

PETITIONER:
RAMESHWARI DEVI

Vs.

RESPONDENT:
STATE OF BIHAR AND OTHERS

DATE OF JUDGMENT: 27/01/2000

BENCH:
D.P.Wadhawal, S.N.Phukan

JUDGMENT:

D.P. Wadhwa, J.

Leave granted.

Appellant is aggrieved by judgment dated April 23, 1998 of the Division Bench of the Patna High Court passed in Letters Patent Appeal affirming the judgment of the learned single Judge dated April 26, 1996.

Dispute concerns to payment of family pension and death-cum- retirement gratuity to two wives of Narain Lal, who died in 1987 while posted as Managing Director, Rural Development Authority of the State of Bihar. Appellant is the first wife. Narain Lal is stated to have married second time with Yogmaya Devi on April 10, 1963 while the appellant was still alive. From the first marriage he had one son and from the second marriage four sons born in 1964, 1971, 1972 and 1976. Learned single Judge in his judgment held that children born to Narain Lal from the wedlock with Yogmaya Devi were entitled to share the family pension and death-cum-retirement gratuity and further that family pension would be admissible to the minor children only till they attained majority. He also held that the second wife Yogmaya Devi was not entitled to anything. Appeal by the first wife Rameshwari Devi against the judgment was dismissed by the Division Bench. According to her there was no marriage between Narain Lal and Yogmaya Devi and the children were, therefore, not legitimate. Aggrieved Rameshwari Devi has come to this Court.

On filing of the special leave petition notices were issued to the respondents. In response thereto counter affidavits have been filed by - (1) Yogmaya Devi, (2) State of Bihar and (3) Accountant General (A&E) II Patna.

Stand of the State Government is that Rameshwari Devi was the legally married wife of Narain Lal. He married again to Yogmaya Devi in April, 1963 and that the marriage with Yogmaya Devi was against the provisions of law as contained in Sections 5 and 11 of the Hindu Marriage Act, 1955. It was, therefore, a void marriage. Second wife had thus no status and could not claim any share from the estate of Narain Lal as per the provisions of Hindu Succession Act,

1956. Accordingly State Government sanctioned family pension and gratuity to Rameshwari Devi by its order dated August 22, 1995. By this order the State Government cancelled its previous two orders dated September 23, 1993 and October 6, 1993. Group insurance and final withdrawal of GPF had already been sanctioned to Rameshwari Devi. However, in compliance with the order of the High Court dated April 26, 1996 in writ petition filed by Yogmaya Devi family pension, gratuity, GPF, pay for unutilised leave and group insurance were sanctioned to Rameshwari and her son and minor sons of Yogmaya Devi.

Accountant General in his affidavit has only to refer to the action of the State Government in cancelling its earlier order dated September 23, 1993 and fresh order dated August 22, 1995 authorising all the payments to Rameshwari Devi being the sole recipient of family pension and death-cum-retirement gratuity. Accountant General says that on the orders of the State Government it authorised full family pension and full gratuity to Rameshwari Devi. Reference was then made to writ petition filed by Yogmaya Devi in the High Court and when the State Government on the basis of the order of the High Court issued fresh order dated October 17, 1996 Accountant General accordingly authorised 50% of family pension and death-cum-retirement gratuity to the minor children of Yogmaya Devi. A direction was issued to the Treasury Officer to recover excess amount of family pension and death-cum-retirement gratuity paid to Rameshwari Devi and further to reduce her family pension and death-cum-retirement gratuity by 50%. Accountant General is non-committal if the children of Yogmaya Devi are legitimate or illegitimate children of Narain Lal and rightly so. He has merely to act as per the directions issued by the State Government.

Rameshwari Devi has disputed the very factum of marriage between Narain Lal and Yogmaya Devi. Her case is that nothing has come on record to show that there was any valid marriage solemnized as per Hindu law between Yogmaya Devi and Narain Lal. Yogmaya Devi says that from the time of her marriage with Narain Lal in April, 1963 she has been continuously living with Narain Lal as his wife. At the time of her marriage she had no knowledge if Narain Lal had earlier been married. She has referred to various judgments of this Court to show that when two persons are living together for long years as husband and wife, in such circumstances, even in absence of proof, a presumption of valid marriage between them would arise. She says nothing has been brought on record to rebut that presumption. In *Badri Prasad vs. Dy. Director of Consolidation & Ors.* [(1978) 3 SCC 527] this Court said that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy. The Court further observed that if men and women who live as husband and wife in society are compelled to prove, half a century later, by eye-witness evidence that they were validly married, few will succeed. There have been various other judgments of this Court holding where a man and a woman live together for long years as husband and wife then a presumption arose in law of legality of marriage existed between the two, though the presumption is rebuttable.

