Court No.1
Reserved Judgment

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 214 OF 2017

Friday this the 18th day of May, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

JC-74264W Ex Ris/Hony Capt Gyan Singh
Son of Late Shri Siaram Singh
R/o House No.1678, Shambhunagar,
Near Pali Degree College, Shikohabad
District – Firozabad (UP)

……Applicant

Ld. Counsel for the Applicant : **Shri R. Chandra, Advocate**

Versus

1. Union of India, through the Secretary,
   Ministry of Defence, Government of India,
   New Delhi-110011.

2. Chief of the Army Staff,
   Integrated Headquarters
   New Delhi – 110011

3. The Officer-in-Charge
   Armoured Corps Records
   PIN-900476, C/o 56 APO

3. PCDA (P) Draupadi Ghat,
   Allahabad (UP)

……Respondents

Ld. Counsel for the Respondents : **Shri Ashish Saxena,**
Ld. Counsel for Central Govt.

ORDER

Per Hon'ble Mr. Justice S.V.S.Rathore, Member (J)

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs :-

> *"(i) The Hon'ble Tribunal may be pleased to direct the respondent No 3 and No 4 to issue Corrigendum PPO as per respondent No 3 letter dated 13/06/2015 (Annexure No A-6).*
>
> *(ii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case."*

2. In brief the facts giving rise to the instant O.A. may be summarised as under :

The averments of the applicant in O.A. is that the applicant was enrolled in the Indian Army in ARMD Corps on 24.11.1957. His marriage was solemnised on 15.10.1985 with Smt. Pushpa Devi. On 30.11.1985, the applicant was discharged from service on was getting service pension. In the PPO, there was joint notification with Smt. Atar Pyari. On 16.09.2013, the applicant's first wife Smt. Atar Pyari expired. The respondent no.3 published the occurrence regarding demise of applicant's wife Smt. Atar Pyari on 16.09.2013. On 07.01.2014 the respondent no.3 issued service particulars in which family details were given. Thereafter on 11.09.2014 the respondent no.3 published the Part II Order regarding applicant's marriage with Smt. Pushpa Devi on 15.10.1085 and date of birth of Smt. Pushpa Devi is 24.03.1967. Thereafter the applicant gave a petition on 25.05.2015 and requested for issuing corrigendum PPO correcting the name of his wife as Smt. Pushpa Devi as joint notification. On 13.06.2015, the respondent no.3 has intimated to the applicant that case for endorsement of family pension with the second wife Smt. Pushpa Devi has already been forwarded to the PCDA (P), Allahabad for issue of corrigendum PPO on 05.03.2015. On 12.04.2016, Jila Sainik Kalyan Evam Punarvas, Firozabad approached the respondent no.3, but no reply has been received regarding the joint notification in the PPO with second wife Smt. Pushpa Devi, hence this O.A. has been filed.

3. In the counter affidavit filed on behalf of the respondents, it has been submitted that Ex Hony Capt Gyan Singh was firstly married with Smt. Atar

Pyari on 01.07.1953 i.e. before his enrolment according to Hindu rites and custom. From the said wedlock, a male child was born on 02.02.1979, who unfortunately died on 25.01.1982. Thereafter the first wife of the applicant Smt. Atar Pyari died on 16.09.2013 and it was published vide AC Records Part II on 27.12.2013. The applicant during the life time of his first wife namely Smt. Atar Pyari, remarried with Smt. Pushpa Devi on 15.10.1985. The certificate of this second marriage was issued by the Pradhan of the concerned Gram Panchayat evidencing the said fact. The occurrence of the marriage was published in AC Records Part II on 11.09.2014. It has also been pleaded that the claim of the applicant for joint notification was returned by the PCDA (P), Allahabad on 29.05.2015 stating that the case comes under the plural marriage according to Circular No.455 and the applicant was intimated accordingly vide letter dated 06.07.2015. On behalf of the respondents, Circular No.455 dated 16.03.2011 has also been filed. Before proceeding further, we would like to reproduce the same as under :

" OFFICE OF THE PR. CONTROLLER OF DEFENSE ACCOUNTS (PENSION), DRAUPADI GHAT, ALLAHABAD-211014

Circular No. 455 ***Dated : 16.03.2011***

To.

