took place in the year 1986 as per the Christian rites in front of relatives and elders, and out of that wedlock they were blessed with three daughters and in their school records, the name of G. Danam is recorded long back. They lived together till the death of late Gaddam Danam and at no point of time, he disclosed about the marriage with the petitioner. The documents filed by the petitioner were also alleged to be not genuine and forged, not reflecting upon the marriage of the petitioner with Gaddam Danam, and it was submitted that it appeared that the petitioner married in 1975 and left him in 1979 by making settlement in front of elders, even before Gaddam Danam got job in 1980. The marriage with 5th respondent was solemnized thereafter in 1986. Consequently, the 5th respondent claimed for the pensionary benefits in her favour to the denial of the claim of the petitioner.

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9. Various documents were filed before the APAT by the petitioner and the 5th respondent in support of their respective claims.

10. The Tribunal found that late Gaddam Danam himself filed divorce petition for dissolution of the marriage between him and the petitioner. It therefore ment that late Gaddam Danam was married with the petitioner and she is his wife. It also found that pursuant to the order in CRP No.1024 of 2012 decided on 04.12.2012, the amount of attachment of Rs.3,60,000/- remained withheld, as the matter could not be decided afresh and the amount was not released and kept with the department. With respect to the present 5th respondent, the Tribunal found that her name was entered in the service register of late Gaddam Danam as nominee, but observed that only because of that she was not only entitled for family pension and pensionary benefits. Such contention of the 5th respondent that she was only entitled for family pension and pensionary benefits was not accepted.

11. The Tribunal further found that as per Rule 25 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964, no government employee who has a wife living shall contract another marriage without first obtaining the permission of the government. Any such permission late Gaddam Danam did not obtain.

12. We find that the Tribunal adopted a middle way and disposed of the OA placing reliance on Rule 50 of the Andhra Pradesh Revised Pension Rules 1980, that wives are entitled for family pension and as such both the petitioner as well as the unofficial 5th respondent, who are wives of late Gaddam Danam, were entitled for family pension. With regard to medical reimbursement, the

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order was passed in favour of the 5th respondent, as the Tribunal found that she looked after late Gaddam Danam. With regard to other retirement benefits of late Gaddam Danam, both, the petitioner and the 5th respondent were held entitled.

13. Challenging the said order of the Tribunal, dated 25.04.2017, this writ petition has been filed by the petitioner (Applicant before the Tribunal).

14. The present 5th respondent has not challenged the order of the Tribunal.

15. Learned counsel for the petitioner submitted that the Tribunal after holding that the petitioner is the legally wedded wife of late Gaddam Danam and that he did not obtain any permission for marriage with 5th respondent and also that such second marriage is not permissible under the customary law, during continuance of the first marriage and undisputedly the case for divorce filed by late Gaddam Danam against the petitioner remained pending during which Gaddam Danam died and as such any decree of divorce was not passed, the 5th respondent could not legally acquire the status of wife and was not entitled for any relief in O.A. He further submitted that for the same reason, the Tribunal further committed illegality in applying Rule 50 of the Andhra Pradesh Revised Pension Rules 1980, as the said rule refers to wives i.e., more than one wife, but having the status of wife under law. Consequently, the petitioner being the only wife in law, she was entitled for all the benefits on the death of Gaddam Danam.

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16. Learned counsel for the 5th respondent submitted that Gaddam Danam got the job on 12.08.1980 and thereafter married the 5th respondent in the year 1986. Previously, he might have married the petitioner in the year 1975, as is the case set up, but she left his company during 1979 by making settlement in front of elders. Since 1986, Gaddam Danam lived with the 5th respondent till his death on 17.10.2014 and out of the wedlock, three daughters were born and one of them is unmarried. During the lifetime of Gaddam Danam, it was the 5th respondent who looked after him when he suffered from ill-health and was in need of care, and during that time also the petitioner was not with Gaddam Danam. It is only after his retirement, the petitioner filed the case for maintenance etc., and after his death, the petitioner, in order to get the pensionary benefits of late Gaddam Danam has filed the claim. After the death, 5th respondent submitted medical bills for reimbursement, but as the petitioner also raised claim on medical bills, though without submitting the original medical bills, the authorities did not release the amount. The name of 5th respondent was entered into service register of Gaddam Danam as wife and even in pension papers in the membership details her name was given by Gaddam Danam along with the names of the three daughters. The 5th respondent submitted the pension papers, and was receiving the family pension as per the rules. He submitted that the Tribunal ought not to have passed any order in favour of the petitioner for any amount and ought to have rejected the O.A, as the 5th respondent is the only legally wedded and recognized wife as per the records.

