IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3329 of 2011 (O&M)
Date of Decision: 06.05.2015

Smt. Jaswinder Kaur and others
..... Appellants

Versus

The Union of India and others ..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Barjesh Mittal, Advocate,
for the appellants.

Mr. Anil Rathee, Advocate,
for R-1 & R-2.

Mr. Naveen Sharma, Advocate and
Mr. Vijay Lath, Advocate,
for R-3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

<u>RAJIV NARAIN RAINA, J.</u>

Bhupinder Singh died in harness on September 07, 2002 while serving as a Sub Divisional Officer with the Department of Telecommunications/BSNL. He left behind his widow Jaswinder Kaur, the appellant, two minor children and his mother Pritam Kaur. The department failed to release monetary benefits as per rules, namely, death-cum-retirement gratuity, General Provident Fund, Central Government Employees Group Insurance Scheme [CGEGIS], LIC policy and family pension etc. to his legal heirs and representatives. In order to secure the monetary benefits accruing on the death of her husband and unable to secure them without litigation, Jaswinder Kaur brought a suit for declaration before the Civil Judge (Junior Division), Rupnagar claiming that the plaintiffs and defendant 1 Pritam Kaur were entitled to the monetary benefits in equal shares, i.e. 1/4th share each of the General Provident Fund [GPF] account lying in the name of late Bhupinder Singh along with all other benefits which remain due and payable under the rules.

Civil Suit No.286 of 12.10.2002 was decreed on August 05, 2004 accepting the prayer of Jaswinder Kaur that each of the four claimants were entitled to 1/4th share each in the movable property left behind by the deceased.

Still feeling aggrieved by the decree by apportionment of equal shares, Jaswinder Kaur approached the First Appellate Court against the decree. During the pendency of the appeal, the appellants i.e. Jaswinder Kaur and her two minor children filed an application under Order 23 Rule 1 of the CPC seeking permission to withdraw the suit to file a fresh one on the same cause of action. It was pleaded in the application for leave to withdraw suit that the prayers in the suit were made "due to oversight and ignorance of law" and the defect was incurable and she be permitted to withdraw the suit to completely alter the prayers and claim exclusion of Pritam Kaur from the right of inheritance of the movable property left behind by Bhupinder Singh so far as GPF was decreed in four equal parts. It appears that the application was not opposed by the opposite party, mother-in-law and resultantly, the learned Additional District Judge, Ropar allowed the application recording that the prayer in the application was for the benefit of the minors. Liberty was granted to institute a fresh suit on the same cause of action subject to payment of costs of Rs.1000/-. The appeal stood disposed of vide order dated December 05, 2005.

It is noteworthy that in the application, a stand was taken that Bhupinder Singh was an employee of the Central Government and as such the service rules applicable to Central Government employees would apply which entitle only the widow and minor children to the monetary benefits in preference to defendant 1, her mother-in-law.

In the wake of the order passed by the learned Additional District Judge, Ropar, Jaswinder Kaur and her minor children instituted Civil Suit No.15 of 02.03.2006 praying for a declaration to the effect that the plaintiffs be declared the only legal heirs of late Bhupinder Singh for the purpose of departmental benefits/dues as admissible under the rules and were thus entitled to seek pension, gratuity etc. ignoring the claim of Pritam Kaur who was arrayed as defendant 3.

The suit was dismissed by the learned Civil Judge (Senior Division) Rupnagar by judgment and decree dated November 12, 2009. The trial Judge reasoned that having received a decree in the previous suit and withdrawing the appeal for an incurable defect was nothing but misuse of the process of law. The declaration sought was declined reasoning that the suit was not maintainable and the plaintiffs have no locus standi or cause of action to file the fresh suit. The court without saying so directly, I think, subconsciously applied the principle of estoppel.

