

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 6023 of 2022

Petitioner :- Sarthak Dixit (Minor)

Respondent :- Union Of India And Another

Counsel for Petitioner :- Ashish Kumar Srivastava

Counsel for Respondent :- A.S.G.I., Ashok Kumar, Mahesh Dwivedi, Sudarshan Singh

Hon'ble Jayant Banerji, J.

1. Heard Shri Ashish Kumar Srivastava, learned counsel for the petitioner, Shri Sudarshan Singh, learned counsel appearing for the Union of India and Shri Mahesh Dwivedi, learned counsel appearing for the defendant-respondent no. 2.

2. This petition has been filed seeking the following relief:

"(i) Issue an appropriate order or direction restraining the respondent no. 1 from releasing the family pension, funds, insurance, gratuity and other service dues of late Sushil Kumar Dixit to respondent no.2 till the disposal of injunction application 6C' filed by the plaintiff-petitioner U/O. 39 R.1 & 2 r/w Sec. 151 CPC in O.S. No. 1184 of 2020 Sarthak Dixit Vs. Union Of India and another.

(ii) issue an appropriate order or direction to the court below i.e. Additional Civil Judge (S.D.) Kanpur Nagar to decide the temporary injunction application '6C' filed by the plaintiff/petitioner in O.S. No. 1184 of 2020 Sarthak Dixit Vs. Union Of India and another within a time frame which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iii) Issue any other appropriate order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice;

(iv) Award cost of the Petition in favour of the petitioner."

3. The contention of the learned counsel for the petitioner is that the plaintiff-petitioner is the nephew of the deceased-testator, who was an employee in the Department of Post, Government of India and had retired from service. It is stated that the deceased during his lifetime had executed a registered will deed dated 23.10.2019 bequeathing various properties including his post retiral dues in favour of the petitioner. It is stated by him that the defendant-respondent no. 2 had deserted the deceased during his lifetime while he was suffering from cancer and was living separately. As such, she would have no right to any of the dues or property demised by the will of the deceased. It is stated by him that there is no valid nomination made by the deceased in favour of the respondent no. 2 in the records of the

Department of Post. It is stated that the nomination as exists reflects interpolation and forgery which vitiates the entry made for nomination.

4. Shri Sudarshan Singh, learned counsel appearing for the Government of India has stated that during the lifetime of the deceased, a nomination was made by him in favour of the respondent no. 2 and the nomination is valid.

5. Shri Mahesh Dwivedi, learned counsel appearing for the respondent no. 2 has opposed the petition and has relied upon a judgment of the Supreme Court in the case of **Violet Issac Vs. Union of India** reported in **1991 (1) SCC 725** to contend that family pension is to be granted to the widow and if there is no widow, to the minor children of the government servant, who may have died during service. It is stated that the rules provide for relief to the widow and the children by way of compensation for the untimely death of the employee and do not provide for any nomination with regard to the family pension.

6. A perusal of the record reveals that on 3.8.2022, this Court had passed the following order:

"The petitioner has instituted a suit for permanent injunction, claiming relief to the effect that the defendant-respondent no. 1 be restrained from releasing the post retiral benefits of late Shushil Kumar Dixit that includes G.P.F., Family Pension, Gratuity, Group Insurance etc. in favour of respondent no. 2, which has been bequeathed in favour of the petitioner. The minor is represented by his father Shailendra Kumar Dixit and brother of the deceased. The Will in favour of the petitioner, excluding respondent no. 2 of her right to receive the deceased post retiral benefits, is a registered document. It is argued that there is no nomination in the service records in favour of his wife made by the deceased, yet respondent no. 1 is proceeding to release all his post retiral benefits in favour of respondent no. 2, ignoring the registered Will. An application for temporary injunction was also made in a suit seeking to restrain respondent no. 1 from releasing Shushil Kumar Dixit's post retiral benefits in favour of respondent no. 2, but till date no orders have been passed on that application. The suit was filed in the year 2020 and notice on the temporary injunction application was issued on 21.12.2020. The temporary injunction application has thereafter been casually adjourned on various dates. It is submitted that in case all post retiral benefits are disbursed by respondent no. 1 in favour of respondent no. 2, it will not be possible for the petitioner to recover, even if he succeeds at the hearing.

Issue notice.

Notice on behalf of respondent no. 1 has been accepted by Mr. Sudarshan Singh, learned Central Government Counsel. He is granted four weeks' time to file a counter affidavit.

Steps to serve respondent no. 2 shall be taken within a week.

List for admission on 08.09.2022 in the additional cause list before the appropriate Bench.

Till then, respondent-Union of India are restrained from releasing the post retiral benefits of late Shushil Kumar Dixit in favour of respondent no. 2, Smt. Sushma Dixit. It is made clear that the Trial Court shall be free to hear and decide the temporary injunction application, in accordance with law, after hearing all parties uninfluenced by anything said in this order.

Let this order be communicated to the Trial Court concerned through the learned District Judge, Kanpur Nagar by the Registrar (Compliance) within 48 hours. "

7. The interim order passed by this Court was extended from time to time and is continuing till date.

8. Evident it is that an application for temporary injunction 6C is pending disposal before the trial court. A perusal of the judgment cited by learned counsel for the respondent no. 2 reflects that in that judgment a case of **Jodh Singh Vs. Union of India** was considered in which after referring to the rules of the family pension applicable to that case, it was observed that family pension could never form part of the estate of the deceased and could not be a subject matter of testamentary disposition.

9. Under circumstances, with the consent of the counsel for the parties, this case is **disposed of** with a direction to the trial court to proceed to decide the application 6C filed by the plaintiff-petitioner seeking temporary injunction in Original Suit No. 1184 of 2020 on its own merit. The trial court, that is, Civil Judge (Senior Division), Kanpur Nagar or any other court which is in seisin of the case is requested to proceed with the adjudication/ disposal of the application 6C without granting any unnecessary adjournment to either of the parties and endeavour ought to be made for its expeditious disposal which shall not be beyond a period of two months from the date of filing a certified copy of this order before the concerned court.

10. Till disposal of the aforesaid application, the interim order granted by this Court on 3.8.2022 will continue to be operative.

11. Any observation made herein or in any previous order in this petition are only for purpose of and during course of adjudication of this case and shall not be taken as opinion of this Court on merits of the case.

Order Date :- 1.11.2023

A. V. Singh

(Jayant Banerji, J.)