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17. We have considered the submissions advanced by the learned counsels for the parties and perused the material on record.

18. In view of submissions advanced, the point which arises for our consideration is; Whether the order of the Tribunal suffers from illegality and deserves to be set aside?

19. The Tribunal has recorded a specific finding, based on the documents filed by the petitioner; including the petition for divorce filed by late Gaddam Danam against the petitioner, admitting the petitioner to be his wife, during his lifetime, that the petitioner is the legally wedded wife and such wedlock subsisted till the death of Gaddam Danam. Additionally, from perusal of the petition in FCOP No.151 of 2010 under Section 125 Cr.P.C for maintenance filed by the petitioner as also its counter filed by Gaddam Danam, it is evident that the petitioner's marriage in 1975 was admitted by Gaddam Danam though it was further stated that she left in 1979. Subsequent, filing of the divorce petition by Gaddam Danam against the petitioner-Gaddam Ruth Victoria and during its pendency his death without any decree of divorce, not being in dispute, we are in affirmance with the finding of the Tribunal on this point also in the absence of any challenge by the 5th respondent to the order of the Tribunal.

20. But, at the same time, the marriage of the 5th respondent with Gaddam Danam in the year 1986 is also found, by the Tribunal. It is also established, as held by the Tribunal, that Gaddam Danam resided with the 5th respondent since 1986 till his death in 2014 and they were blessed with three

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daughters. The Tribunal found that in the service register, the 5th respondent is recorded as the wife of Gaddam Danam. The medical bills were submitted by the 5th respondent for medical claim, in original, which shows that the 5th respondent was taking care of the deceased Gaddam Danam. The only thing is that the petitioner was married in the year 1975 and it was during continuance of her marriage with Gaddam Danam that he married the 5th respondent. So in the eye of law, the status of legally wedded wife cannot be acquired, though they were only living as husband and wife; they were blessed with three daughters and such status of wife was also recognized by Gaddam Danam in his service records as well.

21. In the aforesaid peculiar factual situation coupled with the fact that both are widows, in their old age, and the Tribunal having taken a middleway, whether the direction as issued by the Tribunal under the impugned judgment deserves interference, by us, and if so, to what extent, keeping in view, what the social justice demands. Should we allow the claim of the petitioner in toto, only because, she is the 1st legally wedded wife, and deny the benefit to 5th respondent only, because, her marriage, was during subsistence of 1st marriage of Gaddam Danam, though since 1986 she lived with Gaddam Danam till his death, and looked after him as wife and also being recorded in the service records as wife.

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22. We may at this very stage profitably refer the judgment of the Hon'Apex Court in the case of ***Vidhyadhari v. Sukhrana Bai***[1].

23. In ***Vidhyadhari*** (supra), the facts were that during the subsistence of the first marriage, one Sheetaldeen working as CCM Helper in Mines of the Western Coalfields at Pathakheda solemnized second marriage. From that wedlock four children were born. The first wife did not have any children. After the death of Sheetaldeen, two separate applications came to be filed under Section 372 of the Indian Succession Act for obtaining succession certificate with respect to the movable properties of the deceased, one by the first wife and the other by the second wife. The application filed by the second wife was allowed and the application filed by the first wife was dismissed. Two appeals were filed by the 1st wife which were allowed in her favour by the High Court and the matter approached the Hon'ble Supreme Court at the instance of the second wife. The High Court held that the marriage of Sheetaldeen with the first wife is very much subsisting when the second wife got married. Consequently, the first wife alone was entitled to the grant of succession certificate. The Hon'ble Apex Court held that the marriage of the second wife during subsistence of the first marriage and in the absence of any divorce deed or even assertion that there was customary divorce, the High Court was right in holding that the second wife could not claim the status of wife and the finding of the High Court did not call for interference. The Hon'ble Apex Court, however, further observed that the High Court ought not to have stopped there

[1] (2008) 2 SCC 238

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only and the question as to whether in spite of the factual scenario, the first wife could be rendered the succession certificate ought to have been considered.