Aggrieved by the judgment and decree of the learned trial Court, Jaswinder Kaur etc. appealed under Section 96 of the Code of Civil Procedure. It was urged in first appeal that the Civil Judge (Senior Division) Rupnagar had fallen in error in ignoring the order passed by the learned

Additional District Judge, Ropar on December 05, 2005 which had permitted the plaintiffs to withdraw the suit to file a fresh one on the same cause of action and, therefore, it could not be said that the fresh suit was not maintainable or that plaintiffs have no locus standi to re-agitate the matter on an entirely different footing. If liberty was granted then it was not the business of the trial Judge to have dismissed the suit without entering upon the merits of the case and the rule position. In this, it was argued that the trial Judge had misdirected herself.

The appeal failed and was dismissed by the learned District Judge, Rupnagar on March 14, 2011. The learned District Judge, Rupnagar rightly held that the suit could not be dismissed as not maintainable or that the issue stood decided vide judgment dated August 05, 2004. Since the suit was withdrawn with permission to file a fresh suit, the earlier proceedings ceased to exist and it could not be said then that the plaintiffs have abused the process of law. The reasoning of the learned trial Judge on maintainability of the suit was set aside. However, the learned District Judge, Rupnagar dismissed the appeal on merits holding that since the nomination papers were filled by late Bhupinder Singh in favour of his mother, she was authorized to receive the amounts and since the amounts stood already released to her by the BSNL in terms of the previous decree, the Department stood discharged of its liability and thus no amount remained recoverable from the employer. Since BSNL stood indemnified on payment of money in $1/4^{th}$ share each to the four members of the family left behind by the decedent, the dispute, if any, remains *inter se* the appellants and respondent 3. Since monetary benefits have passed on to the 3^{rd}

respondent under a court decree, that money transfer was protected by civil court decree which transfer was neither illegal nor unlawful. Jaswinder Kaur and her minor children were left with the liberty to file a separate suit to recover money from the mother-in-law. It is against this appellate decree that the present appeal has been preferred under Section 100 of the Code.

It is argued that the learned District Judge, Rupnagar was misled to assume that Bhupinder Singh had nominated the 3rd defendant, his mother Pritam Kaur, in the papers submitted to the Department before he breathed his last. The facts were to the contrary since during his life time Bhupinder Singh had nominated his wife to receive and recover amounts due to him as per Rule 53 of the Central Civil Services (Pension) Rules, 1972 (for short "the Rules"). The error, it was said, occurred in para.12 of the judgment dated March 14, 2011 when the Court relied on the statement made by DW-2 Mehar Singh Punia, a departmental official who deposed that the nomination papers were changed and filed by late Bhupinder Singh in favour of his mother. She produced information received under the Right to Information Act, 2005 from the Department which disclosed who was the rightful nominee in the nomination form submitted under Rule 53 by her late husband and she was supplied information by the Additional General Manager-cum-CPIO in the office of General Manager Telephones/D BSNL Rupnagar by letter dated June 04, 2011 (P-1) which revealed that the nomination was in fact recorded in favour of Jaswinder Kaur and her two children as co-appellants entitling them exclusively to right to receive the monetary benefits admissible on the death of the employee. The form was submitted in the month of September 1999 by late Bhupinder Singh which neither was cancelled, changed nor modified and no fresh nomination was ever made by Bhupinder Singh before he passed away. It is argued that in the absence of change in nomination papers, rights of the parties are governed by Rule 53 (7) & (8) of the Rules. There was no entry in the service book as to change in the name of the nominee.

The rule position is as under:-

"50. <u>DEATH-CUM-RETIREMENT GRATUITY</u> -

(1) (a) Government servant who has completed five years, qualifying service and has become eligible to service gratuity or pension under Rule 49, shall, on his retirement, be granted 2[retirement gratuity equal to one-fourth of his emolument for each completed six monthly period of qualifying service, subject to maximum 16 ½ times the emoluments.

(b) If a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-rule (2) of Rule 51 at the rates given in the Table below, namely :-

xxx xxx xxx xxx

<u>51. PERSONS TO WHOM GRATUITY IS PAYABLE</u> -

(1) (a) The gratuity payable under Rule 50 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 53.

