



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 276 of 2018

Date of Decision: 10.05.2023

Smti Dhansari Rana

Vs.

Union of India & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K.C. Gautam, Adv.

For the Respondent(s) : Mr. R. Debnath, CGC

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER

1. The petitioner who is presently residing at Happy Valley, Shillong is a permanent resident of village Balkota, VDO, Ward No. 2, P.O. Balkota, District Parbat, Dhaulagiri Zone, Nepal, has approached this Court with this petition under Article 226 of the Constitution of India with a prayer for grant of family pension, which pensionary benefits is due and entitled to her on account of the service of her deceased husband Man Bir Rana, Ex-NK,



20 Assam Rifles.

2. Heard Mr. K.C. Gautam, learned counsel appearing on behalf of the petitioner who has submitted that the petitioner is the widow of late Man Bir Rana who, during his lifetime was serving in the Assam Rifles, being enrolled in the same on 05.12.1957 and was discharged on 05.08.1976 on superannuation, after rendering service for eighteen years and seven months and one day of service. Thereafter, he went back to his native place at village Balkot, Nepal till his death on 20.10.2006. During his lifetime, the deceased was receiving his monthly pension from Assam Rifles.

3. The petitioner is admittedly the second wife of the said deceased, Man Bir Rana having married him in the year 1974, two years before his retirement. The marriage was solemnized, while the marriage between the deceased husband of the petitioner and his first wife is still subsisting. This is the customary practice amongst the Rana community Hindus of Nepal, one of the factors being that if the first wife could not bear a child during the first ten years of her marriage, then with her consent, the second marriage can be contracted. The first wife was also still living at the relevant time, but at the time of filing this petition, she is since deceased.

4. It is also submitted that soon after the death of the deceased



husband of the petitioner, she had received a sum of ₹ 23,262/- (Rupees twenty-three thousand two hundred and sixty-two) only as Life Time Arrears (LTA) of pension due and payable to her deceased husband for the period from 01.05.2006 to 20.10.2006, wherein it was specifically mentioned therein that the said pension was paid to Dhan Siri Rana, widow of the deceased, Man Bir Rana.

5. The petitioner has then applied to the respondent authorities for grant of family pension to her. However, the prayer was rejected on the ground that under the prevalent rules and as per the provisions of the Hindu Marriage Act, a second wife is not entitled to family pension, if the deceased service holder/pensioner had remarried during the lifetime of his first wife. It is also the stand of the respondent authorities that the deceased, Man Bir Rana had not disclosed the factum of the second marriage to the authorities at the relevant time. The decision of the respondent authorities was communicated by Col. P.K. Sharma on behalf of the Director General Assam Rifles, Shillong to the Indian Embassy, Pension Paying Office, Pokhara, Nepal, copy of which was also marked to the petitioner, by communication dated 21.10.2008.

6. Against the decision conveyed vide letter dated 21.10.2008, the petitioner filed another representation to the respondent authorities and on



being called upon to submit relevant documents, the matter was finally decided and conveyed to her vide letter No. PAO/AR/PEN/FP Cell/2015-16/ dated 13.08.2015, indicating that the respondents has rejected her claim, primarily on the ground that the case attracts the provision of Section 11 of the Hindu Marriage Act, 1955 which annulled a second marriage and the petitioner as the second wife was therefore, not found eligible for family pension as clarified under Rule 54 GID 13 of CCS (Pension) Rules, 1972.

7. The learned counsel has then submitted that the contention of the petitioner would be that the provisions of the Hindu Marriage Act, 1955 would not be applicable to her since she is not a Hindu domiciled in India, but a Hindu domiciled in Nepal, though presently residing in India. It is clarified that the Hindu Marriage Act would be applicable to all Hindus who are citizens of India, but would not be applicable to a person who is not a citizen of India but may be a Hindu by caste.