24. In ***Vidhyadhari*** (supra) it was held that the succession certificate was for the purpose of collecting Provident Fund, Life Cover Scheme, Pension and amount of life insurance and amount of other dues in the nature of death benefits of Sheetaldeen. The second wife was a nominee, which was not disputed and was therefore proved. The Hon'ble Apex Court held that a nominee like, the second wife, who was claiming the death benefits arising out of the employment can always file an application under Section 372 of the Succession Act, as there is nothing in that section to prevent such a nominee from claiming the certificate on the basis of nomination. The Hon'ble Apex Court observed that the High Court should have realized that the second wife was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and their names were found in Form-A which was the declaration of Sheetaldeen during his lifetime. It was observed that the second wife continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen, who had nominated her for his provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues. The Hon'ble Apex Court held that under such circumstances, she was always preferable even to the legally wedded wife like the first wife, who had never stayed with Sheetaldeen as his wife. The Hon'ble Apex Court observed that the High Court should have taken

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into consideration these crucial circumstances. Merely because the first wife was the legally wedded wife that by itself did not entitle her to a succession certificate in comparison to the second wife who all through had stayed as the wife of Sheetaldeen, had borne his four children and had claimed a succession certificate on behalf of children also.

25. It is apt to reproduce paras 11 to 14 of ***Vidhyadhari*** (supra) as under:

> "**11.** There can be no dispute that Vidhyadhari had never pleaded any divorce, much less customary divorce between Sukhrana Bai and Sheetaldeen. There were no pleadings and hence no issue arose on that count. In our opinion, therefore, the High Court was right in holding that marriage between Sukhrana Bai and Sheetaldeen was very much subsisting when Sheetaldeen got married to Vidhyadhari. Learned counsel tried to rely on *Govindaraju case* [(1996) 5 SCC 467 : AIR 1997 SC 10] . We are afraid the decision is of no help to the respondent as basically the issue in that decision was about the legitimacy of the children born to a mother whose first marriage was not dissolved and yet she had contracted the second marriage. This is apart from the fact that in the present case there were no pleadings about the existence of custom and alleged divorce thereunder. Therefore, there was no evidence led on that issue. In our opinion the decision in *Govindaraju case* [(1996) 5 SCC 467 : AIR 1997 SC 10] is not applicable. Even the other decision in *Yamanaji case* [(2002) 2 SCC 637] is not applicable as the facts are entirely different. In *Yamanaji case* [(2002) 2 SCC 637] there was a deed of divorce executed by the wife. The question was whether there was a customary divorce. There was a custom permitting divorce by executing deed existing in the community to which the parties belonged. Such is not the situation here. There is neither any divorce deed nor even the assertion on the part of Vidhyadhari that Sheetaldeen had divorced Sukhrana Bai. We, therefore, accept the finding of the High Court that

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Sukhrana Bai was the legally wedded wife while Vidhyadhari could not claim that status.

12. However, unfortunately, the High Court stopped there only and did not consider the question as to whether in spite of this factual scenario Vidhyadhari could be rendered the succession certificate. The High Court almost presumed that succession certificate can be applied for only by the legally wedded wife to the exclusion of anybody else. The High Court completely ignored the admitted situation that this succession certificate was for the purposes of collecting the provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues in the nature of death benefits of Sheetaldeen. That Vidhyadhari was a nominee is not disputed by anyone and is, therefore proved. Vidhyadhari had claimed the succession certificate mentioning therein the names of four children whose status as legitimate children of Sheetaldeen could not and cannot be disputed.

13. This Court in *Rameshwari Devi case* [(2000) 2 SCC 431 : 2000 SCC (L&S) 276] has held that even if a government servant had contracted second marriage during the subsistence of his first marriage, children born out of such second marriage would still be legitimate though the second marriage itself would be void. The Court, therefore, went on to hold that such children would be entitled to the pension but not the second wife. It was, therefore, bound to be considered by the High Court as to whether Vidhyadhari being the nominee of Sheetaldeen could legitimately file an application for succession certificate and could be granted the same. The law is clear on this issue that a nominee like Vidhyadhari who was claiming the death benefits arising out of the employment can always file an application under Section 372 of the Succession Act as there is nothing in that section to prevent such a nominee from claiming the certificate on the basis of nomination. The High Court should have realised that Vidhyadhari was not only a nominee but also was the mother of four children of Sheetaldeen who were the legal heirs of Sheetaldeen and whose names were also found in Form A which was the declaration of Sheetaldeen during his lifetime. In her application Vidhyadhari candidly pointed out the names of the four children as the legal heirs of Sheetaldeen. No doubt that she