The OI/C,
Records PAO (Ors)

_____

Subject : Non Endorsement of Family Pension in respect of second wife in the pension payment order during the life time of pensioner in case of valid marriage.

Record Offices have raised an issue that endorsement of family pension in favour of second wife after the death/divorce of the first wife are not being entertained by this office on the plea that it is a plural marriage.

2. The case has been examined in this office. It has now been decided that cases for endorsement of family pension in favour of second wife will be accepted provided the first wife has expired/legally divorced and children from the first wife have become ineligible. Once the personal occurrence regarding death/divorce of the first wife is published in Part II Orders and second marriage take place after death/divorce of the first wife then remarriage by the serving /retired PBOR is not considered as plural marriage.

3. The following documents should be fwd to this office for endorsement of Family Pension in respect of second wife in the pension payment order during the life time of pensioner in case of valid marriage along with LPC-cum-Data Sheet :-

(a) Death Legally Divorced Certificate of first wife issued by the Competent Authority

(b) Certificate of Registrar of Marriage or other Competent Authority under the relevant law.

(c) Details of children in respect of first wife.

(d) DO Part II Order under which the personal occurrence of the second wife has been published.

(e) A copy of the kindred Roll Portion wherein details of children have been recorded duly attested by the Record Office.

All Record Offices are requested to fwd pending cases of the above nature to this office immediately.

Please acknowledge receipt.

……SD…..
A.C.D.A. (P)

No. Gts/Tech/0113/LIX
Dated 16/03/2011" *(emphasis added)*

4. Thus, the admitted facts situation is that the applicant's first wife was Smt. Atar Pyari and the marriage with Smt. Atar Pyari was solemnised prior to the enrolment of the applicant in the Army. Smt. Atar Pyari expired in the year 2013. The applicant admittedly solemnised the second marriage with Smt. Pushpa Devi on 15.10.1985. Therefore, this is an admitted facts situation that the applicant solemnised the second marriage with Smt. Pushpa Devi during the continuance of his first marriage.

5. Learned counsel for the applicant has submitted that after the death of her first son, it was declared by the Doctors that his first wife Smt. Atar Pyari is medically unfit to give birth to any other child in future and therefore, the second marriage was solemnised. So the second wife is entitled for his nomination in the PPO as wife of the applicant.

6. Learned counsel for the respondents has vehemently argued that since the marriage with Smt. Pushpa Devi was solemnised during the continuance of the first wife Smt. Atar Pyari, therefore, it was a void marriage, therefore, she is not entitled to any legal rights as the marriage during the continuance of the first marriage, is void under law.

7. Admittedly, the applicant is a Hindu and is governed by the provisions of Hindu Marriage Act. Section 5 of the Hindu Marriage Act, 1955 defines condition for a Hindu marriage which reads as under :

> ***"5. Conditions for a Hindu marriage.-***
> *A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-*
> *(i) neither party has a spouse living at the time of the marriage;*
> *(ii) neither party is an idiot or a lunatic at the time of the marriage;*
> *(iii) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage;*
> *(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;*
> *(v) the parties are not sapindas of each other, unless the custom or usage governing each*
> *of them permits of a marriage between the two;*
> *(vi) where the bride has not completed the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage."*

Section 11 of the Hindu Marriage Act 1955 defines void marriage which reads as under :

> ***"11. Void marriages.-***
>
> *Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, 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."*

Voidable marriages are defined under Section 12 of Hindu Marriage Act, 1955 which reads as under :

> ***"12. Voidable marriages.-***
>
> *(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-*
>
> *(a) that the respondent was impotent at the time of the marriage and continued to be so until the institution of the proceedings; or*
>
> *(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or*
>
> *(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under section 5, the consent of such guardian was obtained by force or fraud; or*
>
> *(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.*
>
> *(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-*
>
> *(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if-*

(i) the petition is presented more than one year after for force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree."