8. In this regard, the case of **Sondur Gopal v. Sondur Rajini: (2013) 7 SCC, 426, para 18, 19, 21, 23, 24 & 27** was referred to by the petitioner which para is reproduced herein below as:

“18. Rival submission necessitates examination of extent and applicability of the Act. Section 1(2) of the Act provides for extent of the Act. The same reads as follows:

“1. Short title and extent.—(1)

(2) It extends to the whole of India except the State of



Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.”

From a plain reading of Section 1(2) of the Act, it is evident that it has extra-territorial operation.

19. The general principle underlying the sovereignty of States is that laws made by one State cannot have operation in another State. A law which has extra-territorial operation cannot directly be enforced in another State but such a law is not invalid and is saved by Article 245(2) of the Constitution of India. Article 245(2) provides that:

“245. (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.”

But this does not mean that law having extra-territorial operation can be enacted which has no nexus at all with India. In our opinion, unless such contingency exists, Parliament shall be incompetent to make a law having extra-territorial operation.

21. Bearing in mind the principle aforesaid, when we consider Section 1(2) of the Act, it is evident that the Act extends to the Hindus of whole of India except the State of Jammu and Kashmir and also applies to Hindus domiciled in India who are outside the said territory. In short, the Act, in our opinion, will apply to Hindus domiciled in India even if they reside outside India. If the requirement of domicile in India is omitted altogether, the Act shall have no nexus with India which shall render the Act vulnerable on the ground that extra-territorial operation has no nexus with India. In our opinion, this extra-territorial operation of law is saved not because of nexus with Hindus but Hindus domiciled in India.

23. Now, we revert to the various decisions of the High Courts relied on by the Senior Counsel for the respondent wife.

24. The first in sequence is the decision of Calcutta High Court in the case of Prem Singh [AIR 1973 Cal 425]. In this case, the husband submitted an application for restitution of conjugal rights inter alia pleading that he had married his wife according to Hindu rites in India. After the marriage, they continued to live



as husband and wife and a daughter was born. The grievance of the husband was that the wife had failed to return to the matrimonial home which made him file an application for restitution of conjugal rights. The trial court noticed that the husband was a Nepali and he was not a domicile in India and therefore, he could not have invoked the provisions of the Act. While interpreting Sections 1(1) and 2(1) of the Act, the Court held that as regards the intra-territorial operation of the Act, it is clear that it applies to Hindus, Buddhists, Jainas and Sikhs irrespective of the question as to whether they are domiciled in India or not. Having given our most anxious consideration, we are unable to endorse the view of the Calcutta High Court in such a wide term. If this view is accepted, a Hindu living anywhere in the world, can invoke the jurisdiction of the courts in India in regard to the matters covered under the Act. To say that it applies to Hindus irrespective of their domicile extends the extra-territorial operation of the Act all over the world without any nexus which interpretation if approved, would make such provision invalid. Further, this will render the words “domiciled” in Section 1(2) of the Act redundant. Legislature ordinarily does not waste its words is an accepted principle of interpretation. Any other interpretation would render the word “domicile” redundant. We do not find any compelling reason to charter this course. Therefore, in our opinion, the decision of the Calcutta High Court taking a view that the provisions of the Act would apply to a Hindu whether domiciled in the territory of India or not does not lay down the law correctly. One may concede to the applicability of the Act if one of the parties is Hindu of Indian domicile and the other party a Hindu volunteering to be governed by the Act.

27. Section 2(1) provides for the application of the Act. The same reads as follows:

2. Application of Act.– (1) This Act applies –

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and



(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.”

This section contemplates application of the Act to a Hindu by religion in any of its forms or Hindu within the extended meaning i.e. Buddhist, Jaina or Sikh and, in fact, applies to all such persons domiciled in the country who are not Muslims, Christians, Parsi or Jew, unless it is proved that such persons are not governed by the Act under any custom or usage. Therefore, we are of the opinion that Section 2 will apply to Hindus when the Act extends to that area in terms of Section 1 of the Act. Therefore, in our considered opinion, the Act will apply to a Hindu outside the territory of India only if such a Hindu is domiciled in the territory of India.”