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herself has claimed to be a legal heir which status she could not claim but besides that she had the status of a nominee of Sheetaldeen. She continued to stay with Sheetaldeen as his wife for long time and was a person of confidence for Sheetaldeen who had nominated her for his provident fund, Life Cover Scheme, pension and amount of life insurance and amount of other dues. Under such circumstances she was always preferable even to the legally wedded wife like Sukhrana Bai who had never stayed with Sheetaldeen as his wife and who had gone to the extent of claiming the succession certificate to the exclusion of legal heirs of Sheetaldeen. In the grant of succession certificate the court has to use its discretion where the rival claims, as in this case, are made for the succession certificate for the properties of the deceased. The High Court should have taken into consideration these crucial circumstances. Merely because Sukhrana Bai was the legally wedded wife that by itself did not entitle her to a succession certificate in comparison to Vidhyadhari who all through had stayed as the wife of Sheetaldeen, had borne his four children and had claimed a succession certificate on behalf of children also. In our opinion, the High Court was not justified in granting the claim of Sukhrana Bai to the exclusion not only of the nominee of Sheetaldeen but also to the exclusion of his legitimate legal heirs.

14. Therefore, though we agree with the High Court that Sukhrana Bai was the only legitimate wife yet, we would choose to grant the certificate in favour of Vidhyadhari who was his nominee and the mother of his four children. However, we must balance the equities as Sukhrana Bai is also one of the legal heirs and besides the four children she would have the equal share in Sheetaldeen's estate which would be 1/5th. To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the trial court to the satisfaction of the trial court."

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26. In ***Vidhyadhari*** (supra) the Hon'ble Apex Court, though in agreement with the finding of the High Court that the first wife was only the legitimate wife, yet, chosen the second wife to grant the certificate who was the nominee of the deceased Sheetaldeen and mother of his four children.

27. In ***Vidhyadhari*** (supra) the Hon'ble Apex Court, however, observed that the equities must be balanced, as the first wife is also one of the legal heirs, besides the four children, she would have the equal share in the estate of Sheetaldeen which would be 1/5th. To balance the equities, while granting the succession certificate to the second wife, a rider was put that she would protect the 1/5th share of the first wife and would hand over the same to the first wife.

28. Recently, in ***Tulsa Devi Nirola v. Radha Nirola***[2] the Hon'ble Apex Court held that family pension undoubtedly is not part of the estate of the deceased and will be regulated by the Pension Rules which confer a statutory right in the beneficiary eligible for the same. ***Tulsa Devi Nirola*** (supra) is a case where the second marriage was held not invalid. So far as the grant of family pension is concerned, the nomination was made in favour of the second wife. The rules provided for such nomination. It was held that Rule 40 (6) of Sikkim Services Pension Rules 1990, was conditional in nature and did not vest an automatic statutory right in the first wife, therein, to equal share in the family pension. In ***Tulsa Devi*** Nirola (supra), Rule 35 (5) of the Pension Rules provided that for the purpose of Rules 36, 37 and 38, family in relation to a government servant means wife or wives, including judicially separated wife.

[2] 2020 SCC OnLine SC 283

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Rule 38 provided for nomination to be made by the government servant in Form 1 or 2 or 3 conferring on one or more persons, the right to receive death come retirement gratuity that may be due to him. In the nomination form under Rule 38, the deceased mentioned the name of the 2nd wife only. There was also a settlement deed in favour of the first wife by the deceased husband, under which she received certain benefits.

29. The Hon'ble Apex Court in ***Tulsa Devi Nirola*** (supra) held the right of family pension in favour of the second wife, as the sole nomination was in her favour. The Hon'ble Apex Court observed that the deceased husband resided exclusively with the second wife and occasionally visited the first wife. The deceased was exclusively taken care of by the second wife during his illness including the expenditure incurred on his treatment. The contention as raised in that case that the nomination in favour of 2nd wife was only for purpose of receipt of the family pension and per force she was required to share it equally with the 1st wife was not accepted by the Hon'ble Apex Court.