8. At this stage, we would like to discuss the legal position regarding the void and voidable marriage. We may refer to the pronouncement of Hon'ble Apex Court in the case of **Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav & another** [(1988) 1 SCC 530], wherein the Hon'ble ApexCourt in para 3 has observed as under :

"3. For appreciating the status of a Hindu woman marrying a Hindu male with a living spouse some of the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) have to be examined. Section 11 of the Act declares such a marriage as null and void in the following terms:

" 11. Void marriages-Any marriage solemnized after the commencement of this 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. "

Clause (1)(i) of s. 5 lays down, for a lawful marriage, the necessary condition that neither party should have a spouse living at the time of the marriage. A marriage in contravention of this condition, therefore, is null and void. It was urged on behalf of the appellant that a marriage should not be treated as void because such a marriage was earlier recognised in law and custom. A reference was made to s. 12 of the Act and it was said that in any event the marriage would be voidable. There is no merit in this contention. By reason of the overriding effect of the Act as mentioned in s. 4, no aid can be taken of the earlier Hindu Law or any custom or usage as a part of that Law inconsistent with any provision of the Act. So far as s. 12 is concerned, it is confined to other categories of marriage and is not applicable to one solemnised in violation of s. S(1)(i) of the Act. Sub-section (2) of s. 12 puts further restrictions on such a right. The cases covered by this section are not void ab initio, and unless all the conditions mentioned therein are fulfilled and the aggrieved party exercises the right to avoid it, the same continues to be effective. The marriages covered by s. 11 are void-ipso- jure, that is, void from the very inception, and have to be ignored as not existing in law at all if and when such a question arises. Although the section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from a court in a proceeding specifically commenced for the purpose. The provisions of s. 16, which is quoted below, also throw light on this aspect:

(emphasis added)

> *" 16. Legitimacy of children of void and voidable marriages.-(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.*
>
> *(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties of the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child not withstanding the decree of nullity.*
>
> *(3) Nothing contained in sub-section (1) or sub section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents."*

9. When we examine the facts of the instant case in view of the aforementioned legal position, then the conclusion is irresistible that the applicant solemnized second marriage with Smt. Pushpa Devi during continuance of his first marriage with Smt. Atar Pyari. Smt. Atar Pyari, first wife of the applicant survived for a period of about 28 years after the second marriage. It is nowhere the case of the applicant that he divorced his first wife and thereafter solemnized second marriage. So the only conclusion, in view of the admitted facts and law, is that marriage of the applicant with Smt. Pushpa Devi during continuance of her first marriage was a void marriage.

10. Now the point that arises for consideration is whether Smt. Pushpa Devi, whose marriage with the applicant was a void marriage, is entitled to nomination in the PPO. Effect of void marriage has to be considered in view policy laid down in the Pension Regulations. According to the Regulation 216 of the Pension Regulations for the Army, 1961 only a lawfully married wife is entitled to receive family pension. Regulation 216 reads as under :

> "*The following members of the family of a deceased individual shall be viewed as eligible for the grant of a special family pension, provided that they are otherwise qualified-*
>
> *(a)* ***widow/widower lawfully married****. It includes a widow who was married after individuals release/retirement/discharge/invalidment.*
> *(b) .....*
> *(c) .....*
> *(d) .....*
> *(e) .....*
> *(f) .....*
> *(g) ....."*.

It clearly comes out that the regulation recognizes only a lawful marriage. Regulation 218 deals with grant of pension to the nominee in the records of the Army. Admittedly, the name of Smt. Atar Pyari, the first wife of the Applicant was entered in the Army records. Therefore, the prayer of the Applicant does not fall within the four corners of Para 216 of the Pension Regulations.

11. A bare perusal of the aforesaid Pension Regulation shows that it is only the legally wedded wife, who is entitled to the pension. It is nowhere the case of the applicant that he solemnised the marriage after the death of his first wife Smt. Atar Pyari or after divorcing her. The applicant solemnised the second marriage with Smt. Pushpa Devi during the continuance of the first marriage, therefore, his second marriage with Smt. Pushpa Devi was void marriage. Accordingly, she is not entitled to any legal rights arising out of the second marriage. Circular 455, quoted above, also supports this view.

12. Thus, this O.A. is devoid of merit, deserves to be dismissed and is hereby **dismissed.**

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated: May , 2018.
PKG