(b) If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below:-

(i) If there are one or more surviving members of the family as in Clauses (i), (ii), (iii) and (iv) of sub-rule (6) of Rule 50, to all such members in equal shares;

(ii) if there are no such surviving members of the family as in sub-clauses (i) above, but there are one or more members as in Clauses (v), (vi), (vii), (ix), (x) and (xi) of sub-rule (6) of Rule 50, to all such members in equal shares.

(2) to (4) xxx xxx xxx

53. NOMINATIONS **-**

(1) *A government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or 2, as may be, as appropriate in the circumstances of the case, conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under Rule 50 :*

Provided that if at the time of making the nomination -

(i) the Government servant has a family, the nomination shall not be in favour of, any person or persons other than the members of his family ; or

(ii) the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not.

(2) to (8) xxx xxx xxx

54. FAMILY PENSION, 1964 -

(1) *The provisions of this rule shall apply -*

(a) to a Government servant entering service in a pensionable establishment on or after the 1st January, 1964 ; and

(b) to a Government servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for Central Government Employees, 1964, contained in the Ministry of Finance, Office Memorandum No. 9 (16)-EV (A)/63, dated the 31st December, 1963, as in force immediately before the commencement of these rules.]

(2) to (7) xxx xxx xxx

(8) (i) Except as provided in sub-rule (7), the family pension shall not be payable to more than one, member of the family at the same time.

(ii) If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower failing which to the eligible child.

(iii) Family pension to the children shall be payable in the order of their birth and the younger of them will not be eligible for family pension unless the elder next above him/her has become ineligible for the grant of family pension :

Provided that where the family pension is payable to twin children it shall be paid in the manner set out in Clause(d) or sub Rule (7) of this Rule.

(9) to (13) xxx xxx xxx

(14) For the purposes of this rule-

(a) xxx xxx xxx

(b) ***"family"*** *in relation to a Government servant means -*

(i) wife in the case of a male Government servant, or husband in the case of female Government servant,

(ia) A judicially separated wife or husband such separation not being granted on the ground of adultery, and the person surviving was not held guilty of committing adultery.

(ii) son who has not attained the age of [twenty-five] years and unmarried daughter who has not attained the age of [twenty-five] years, including such son and daughter adopted legally before retirement.

(c) xxx xxx xxx

(15) xxx xxx xxx"

Rule 54 deals with family pension. Rule 54 (8) (i) and (ii) postulate that family pension shall not be payable to more than one member of the family at the same time and if the deceased Government servant leaves behind a widow, the family pension shall become payable to the widow. The term 'Family' has been defined in Rule 54 (8) (14) (b) to mean wife in the case of a male Government servant or a son who has not attained the age of 25 years or an unmarried daughter who has not attained the age of 25 years. It is thus urged that the mother of a deceased person does not come within the definition of 'Family' to be entitled to family pension which has been wrongly allowed proportionately to the mother-in-law by the impugned decrees thereby leaving the subject matter corpus of this appeal limited to a sum of Rs.2 lacs paid from GPF to the mother-in-law under the first decree which Jaswinder Kaur says is her money including exclusive rights to property to the benefits of family pension which is a continuing obligation and the mother is not entitled to under the Rules.

The appellants cite case law in their support contending that the mother is not entitled to family pension. They rely on a judgment of the Supreme Court in **Haryana State Electricity Board vs. Surasti Devi**, 1996 (1) SLR 614 holding that mother is not entitld to family pension though she may be entitled to the other benefits available to the deceased. In **State of Gujarat and others vs. Savitri Devi**, 1996 (2) SCT 766 the Supreme Court dealt with Revised Pension Rules, 1950 in relation to right to property under Article 300-A of the Constitution in which *inter alia* it was held that when mother is not a family member she would not be entitled to family pension. They also rely on the decisions of this Court in **Lachhmi Devi vs. General Public**, 2001(3) SCT 374 and **Chander Kanta vs. Monica**, 2000(4) SCT 635 to press their point. In *Chander Kanta*, this Court held that in matters of nomination and entitlement to pension and pensionary benefits the principles of Hindu Succession Act will not apply. Any nomination made by Government servant would be rendered invalid when he gets married. This Court considered the entitlement of a mother of a married male subscriber in the context of the Rules and held that mother does not fall within the definition of 'Family'. Therefore, only widow is entitled to collect the amount of Group Insurance Scheme. In terms of Rule 10 of the General Provident Fund (Central) Service Rules, 1960 it is only the wife or widow who is entitled to GPF amount after the death of her husband. The question merely is one based on rule since principles of Hindu Succession law do not apply in such a situation.

