



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2023

PRESENT



THE HON'BLE MR PRASANNA B. VARALE, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT APPEAL NO. 256 OF 2023 (S-R)

BETWEEN:

SMT. MAHALAKSHMAMMA
@ MAHALAKSHMI,
W/O LATE NANJUNDAIAH,
AGED ABOUT 51 YEARS,
R/AT BYLAPPANAMUTT,
MUDDENAHALLI POST,
CHIKNAYAKANAHALLI TALUK,
TUMAKURU DISTRICT 572 28.

...APPELLANT

(BY MS.SHARMILA GOWDA M R., ADVOCATE FOR
SRI. RAVINDRA M R.,ADVOCATE)

AND:

1. THE SECRETARY
DEPARTMENT OF RURAL DEVELOPMENT
AND PANCHAYATHRAJ,
M.S.BUILDING,
DR. AMBEDKAR VEEDHI,
BANGALORE-560 001.
2. THE ACCOUNTANT GENERAL (A & E)
KARNATAKA CIRCLE,
NEAR M.S.BUILDING,
DR.AMBEDKAR VEEDHI,
BANGALORE-560 001.





3. THE ASSISTANT EXECUTIVE ENGINEER
PANCHAYTH RAJ ENGINEERING SUB-DIVISION,
ARSIKERE 573 103
HASSAN DISTRICT.
4. HANUMANTHAIHAH
S/O LATE NANJUNDAIAH,
AGED ABOUT 34 YEARS,
R/AT BYLAPPANAMUTT,
MUDDENAHALLI POST,
CHICKANAYAKANAHALLI TALUK,
TUMAKURU DISTRICT 572 228.
5. THE CHEIF EXECUTIVE OFFICER
ZILLA PANCHAYATH,
HASSAN DISTRICT,
HASSAN-573 302.

...RESPONDENTS

(BY SMT.NILOUFER AKBAR., AGA FOR R1 & R2)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO i) SET ASIDE THE ORDER OF THE SINGLE JUDGE PASSED ON 14/12/2022 IN WP NO.33427/2016 OF THIS HON BLE COURT AS PER ANNEXURE-A AND ALLOW THE WRIT PETITION AS PRAYED FOR AND ii) DIRECT THE RESPONDENT NOS.1, 2 AND 3 TO GRANT PENSION TO THE APPELLANT FROM THE DATE OF THE DEATH OF HER DECEASED HUSBAND SRI. NANJUNDAIAH W.E.F. 14-01-2015 AND iii) PASS SUCH SUITABLE ORDER/s INCLUDING THE COST OF THE LITIGATION.

THIS WRIT APPEAL COMING ON FOR ORDERS THIS DAY,
CHIEF JUSTICE DELIVERED THE FOLLOWING:

**JUDGMENT**

This appeal is directed against a learned Single Judge's order dated 14.12.2022 whereby her W.P.No.33427/2016 (S-R) has been negated. The prayer in the writ petition was for the quashment of a letter dated 1st & 3rd December of 2015 whereby her request for the sanctioning of Family Pension along with arrears was rejected on the ground that she was a espoused by the employee when the first marriage was subsisting.

2. Learned counsel for the appellant argues that even the second wife is entitled to Family Pension and therefore the impugned order is liable to be voided. Learned Additional Government Advocate appearing for the official respondents nos. 1 to 3 repels this contention pointing out the undisputed fact that appellant had contracted the marriage with the employee when his first marriage was subsisting.



3. Having heard the learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter broadly agreeing with the reasoning of the learned Single Judge that the appellant was not the legally wedded wife for the purpose of grant of Family Pension. It hardly needs to be stated that amongst Hindus monogamy is not only ideal but a legal prescription and therefore marriage contracted when the first wife is alive, cannot be taken cognizance of by law, subject to all just exceptions into which the argued case of the appellant does not fit.

4. Recognizing such *relations* arising from second marriage during the subsistence of first one is detrimental to public interest inasmuch as that would facilitate directly or indirectly the employees contracting the second marriage, which is legally impermissible. Statutorily bigamy is an offence punishable u/s. 17 of the Hindu Marriage Act, 1955. The provisions of Rule 294 of the Karnataka Civil Services Rules provide for the sanctioning



of Family Pension to the family of a Government servant, after his demise in harness or post-retirement. Clause (i) of this Rule reads as under:

"(i) A family pension not exceeding the amount specified in sub-rule (ii) may be granted to the family of a Government servant who dies whether while still in service or after retirement, after completion of not less than 20 years qualifying service, for a period of ten years".

Rule 302(i) reads:

" 'Family' for the purpose of this rule will include the following relatives of the Government Servant: (a) Wife,...."

Thus Family Pension is payable to the "wife", and not to those whose marriage is 'no marriage' in the eye of law, the limited status of legitimacy of children begotten therefrom, by virtue of Sec.16 1955 Act, notwithstanding. The Apex Court in RAJ KUMARI vs. KRISHNA, (2015) 14 SCC 511 at para 13 observed as under:

"13. Normally, pension is given to the legally wedded wife of a deceased employee. By no stretch of imagination one can say that the plaintiff, Smt. Krishna was the legally wedded wife of late Shri Atam Parkash, especially when he had a wife, who was alive when he married



to another woman in Arya Samaj temple, as submitted by the learned counsel appearing for the appellants. We are, therefore, of the view that the High Court should not have modified the findings arrived at and the decree passed by the trial court in relation to the pensionary benefits. The pensionary benefits shall be given by the employer of late Shri Atam Parkash to the present appellants in accordance with the rules and regulations governing service conditions of late Shri Atam Prakash”.

5. The Committee constituted under the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) reaffirms paragraph 14 of its General Recommendation No.21 which reads: *“polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited”...* The Committee’s view is consistent with the African Union’s position in the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol), that *‘monogamy is encouraged as the preferred form of marriage...’* . India being a party State



ratified CEDAW on 09.07.1993 expressing its commitment to the General Resolution which needs to be read into our Domestic Law, in the absence of contra statute, in view of Article 51(c) of the Constitution of India vide **N.D.JAYAL vs. UOI, (2004) 9 SCC 362.**

In the above circumstances, this appeal being devoid of merits is liable to be and accordingly dismissed.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

Snb/
List No.: 1 Sl No.: 20