An inquiry report dated December 11, 1987 of ADM, Danapur Sub Division, Danapur, Patna has been brought on record. According to this report on inquiry it was found that Narain Lal had married twice. First time to Rameshwari Devi in 1948 and second time to Yogmaya Devi on April 10, 1963. There is mention of one son from his first marriage with Rameshwari Devi and four sons from marriage with Yogmaya Devi. Two persons have testified to the marriage of Yogmaya Devi with Narain Lal. Both Narain Lal and Yogmaya Devi had lived together as husband and wife at all the places wherever Narain Lal was posted. This fact was also verified from the colleagues of Narain Lal and their wives. That four sons were born to Narain Lal from his marriage with Yogmaya Devi has also been similarly testified.

Now, when first order was cancelled by the State Government and second passed depriving Yogmaya Devi and her children of any right in the pensionary benefits of Narain Lal, she filed writ petition in the High Court, which, as noted above, was allowed by the learned single Judge and later appeal filed by Rameshwari Devi against that was dismissed by the Division Bench of the High Court which is impugned. Learned single Judge referred to Section 16 of the Hindu Marriage Act, 1955 holding that even though the marriage of Narain Lal with Yogmaya Devi was void their children would be legitimate and thus would be entitled to claim share in the family pension and death-cum-retirement gratuity of Narain Lal but only till they attained majority. Learned single Judge accordingly issued direction to the State Government to issue fresh sanction order for payment of arrears of family pension and death-cum-retirement gratuity to the minor children born from the wedlock between Yogmaya Devi and Narain Lal till they attain majority but nothing would be payable to Yogmaya Devi.

Mr. Dubey, counsel for Rameshwari Devi, submitted that inquiry conducted by the State Government as to the marriage of Narain Lal with Yogmaya Devi was incompetent as there was no lawful authority with the State Government to hold such an inquiry. It was for Yogmaya Devi to establish her right of her being married to Narain Lal in a court of law. Mr. Dubey said under the relevant Conduct Rules applicable to Narain Lal he could be charged with misconduct of his having married a second time during the life time of his first wife. It is only in that circumstance when there is charge of misconduct there could be an inquiry as to the marriage of Narain Lal with Yogmaya Devi. He referred to Rule 21 of the Central Civil Service (Conduct) Rules as well as to Rule 23 of the Bihar Government Servant's conduct Rules, 1976, which are as under:-

CCS Rules "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 Indian nationality shall forthwith intimate the fact to the Government.

Bihar Government Servant's Conduct Rules, 1976

23. Restrictions regarding marriages. (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 Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (4) 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 Indian Nationality shall forthwith intimate the fact to the Government."

We may also note two judgments of this Court on the question when there is charge of misconduct against a Government servant. In State of Karnataka and another vs. T. Venkataramanappa (1996 (6) SCC 455) the respondent, a police constable was prosecuted at the instance of his wife for having contracted second marriage. He was discharged for want of evidence. A departmental inquiry was instituted against him for having contracted second marriage, for which he was suspended. He approached the Karnataka Administrative Tribunal against the order of suspension and for stopping of the inquiry against him on the ground that a criminal court had discharged him of the offence of bigamy. Tribunal accepted the stand of the respondent, quashed the departmental proceedings and lifted the suspension. On appeal filed by the State this Court said as under: --

"There is a string of judgments of this Court whereunder strict proof of solemnisation of the second marriage, with due observance of rituals and ceremonies, has been insisted upon. The prosecution evidence in the criminal complaint may have fallen short of those standards but that does not mean that the State was in any way debarred from invoking Rule 28 of the Karnataka Civil Service Rules, which forbids a government servant to marry a second time without the permission of the Government. But, here the respondent being a Hindu, could never have been granted permission by the Government to marry a second time because of his personal law forbidding such marriage. It was thus beyond the ken of the Tribunal to have scuttled the departmental proceedings against the respondent on the footing that such question of bigamy should normally not be taken up for decision in departmental enquiries, as the decisions of competent courts tending to be decisions in rem would stand at the highest pedestal. There was a clear fallacy in such view because for purposes of Rule 28, such strict standards, as would warrant a conviction for bigamy under Section 494 IPC, may not, to begin with, be necessary."