Heard the learned counsel for the parties at length and perused the record.

Mr. Anil Rathee, Advocate appearing for respondent 1 & 2 BSNL admits that the appellants were nominees of late Bhupinder Singh in Form-I published under Rule 53 (1) with respect to Death-cum-Retirement Gratuity and Central Government Employees Group Insurance Scheme and GPF subscriptions. It is equally well settled that nomination by itself does not create any right to property but only a right to receive property. The right to monetary benefits arising out of death of an employee covered by the scheme would have to depend on the rules applicable which are statutory in nature. The rule cited by the appellants does indicate that a mother of the deceased employee does not fall within the definition of 'Family' and, therefore, the widow alone would inherit pension and pensionary dues. The expression 'Family' in Rule 14 (b) in relation to a Government servant has been defined to mean wife in a case of male Government servant or husband in the case of a female Government servant. The entitlement of all others was excluded by Notification No.F.6 (4)-EV (A)/74 dated November 20, 1974 which provision is relied upon by the appellants in their favour. However, Mr. Rathee points out that the rule has suffered amendment in 1996 which gives rights to a wholly dependent mother of a deceased Government servant if neither the widow nor children below prescribed age are left behind.

The nomination form obtained through RTI by the appellants has been produced by way of additional evidence under Order 41 Rule 27 CPC through CM No.9213-CII of 2011 which could not be produced in the Courts below as they were not to the knowledge of the appellants including the statutory rules of 1972 which are placed as Annexures P-1 and P-2. The application has been contested by the mother-in-law as not satisfying the ingredients of Order 41 Rule 27 CPC. It has not been pleaded in the application that the same could not be produced inspite of exercise of due diligence when the trial took place. Therefore, ingredients of Order 41 Rule 27 CPC are not satisfied in the application and the same has been produced to linger on the proceedings in the appeal filed in the year 2011. However, BSNL has not contested the application.

Though technically speaking, the application does not satisfy the test of provisions under which it is filed yet in the interest of justice, the same can be considered by this Court since Mr. Rathee has not seriously disputed the information supplied by BSNL that on paper the nominee was the wife. Insofar as the Rules are concerned, this Court can always take judicial notice of them since they are statutory in nature. All said and done the relationship between the parties with respect to entitlement to movable property and the estate of the deceased can only be governed by the Rules and in this both the Courts have proceeded without aid of the Rules. Just as this Court would take cognizance of the Rules produced by the appellants at P-2 this Court would also have to take cognizance of the amended rule. It cannot be gainsaid that in 1996 the definition of 'family' was amended to accommodate the rights of a dependent mother but not in the presence of the appellants. Dependency is a pure question of fact which has not been pleaded in both the suits and, therefore, in second appeal, no interference is called for in the conclusion reached by the first court of appeal. Therefore, the direction of the Lower Appellate Court leaving Jaswinder Kaur and Pritam Kaur to sort out their differences in a separate suit are legally sustainable.