9. As to the contention of the respondents in their affidavit-in-opposition that the case of the petitioner is hit by the provision of Rule 21 of the Central Civil Services (Conduct) Rules, 1964 which stipulates that though a Government servant can enter into a second marriage, while still being married to a living spouse, however he has to obtain prior permission from the Government, the learned counsel has submitted that there is a proviso to the said Rule which says that the Government may permit a Government servant to enter into a second marriage, if such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage.

10. Again, the learned counsel has submitted that there are certain



sections of the communities who are domiciled in India whose personal laws permits a second or more than one marriage while the marriage with the first wife is subsisting and it is to safeguard the interest of such persons that the proviso to Rule 21 of the CCS Rules was made.

11. Coming to the case of Gorkhas who are serving in India, but who are domiciled in Nepal, particularly those serving in the armed forces, the situation is different. There is a specific provision in the Army Regulation No. 333 which provides that a Gorkha personnel who is domiciled in Nepal but serving in India can enter into a second marriage while the first wife is still living without the prior sanction of the Government. Similar provision is also under the Assam Rifles Regulation 2016, wherein in Regulation No. 160, particularly at 160(B), it is provided that Gorkha of Nepalese domicile can contract a plural marriage under certain condition, one of which applies to the case of the deceased husband of the petitioner herein, that is, if the marriage to the first wife does not result in an issue even after 10 years of marriage.

12. It is therefore the prayer of the petitioner that the respondent authorities may be directed to release the family pension and other similar benefits due and payable her deceased husband and which benefits have now devolved on her.



13. Per contra, Mr. R. Debnath, learned CGC, appearing on behalf of the respondents has submitted that the issue to be considered in this matter is only with regard to the applicability of the relevant rules and regulations governing the service of the deceased husband of the petitioner, particularly the rules relating to pension and pensionary benefits.

14. The learned CGC, at the outset, has submitted that the respondents do admit that the petitioner is the second wife of the deceased, Man Bir Rana, who was married to her during the subsistent of his marriage with the first wife who was then still alive. It is also admitted that at some point of time, the respondent authorities had disbursed the life time arrears of pension of the deceased husband of the petitioner in the petitioner's name.

15. As regard the service conditions of the deceased husband of the petitioner, the learned CGC has submitted that as far as pensionary benefits are concerned, his service is subjected to the provision of the Central Civil Services (Pension) Rules 1972 even if he is a domicile of Nepal residing and serving within the territories of India whether in the Army or the Assam Rifles or in any government departments.

16. As to the status of a person domiciled in Nepal, but serving in India, the learned CGC has submitted that this was made possible on the basis of "Treaty of Peace and Friendship" between India and Nepal penned



on 31.07.1950. In the context of this case, the contents of Article 7 of the said Treaty were pointed out by the learned CGC which reads as follows:

“Article 7:

The Governments of India and Nepal agree to grant, on reciprocal basis, to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature.”

17. It is therefore, the contention of the learned CGC that once a person who may even be a domicile of Nepal, if he or she is serving in India in any government departments, he or she is governed by the law, rules and regulations applicable in, and to the citizens of India. In the case of the deceased husband of the petitioner, while he was serving in India, he is accordingly governed by the relevant rules applicable to his service conditions, including the provisions of the CCS (Pension) Rules, 1972.

18. The learned CGC has also submitted that since the petitioner and her deceased husband are Hindus by religion, they are accordingly regulated by the provisions of the Hindu Marriage Act, 1955 and as per Section 11 of the said Act, plural marriage is prohibited and as such, the marriage between the petitioner and her deceased husband, especially when the marriage of the deceased husband and his first wife is still subsisting, is in violation of the provision of the Act and cannot be considered a legally



valid marriage.