In State of W.B. and others vs. Prasenjit Dutta (1994 (2) SCC 37) departmental proceedings were initiated against the respondent, who was a member of the Police Service of the State of West Bengal under Rule 5(4) of the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 for having contracted a second marriage. That Rule says that no government employee

who has a wife/husband living shall contract another marriage without previously obtaining the dissolution of the first marriage in accordance with law for the time being in force, notwithstanding such second marriage is permissible in the personal law of the community to which he or she belongs. On an inquiry made by an officer, appointed for the purpose, and on his report that the respondent was guilty of misconduct alleged, an order of dismissal was passed by the disciplinary authority. Respondent approached the High Court and the order of his dismissal was stayed. Nevertheless High Court was of the view that the second marriage was a serious matter, which could not be left to be decided by the departmental authorities, in proceedings such as these, and a civil or matrimonial court needs to pronounce thereon properly and finally. On appeal filed by the State Government this Court said: --

"The view of the High Court may be correct that a matter such as the present one concerning the existence or not of a relationship of husband and wife is normally to be dealt with in a matrimonial or a civil court. It cannot at the same time be said that the departmental authorities cannot go into such question for the limited purposes of sub-rule (4) of Rule 5 of the aforesaid Rules. When contracting another marriage, in the presence of the previous one, has been termed to be misconduct visiting departmental punishment it is difficult to keep suspended action under the Rule till after a proper adjudication is made by the civil or matrimonial court. It would, thus, have to be viewed that the departmental proceeding could not be shut in the manner in which the High Court has done and it would have to go on to some finality at a departmental end, on the culmination of which, it may then give rise to the delinquent approaching the civil court for determining his matrimonial status."

But then it is not necessary for us to consider if Narain Lal could have been charged of misconduct having contracted a second marriage when his first wife was living as no disciplinary proceedings were held against him during his lifetime. In the present case, we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long drawn affair. Doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. Decision has to be taken in a bona fide reasonable and rational manner. In the present case an inquiry was held which cannot be termed as sham. Result of the inquiry was that Yogmaya Devi and Narain Lal lived as husband and wife since 1963. A presumption does arise, therefore, that marriage of Yogmaya Devi with Narain Lal was in accordance with Hindu rites and all ceremonies connected with a valid Hindu marriage were performed. This presumption Rameshwari Devi has been unable to rebut. Nevertheless, that, however, does not make the marriage between Yogmaya Devi and Narain Lal as

legal. Of course, when there is a charge of bigamy under Section 494 IPC strict proof of solemnisation of the second marriage with due observance of rituals and ceremonies has been insisted upon.

It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of Section 5 of the Hindu Marriage Act and was a void marriage. Under Section 16 of this Act, children of void marriage are legitimate. Under the Hindu Succession Act, 1956, property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see Sections 8, 10 and the Schedule to the Hindu Succession Act, 1956). Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment. Rameshwari Devi has raised two principal objections : (1) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi with her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. First objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. Inquiry was quite detailed one and there are in fact two witnesses examined during the course of inquiry being (1) Sant Prasad Sharma, teacher, DAV High School, Danapur and (2) Sri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, Rtd. District Judge, Bhagalpur, Smt. (Dr.) Arun Prasad, Sheohar, Smt. S.N. Sinha, w/o Sri S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the

marriage between Yogmaya Devi and Narain Lal were shown in records as sons of Narain Lal.

Having considered all the facts of the case as presented before us we do not find any error in the impugned judgment of the Division Bench of the Patna High Court upholding the judgment of the learned single Judge referred to in the beginning of this judgment. The appeal, therefore, fails and is dismissed. However, there shall be no order as to costs.

