

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.6448 of 2005

Date of Decision.03.08.2015

Mrs. Rakesh Sagar and others

.....Petitioners

Versus

Leela Dhar Thakur

.....Respondents

Present: Mr. C.B. Kaushik, Advocate
for the petitioners.

Mr. Satinder Khanna, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.

1. The decree for money that was put in execution against the legal representatives of the deceased-judgment debtor was with reference to three categories of amount recovered by the legal representatives. One, amount of accumulation of GPF that had been originally credited to the amount payable to the deceased-judgment debtor but after his death, the amount had been recovered in the hands of the legal representatives. Yet another amount was a solatium paid by the employer in lieu of compassionate employment arising out of the death of an employee in harness. There was also a certain amount of leave encashment payable to the deceased. The Executing Court allowed for attachments to prevail and dismissed the objections raised by the legal representatives of the judgment debtor.

2. As regards the amount payable to the wife by way of solatium after the death of an employee, I would hold that it does not really partake the character of the deceased estate. On the other hand, this amount directed to be payable only to the widow and no part of the amount which she claimed in her own right could be a subject of attachment for recoveries against the estate of the deceased. The attachment order in that regard is erroneous.

3. As regards the amount claimed in the hands of the legal representatives which was a GPF accumulation, the reasoning of the Court was that the protection will be available for the person to whom the credit of GPF available but the moment it come to the hands of the legal representatives, it would only be taken as an amount obtained by legal representative and hence, the protection is not available. This point has been squarely raised and considered in **Radhey Sham Gupta Vs. Punjab National Bank (2009) 1 SCC 376**. It was a case relating to an amount of pension and gratuity which had been converted into fixed deposit. The Court held that the amount would not lose the character and continue to be covered under proviso (g) to Section 60(1). In this case, the amount is GPF, which is also exempted under Section 60(1)(k). I will extend the same logic that the Court was applying for unattachability of gratuity amount. The immunity against the attachment of pension is available under the provisions of Civil Procedure Code as well as the provisions under the GPF Act. I will, therefore, hold that the reasoning of the Court was not correct.

4. The only amount that could still be proceeded against, is the amount payable as the leave salary that had accrued to the estate of the

deceased-judgment debtor. The leave salary payable is not in any way exempted under any of the provisions of GPF or any special legislation.

5. The order passed by the Court below is modified upholding the objection through the legal representatives of the deceased-judgment debtor with reference to the immunity against attachment for provident fund what is in the hands of the employer or the legal representatives as well as for the solatium amount recoverable by the wife. The employer as a garnishee shall only retain the amount of leave encashment. If the amount had not already been paid to the legal representatives of the deceased, it would be retained and paid over in part of the satisfaction of the decree obtained against the deceased-judgment debtor L.D. Sagar to the extent to which the amount is transmitted to the benefit of the legal representatives of the employee.

6. The impugned order is set aside and the civil revision is allowed to the above extent.

(K. KANNAN)
JUDGE

August 03, 2015
Pankaj*