30. In ***Tulsa Devi Nirola*** (supra) the Hon'ble Apex Court, however, observed that if the deceased had not executed settlement deed with regard to the movable and immovable properties, which was accepted and acted upon by the first wife, the Court could have considered, balancing the equities in favour the 1st wife as well.

31. The principle as laid down in the said case with respect to grant of family pension is that the family pension is not the estate of the deceased and if the rules provide for nomination and the nomination has been made, in favour

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of the second wife, she would be entitled for the family pension, and the nomination is not for the purpose of mere receipt of the family pension, requiring her to share equally with the 1st wife, per force.

32. In view of the aforesaid judgments, we are of the considered view that in such matters, even if it is found that the second wife does not acquire the status of wife, for the marriage having been contracted during the subsistence of the first marriage, still for the service benefits and service claims of the deceased husband, she is entitled for protection. The endeavour of the Courts has always been to balance the equities amongst two wives though the second may not be understood in the strict sense as 'wife', a legally wedded. For balancing the equities, the Courts can pass appropriate orders in favour of both the wives.

33. In the present case also, we have observed above and have found that the first wife left the deceased Gaddam Danam in 1979, thereafter the deceased Gaddam Danam got the service in 1980, he married the present 5th respondent during the subsistence of the first marriage with the petitioner. There is nothing on record to show any customary divorce. On the other hand, the divorce case was filed in the year 2011, but the same came to end due to the death of Gaddam Danam during its pendency. There is also nothing on record to indicate that during the long years, since 1979 till the death of Gaddam Danam, the first wife ever took care of Gaddam Danam. It was only for the first time in the year 2010 the claim for maintenance was filed just before the retirement of Gaddam Danam, and for enforcement of such claim of

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maintenance, as was granted, the order of attachment was passed in 2011 which was set aside by this Court, but the amount was directed to be kept in abeyance till passing of fresh orders on matter having been remitted. The three daughters were born out of the wedlock of Gaddam Danam with the 5th respondent, and even if it be taken that the marriage of 5th respondent is void for the reason of having been solemnized during subsistence of first marriage, the children would be legitimate. The 5th respondent resided with the deceased Gaddam Danam since after her marriage and also attended him during his illness for which the original medical bills were filed. During the lifetime, Gaddam Danam also nominated her, of which there is entry in the service book. Though that is disputed by the petitioner, being suspicious, and even though in that respect an order of the Tribunal in the same O.A, dated 18.03.2016 is there, in which the Tribunal observed that such entry creates an amount of suspicion, but, we are of the view that there is nothing on record to show that the entry in the service record was forged. Merely because the entry was made with different ink etc., and might have been seen with suspicion by the Tribunal in its previous interlocutory order dated 18.03.2016, but in passing the final order, such alleged suspicion did not prevail with the Tribunal. It is settled in law that the suspicion, howsoever strong, it may be, cannot take the place of proof. We are of the view that the entry in the service records, when considered in the light of the undisputed fact that in the family members details submitted by the deceased at the time of his pension proposals, he gave the particulars of the 5th respondent and the three daughters, it can be said that

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the deceased during his lifetime had nominated the 5th respondent in the service records, and such an entry cannot give rise to any suspicion. Filing of the divorce petition by Gaddam Danam against his first wife, in 2011, is also indicative of the fact that he wanted that after his death there may not arise any dispute, for the benefits in favour of the 2nd wife and wanted to secure the interests of the 2nd wife and the children from her, may be because the first wife started litigation against Gaddam Danam for maintenance etc., in the year 2010.

34. The submission of the learned counsel for the petitioner placing reliance on Rule 50 of the Andhra Pradesh Revised Pension Rules 1980 is that if the second marriage is contracted with permission of the competent authority, such wife will have legal status for all purposes for receiving the family pension with the first wife and children of the first wife. He submits that the payment of family pension to the 2nd wife is therefore dependent upon the permission obtained. If the permission is not obtained for marriage, the 2nd wife will have no legal status of 'wife', the marriage being void. He submitted that there was no permission to Gaddam Danam to solemnize 2nd marriage.