19. It is, however, submitted that as to plural marriage, the same is governed by the provision contained in Rule 21 of the Central Civil Services (Conduct Rules) 1964 under the proviso to sub-Rule 2 of the same where plural marriage has been allowed, subject to the two conditions found in the said proviso, more pertinently, one of which deals the requirement of prior permission of the Government. The said Rule is reproduced herein as:

“21. Restriction regarding Marriage

- (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and*
- (2) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person:*

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause(2), if it is satisfied that–

- (a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and*
- (b) there are other grounds for so doing.*
- (3) A Government servant who has married or marries a person other than of India nationality shall forthwith intimate the fact to the Government.”*

20. The learned CGC has also contended that the customary law of Nepal upon which the petitioner had taken recourse to justify her marriage



with the deceased, admittedly, being a second marriage is not applicable in India. This is with regard to the applicability of the Assam Rifles Regulation, 2016 with specific reference to regulation 160 (B) (d) (e) of the same and therefore, the claim of the petitioner for pensionary benefits as has been prayed for in this petition cannot be considered.

21. This Court has carefully considered the argument advanced by the respective counsels for the parties. From the facts as indicated above, what is apparent is that there is no quarrel that the deceased, Man Bir Rana was serving in the Assam Rifles during his lifetime and had also retired from service in the year 1976. It is also on record that he was married to Smti. Amrita Rana who died on 23.03.2006. Again, it has been stated that he married the petitioner on 27.11.1974 while his first marriage was subsisting and he was also still in service at that point of time.

22. From the copy of the brief sheet of destroyed service record pertaining to the deceased at Sl. No. 7 of the same and under the column ‘(a) Wife’, the name of Smti. Amrita Rana appeared. Again, from the copy of the Pension Payment Order (Pensioner’s Portion), and the accompanying notification thereto, it is also revealed that pension for a sum of ₹ 70/- is to be disbursed in the name of the deceased, Man Bir Rana, the same commencing from 06.08.1976. What is indicated therein is that in the



event of his death, the family pension of ₹ 72/- per month is to be paid to Smti. Amrita Rana. The said pension is payable at IEPPO Pokhra.

23. Again, the respondent authorities has, in their affidavit-in-opposition annexed at Annexure-II a communication to the Director General, Assam Rifles (Record Branch), Shillong, being No. 24(2007)/FP/AR/Pok/652 dated 29.01.2008 wherein the Lt. Col. Officer-in-Charge, Indian Embassy Nepal, Pension Paying Office, Pokhara has clearly stated that (L) Man Bir Rana of 20 Assam Rifles retired from service with effect from 05.08.1976 and died on 20.10.2006. The family pension was sanctioned in advance in favour of Smti. Amrita Rana, the first wife but she died on 23.03.2006. The deceased pensioner got remarried to Smti. Dhansari Rana, second wife on 27.11.1974, that is, while on active service. Payment on account of 'Life Time Arrear' has therefore been paid to Smti. Dhansari Rana, junior widow. This, in effect is an admission by the respondent authority of the existence of the petitioner as the second wife of the deceased.

24. Now, on the issue of the applicability of the provisions of the Hindu Marriage Act, 1955, the respondents have referred to Section 11 of the same to say that since the deceased, Man Bir Rana was already married at the time when he has allegedly married the petitioner in the year 1974,



therefore the said marriage is hit by the provision of Section 11 of the said Act. Under Section 5, in which is listed the various conditions for a valid marriage, one of such conditions stipulate that a marriage may, inter alia, be solemnised between two Hindus if neither party has a spouse living at the time of the marriage. Section 11 provides that any marriage solemnised after the commencement of the Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

25. However, as was submitted by the learned counsel for the petitioner, the provisions of the Hindu Marriage Act, 1955 will not be applicable to Hindus of Nepalese domicile, meaning thereby that the case of the petitioner being the second wife during the subsistence of the marriage of the deceased with the first wife will not be attracted by either Sections 5 or 11 of the said Act, the same is found acceptable in the light of the authority cited in the case of *Sondur Gopal v. Sondur Rajini* (supra) wherein the Hon'ble Calcutta High Court has held that "...the Act will apply to a Hindu outside the territory of India only if such a Hindu is domiciled in the territory of India.", which in essence means that for a Hindu who is living in India but is a domicile of Nepal, the provisions of



the Act will not apply.