Mr. Naveen Sharma, Advocate and Mr. Vijay Lath, Advocate appearing for the respondent 3 – mother have placed reliance on a Division Bench decision of this Court in **Geeta Devi vs. Financial Commissioner & Principal Secretary to Govt. Haryana and others**, 2013 (3) SCT 235 in which the *vires* of Rule 14 of the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 was challenged. The rule excluded dependent parents from the definition of 'Family'. The Court held that non-inclusion of the dependent parents in the definition of 'Family' in Rule 14 is arbitrary and discriminatory. The Division Bench brought in aid the provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007 confirming statutory rights to claim maintenance by parents. The Court held that children are under an obligation to maintain their parents who do not have any other source of income to support themselves. The Court noticed the amendment carried out to the Punjab Civil Services Rules as applicable to Haryana, i.e. Rules 6.16-B and 6.17 which dealt with family pension and held that the father and mother have been statutorily added in the definition of 'Family'. So much so, adopted parents in case of individuals whose personal law permits adoption are brought within the umbrella of the definition and even they are entitled to payment of DCRG. They are also eligible for the grant of 'wound and other Extraordinary Pensions' as contemplated in Chapter VIII of the Punjab Civil Service Rules. The Division Bench entitled and empowered parents of deceased employee to family pension. The Court granted two months' time to the respondents to incorporate suitable amendments in Rule 14 to remove it from the vice of arbitrariness.

The principles enunciated by the Division Bench of this Court are salutary principles in expansion of family law rights and reaffirmation of the pious duties owed by a son towards his parents which death cannot break the thread of, then from his estate left behind.

Mr. Rathee submits that on the death of Bhupinder Singh, BSNL offered compassionate appointment to Jaswinder Kaur who has been earning a handsome salary since her appointment to the post of Telephone Office Assistant presently posted at Chandigarh. Still further, learned counsel for the private respondent 3 reveal that Bhupinder Singh during his life time had filed a divorce petition against Jaswinder Kaur which remained pending till his death. Mr. Rathee says that Bhupinder Singh was ailing before he died and that he had once made an application to the department for medical advance of Rs.50,000/- for his treatment which was opposed in writing by Jaswinder Kaur. He submits that this is part of record and a verifiable fact and can be produced before the Court, if required.

Learned counsel for respondent 3 reveals from the cross-examination of Jaswinder Kaur she admitted filing of a divorce petition against her; that her application under Section 24 of the Hindu Marriage Act, 1956 was allowed and she was in receipt of monthly maintenance amount till the death of her husband. She admitted that she is tied in litigation initiated by her against the brother of her late husband regarding property rights in a residential house. She admitted in her deposition that she had filed civil suits against her mother-in-law relating to disputes over landed property of the family. She admitted that the mother-in-law had executed a sale deed of her 1/4th share in favour of her son Gurjit Singh and volunteered that the sale was executed by practicing fraud even though the matter was compromised in court with her. Jaswinder Kaur has also initiated proceedings before the revenue authorities with respect to mutations entered on the basis of the sale deed. Against the order of the Collector, she appealed before the Court of the Commissioner as on the date of deposition on August 11, 2008. Harassment appears to be writ large and continues with a tirade of litigations filed, wave after wave and relentlessly. The pain must be brought to an end.

Be that as it may, the operating rule was not cited before the Lower Courts which governed the subject on the date of death. But this is not a fit case for interference even on the principle that a case to be decided *ex aequo et bono*, overrides the strict rule of law and requires instead a decision based on what is fair and just, given the circumstances. It was plaintiffs' duty to cite extant rule on which rights rested and not having done so have interefered in the administration of justice of which BSNL's conduct in failing to apprise two courts below also becomes questionable. I would, therefore, dismiss the appeal for the reason that 25% of GPF dues have reached the pocket of the respondent 3 and the present is not a suit for recovery of money and was only a suit for declaration with the consequential relief of permanent injunction.

Notwithstanding the dismissal of the appeal and looking to the litigative stamina of the 1st appellant and the admitted fact that she did not have cordial relations with her husband who unfortunately died fighting a divorce petition and has been harassing her mother-in-law in litigations, who is herself an aged widow and in the evening of her life she deserves some peace of mind and who saw her son pre-decease her, I would thus impose costs of Rs.1 lac on the appellant 1 for breach of pious duty by keeping in mind the underlying philosophy in *Geeta Devi* case [supra], to be paid to respondent 3 within two months from the date of reciept of a certified copy of this order failing which it will be open to the 3rd respondent to claim the amount as arrears of land revenue.

(RAJIV NARAIN RAINA)
JUDGE

06.05.2015
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