35. Before we deal with the aforesaid submission of the learned counsel for the petitioner, we would refer to the relevant provisions as hereinafter. We observe that this provision Rule 50 is a beneficial provision in favour of woman with whom the government employee contracts another marriage during subsistence of the first marriage. This provision is therefore required to be construed liberally to achieve its very object of the grant of family pension after

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the death of the government employee in favour of and to the extent reasonably possible to make available, both the wives, the family pension, and none of them be deprived of the same, in particular to the 2nd wife with whom the deceased government employee solemnized 2nd marriage during subsistence of first marriage. The issue requires coinsideration from the view point of social justice as well.

36. Rule 50 (2) of the Andhra Pradesh Revised Pension Rules 1980 (in short 'Rules 1980'), provides that the family of the deceased shall be entitled to a monthly family pension at the percentage as specified therein.

37. Rule 50 (12) (b) of the Rules 1980 provides that for the purpose of this rule 'family' in relation to government service means Category-I (i) wife in the case of a male government servant, or husband in the case of a female government servant.

38. The Executive Instructions (Circular Memo No.36840-A/329/A2/Pen.I/93, F & P (FW.Pen.I) Dept., Dt 11.09.1996) on the point of grant of family pension to the second living wife provides as under:

> "Irrespective of the Personal Laws if a Government employee having a living wife contracted second marriage after the introduction of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 without the permission of the competent authority, such marriage is null and void and, second wife does not have any legal status and such second wife is not entitled to the family pension. On the other hand if the employee contracted second marriage with permission of the competent authority such wife will have legal status for all purposes for receiving family pension along with the first wife the children of the first wife in terms of sub-rule (6) of Rule 50 of the Andhra Pradesh Revised Pension Rules, 1980. If the second marriage is contracted before the introduction of

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Andhra Pradesh Civil Services (Conduct) Rules, 1964 Family Pension can be paid in the same manner."

39. Rule 49 of the Rules 1980, provides for nominations. A government servant shall on his appointment, make a nomination in Form-I or Form-2, as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the retirement / gratuity payable under Rule 47.

40. From the aforesaid provisions, it is evident that there is provision for grant of family pension to the second living wife also. Point No.1 of the Circular Memo dated 11.09.1996 provides for the family pension to the wives. Irrespective of Personal Laws if the government employee having a living wife contracted second marriage after the introduction of the Andhra Pradesh Civil Services (Conduct) Rules 1964, without the permission of the competent authority, such marriage is null and void, and second wife does not have any legal status and such second wife is not entitled to the family pension. If the employee contracted second marriage with permission of the competent authority, such wife will have legal status for all purposes for receiving family pension along with the first wife, the children of the first wife, in terms of sub-rule (6) of Rule 50 of the Andhra Pradesh Revised Pension Rules 1980.

41. We may refer to the case of the Hon'ble Apex Court in ***Badshah v. Urmila Badshah Godse***[3]***,*** though the same is, dealing with Section 125 of Code of Criminal Procedure (Cr.P.C), where maintenance was claimed by the

[3] (2014) 1 SCC 188

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second wife, the second marriage being performed during subsistence of the first marriage of husband, but is of assistance in the present case, as well.

42. In ***Badshah*** (supra) the petitioner husband therein was already married. His second marriage was also proved between the parties to the said case. He duped the respondent therein by suppressing the factum of the first marriage. It was held that he (husband) could not be permitted to deny the benefit of maintenance to the respondents. The reasons for such course of action, as stated by the Hon'ble Apex Court, were threefold, one of which, we would refer, was that in such cases, purposive interpretation needs to be given. While dealing with an application of a destitute wife or hapless children, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the preamble of the Constitution of India. The preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

43. In ***Badshah*** (supra) the Hon'ble Apex Court further observed that the Courts have to adopt different approaches in "social justice adjudication" which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate.

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44. The Hon'ble Apex Court in para-14 of ***Badshah*** (supra), quoted, as described by Professor *Madhava Menon* as under:

> "It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication."

45. The Hon'ble Apex Court held that the provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

46. The Hon'ble Apex Court in ***Badshah*** (supra) observed that the law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the Court is to understand the purpose of law in society and to help the law achieve its purpose. The law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Change in social reality is the law of life, responsiveness to change in social reality is the life of the law. In both constitutional and

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statutory interpretation, the Court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law. The Hon'ble Apex Court held that there is a non-rebuttal presumption that the legislature while making a provision like Section 125 Cr.P.C, to fulfill its constitutional duty in good faith, had always intended to give relief to the woman becoming 'wife' under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice.