26. The respondent authorities having admitted that the petitioner is the second wife of the deceased, Man Bir Rana, has however submitted that the deceased has failed to comply with the provision of clause (b) of sub-Rule 12 of Rule 54 of the CCS (Pension) Rules which stipulate that a Government servant shall communicate to the Head of Office any subsequent change in the size of the family, including the fact of marriage of his female child, inasmuch as the fact of his second marriage to the petitioner herein was not informed by the deceased to his department.

27. The learned CGC has also pointed out that under Rule 21 of the CCS (Conduct) Rules, 1964 there is a restriction to plural marriage by a Government servant, though under the said Rule it is also provided that the Government may permit a Government servant to enter into such marriage if, inter alia the personal law applicable to the parties does not prohibit such a union. In this context, it is further submitted that sub-Rule 13 of Rule 54 of the CCS (Pension) Rules, 1972 stipulates that a second wife is not entitled to family pension as a legally wedded wife under the Hindu Marriage Act implying that the petitioner herein is not entitled to the family pension of the deceased, Man Bir Rana on the ground that she is his second wife.

28. As pointed out above, the provisions of the Hindu Marriage Act



do not apply to the petitioner or her deceased husband and as such, sub-Rule 13 of Rule 54 (supra) has no relevance to the case of the petitioner.

29. As to the fact that plural marriage, where a personnel of the Assam Rifles is concerned, is allowed or not, the same can be answered by referring to the provisions of the Assam Rifles Regulation, 2016 as was pointed out by the parties, wherein the learned CGC would submit that looking at regulation 160 under the heading 'Plural Marriages' what is evident is that though plural marriage is allowed to whom the Hindu Marriage Act does not apply and whose personal law does not prohibit polygamy or polyandry, however, no person subject to the Assam Rifles Act can marry again within the life time of his wife without prior sanction of the Government, which was not done so in the case of the petitioner.

30. In response to this, the learned counsel for the petitioner has submitted that from the language of regulation 160 (B) (a) what can be discerned is that a person who is subjected to the Assam Rifles Act, can marry again within the life time of his wife with the prior permission of the Government. However, this restriction of prior sanction by the Government is not applicable to Gorkha personnel of Nepalese domicile, which means that personnel of Nepalese domicile can marry another person within the life time of his wife without seeking prior permission from the authorities



concerned.

31. Applied to the context of the case of the parties herein, the picture is now clear inasmuch as the petitioner and her deceased husband are not subjected to the provisions of the Hindu Marriage Act and as such, having contracted a second marriage during the life time of his first wife, the deceased has not run afoul of Section 5 read with Section 11 of the Hindu Marriage Act, 1955.

32. As to the issue or the objection raised by the respondents herein that the deceased husband has not informed the concerned authorities of his marriage with the petitioner who is his second wife, during the life time of his first wife, the fact that the status of the petitioner as the second wife of the deceased, Man Bir Rana was acknowledged by the concerned authorities, when the Life Time Arrear due and payable to the deceased was disbursed to the petitioner would only prove that this objection has become redundant at this juncture, as inference could be drawn to the affirmation of such union between the parties by the concerned authorities.

33. In the light of the above observations, this Court is of the considered opinion that the petitioner has made out a case of establishing the fact that she is the second wife of the deceased, Man Bir Rana and having received the Life Time Arrears in that capacity, given the fact that



the first wife of the deceased has since expired, she is accordingly entitled to the family pension, which was denied to her by the impugned letter No. PAO/AR/PEN/FP Cell/2015-16/ dated 13.08.2015.

34. The said impugned order dated 13.08.2015 is hereby set aside and quashed and the respondent authorities are accordingly directed to facilitate the payment of family pension to the petitioner, preferably within a period of three months from the date of this order.

35. Petition disposed of. No costs.

Meghalaya
10.05.2023
"Tiprilynti-PS"



Judge