

Neutral Citation No. - 2024:AHC:5349

AFR

Reserved on 08.01.2024

Delivered on 11.01.2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 36

CASE :- WRIT - A No. - 11483 of 2023

Rajni Rani

Petitioner

Through : Sri Rakesh Kumar Rahore &
Sri Shyam Narayan Verma, Advs.

Vs.

State of U.P. and others

Respondents

Through : Sri Himanshu Singh &
Sri Siddharth Khare, Advs.

CORAM : HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. One, Sri Bhojraj Singh, was retired on attaining the age of superannuation on 30.06.2012 while working as Assistant Teacher in Maharaja Tej Singh, Junior High School Aurandh, Vikash Khand Sultanganj, District Mainpuri he and died on 02.10.2021. Petitioner is claiming retiral benefits of Sri Bhojraj Singh on strength of being his nominee, as mentioned in service book as well as that she was staying with late Sri Bhojraj Singh for many years as his wife.

2. Sri Rakesh Kumar Rathore and Sri Shyam Narayan Verma, Advocates appearing for petitioner, submitted that petitioner is not disputing that Respondent-10, Usha Devi, was legally wedded wife of Sri Bhojraj Singh. However, she left him many years ago and allegedly married to another person, therefore, she is not entitled for retiral benefits of Sri Bhojraj Singh. Learned counsel further submitted that there was a proceeding initiated at the instance of Respondent-10 under Section 125 Cr.P.C. wherein a compromise was entered and agreed amount was taken by Respondent-10 and thereafter she never claimed any maintenance allowance and as such she has abandoned her right, if any.

3. Per contra, Sri Himanshu Singh, Advocate holding brief of Sri Siddharth Khare, learned counsel for Respondent-10, has referred relevant part of impugned order and contended that since Respondent-10 is legally wedded wife of Sri Bhojraj Singh and there was no divorce between them, therefore, only on basis of being nominee or that petitioner stayed with Sri Bhojraj Singh for a long time, would not sufficient to accrue all retiral benefits to her. Relevant part of impugned order is reproduced hereinafter:

"उपर्युक्त अंकित विवरण का अवलोकन करने पर विदित होता है कि श्रीमती रजनीरानी एवं श्रीमती ऊषा देवी का विवाद न्यायालय तहसीलदार भोगांव के यहां विचाराधीन है तथा पूर्व में हुआ समझौता भी वर्तमान में प्रभावी है। जिला शासकीय अधिवक्ता (सिविल), मैनपुरी ने भी अपनी राय दिनांक- 29.11.2022 में राय व्यक्त की है कि विवाह विच्छेद का अधिकार हिन्दू विवाह अधिनियम की धारा-13 के अन्तर्गत परिवार न्यायालय को प्राप्त है किन्तु धारा-13 हिन्दू विवाह अधिनियम के अन्तर्गत पारित किया गया कोई भी निर्णय इस पत्रावली पर उपलब्ध नहीं है। ऐसी स्थिति में आवेदिका ऊषा देवी का विवाह विच्छेद नहीं माना जा सकता है। इस आधार पर आवेदिका ऊषा देवी के प्रार्थना पत्र पर विचार किया जाना उचित होगा।

निर्णय

श्रीमती ऊषा देवी पत्नी श्री भोजराज सिंह की पहली पत्नी होने के कारण एवं हिन्दू विवाह अधिनियम की धारा-13 के अन्तर्गत उनका विच्छेद/तलाक न होने के कारण वह परिवारिक पेंशन पाने की अधिकारी हैं। अतः उक्त के अनुक्रम में श्रीमती ऊषा देवी पत्नी श्री भोजराज सिंह को पारिवारिक पेंशन का लाभ अनुमन्य किया जाता है। तदुसार प्रकरण निस्तारित किया जाता है।" (Emphasis supplied)

4. In order to decide the controversy involved in this writ petition it would be appropriate to refer a judgment passed by Supreme Court in **Shipra Sengupta Vs. Mridul Sengupta and others (2009) 10 SCC 680** wherein it was held that a nominee of a Government employee is only a custodian and benefit after employee's death will confer to his/ her legal heirs. Relevant part of the judgment is reproduced hereinafter:

"17. The controversy involved in the instant case is no longer res integra. The nominee is entitled to receive the same, but the amount so received is to be distributed according to the law of succession. In terms of the factual foundation laid in the present case, the deceased died on 8.11.1990 leaving behind his mother and widow as his only heirs and legal representatives entitled to succeed. Therefore, on the day when the right of succession opened, the appellant, his widow became entitled to one-half of the amount of the general provident fund, the other half going to the mother and on her death, the other surviving son getting the same.

18. In view of the clear legal position, it is made abundantly clear that the amount under any head can be received by the nominee, but the amount can be claimed by the heirs of the deceased in accordance with the law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee. In the instant case the amounts so received are to be distributed according to the Hindu Succession Act, 1956."

(Emphasis supplied)

5. The aforesaid view of Supreme Court has been followed and reiterated by this Court also in **Smt. Suneeta vs. Union of India and others** (Writ-A No. 9128 of 2009), decided on 14.07.2022.

6. As referred above, it is not in dispute that petitioner was not legally wedded wife of Bhojraj Singh as well as it is also not in dispute that Respondent-10 was legally wedded wife of Bhojraj Singh as well as it is also not dispute that during life time of Sri Bhojraj Singh, he has not divorced Respondent-10.

7. The argument of learned counsel for petitioner that in the proceedings under Section 125 Cr.P.C. Respondent-10 has made a compromise, therefore, it would be sufficient to hold that she has abandoned her right, cannot be accepted since it would not be a correct legal approach. Today Respondent-10 is claiming her right and as held in **Shipra Sengupta (supra)** a nominee of a Government employee is just a custodian and benefit after

death of Government employee has to be conferred or granted in accordance with law, i.e., to his/ her legal heirs and in the present case Respondent-10 is the legal heir being legally wedded wife of Sri Bhojraj Singh and she was never divorced, therefore, I do not find any illegality in impugned order.

8. The writ petition is accordingly dismissed.

Order Date :-11.01.2024

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