47. It is apt to refer paras-20, 21 & 22 in ***Badshah*** (supra) as under:

"**20.** Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in *Heydon case* [(1584) 3 Co Rep 7a : 76 ER 637] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction of *ut res magis valeat quam pereat* in such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 CrPC, such a woman is to be treated as the legally wedded wife.

21. The principles of Hindu Personal Law have developed in an evolutionary way out of concern for all those subject to it so as to make fair provision against destitution. The manifest purpose is to achieve the social

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objectives for making bare minimum provision to sustain the members of relatively smaller social groups. Its foundation spring is humanistic. In its operation field all though, it lays down the permissible categories under its benefaction, which are so entitled either because of the tenets supported by clear public policy or because of the need to subserve the social and individual morality measured for maintenance.

22. In taking the aforesaid view, we are also encouraged by the following observations of this Court in *Capt. Ramesh Chander Kaushal* v. *Veena Kaushal* [(1978) 4 SCC 70 : 1978 SCC (Cri) 508] : (SCC p. 74, para 9)

> "9. … The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts."

48. We are of the view that the object of providing family pension to wife after the death of the husband / government employee cannot be different from the object of providing maintenance during lifetime of the husband in case of divorce.

49. In our view, Rule 50 of the Rules 1980 is with intend to give relief to the woman becoming wife. Under such circumstances, even the wife from the second marriage was made entitled for family pension, as the main object of this rule was to give family pension to the wives i.e., more than one, and for that reason, to clarify the expression 'wife' used in Rule 50 (12) of the Rules 1980, Circular Memo dated 11.09.1996 was issued providing that irrespective of the personal Laws. The only thing that requires consideration is the permission from the department for second marriage.

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50. We have already referred to the judgment of the Hon'ble Apex Court in ***Vidhyadhari*** (supra) & ***Tulsa Devi Nirola*** (supra) that family pension is not the estate of the deceased. The nominee shall be the sole beneficiary. If the nomination is in favour of the second wife, she would be entitled to the family pension and not merely for the purpose of receipt of the family pension. There being nomination in favour of the 5th respondent by the deceased made during his lifetime, as per the pension proposals, as also entry in the service book, the 5th respondent would be entitled to family pension because of the nomination, irrespective of the fact that there was no permission taken from the department by the deceased government employee for second marriage. The point of permission may become relevant, if the 2nd wife also claims family pension, but there is neither permission for 2nd marriage to the government employee nor nomination in favour of 2nd wife.

51. Consequently, even if there was no permission for 2nd marriage, the 5th respondent cannot be denied family pension because of the Circular, provision rule 50 (12), when she had been nominated by the deceased Gaddam Danam.

52. In view of the above, we do not find force in the above submission of the learned counsel for the petitioner on the point of the permission.

53. In view of the above consideration, we find that to do complete justice between the petitioner and the 5th respondent, it is necessary to balance the equities in the facts and circumstances of this case.

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54. The order passed by the Tribunal is in advancement of the social justice doing justice, to both the petitioner and the 5th respondent.

55. We may observe that the amount of Rs.3,60,000/- was attached towards arrears of maintenance amount of the first wife under the orders of the Court as the maintenance awarded by the Family Court was not paid to the first wife. The FCOP.No.232 of 2011 was finally dismissed for want of prosecution, by order dated 03.07.2014. There is nothing on record to show that such amount was paid to the first wife/petitioner. We are of the view that such amount if not paid, but as that is the arrears towards maintenance granted to the petitioner during the lifetime of and against, the deceased Gaddam Danam, that amount should go to the petitioner the 1st wife, notwithstanding the dismissal of the FCOP No.232 of 2011 for default.

56. In the rest amount of dues towards the service benefits of the deceased, to balance the equities, we provide that the same shall go to the 5th respondent including the claim for medical bills.

57. With respect to the family pension, we provide that the petitioner and the 5th respondent, both shall be entitled in equal shares.

58. With the aforesaid directions and modification in the judgment of the Tribunal, the writ petition stands allowed in part.

59. Let the official respondents grant the benefit, as aforesaid, within a period of 6 (six) weeks from the date of receipt the copy of this judgment, without insisting for succession certificate from any of the parties i.e., the petitioner and the 5th respondent.

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60. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Dr. K. MANMADHA RAO, J

Date: 18.08.2023
Dsr

Note:
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