

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
*THE HON'BLE SMT. JUSTICE T.RAJANI**

+W.P. No.9184 OF 2010

% Dated : 30.08.2017

#A.Vimala Devi

..... Petitioner

AND

\$ The Registrar (Administration)

High Court of A.P., Hyderabad and another

..... Respondents

! Counsel for Petitioner : Mr. P.Nagendra Reddy

^Counsel for Respondent No.1: Mr. S.Sri Ram

^Counsel for Respondent No.2: Mr. B.Narayana Reddy

<GIST:

>HEAD NOTE :

? Cases referred :

1. 1991(1) SCC 725
2. 1997 (1) PLJR (CWJC.No.12092 of 1995 dt.10.12.1996)
3. 1971 SC 1409
4. (1988) 3 SCC 32

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ORDER: (Per the Hon'ble Smt. Justice T.Rajani)

The petitioner, under an impression and belief that she parted with half of the pension, whole of which she alone is entitled to and allowed it to be paid to the step-son, under a compromise, files this writ petition, after the death of her step-son, seeking a direction to the respondents to revert to her that half of the pension that was being paid to her step-son, which according to her, is only because of the concession that she made under the compromise.

Heard the learned counsel, Sri. P.Nagendra Reddy, for the petitioner, Sri S.Sri Ram, learned Standing Counsel for the APHC and Sri B.Narayana Reddy, learned Assistant Solicitor General appearing for the 2nd respondent.

The husband of the petitioner, Sri A.Sudhakar Reddy, herein after referred as the deceased, while working in A.P. State Judicial Service as Additional Judge, City Small Causes Court at Hyderabad, died on 18.07.1996 leaving behind the petitioner, her daughter, Aila Sai Phani Mamatha Bhargavi, and her step-son, Aila Phanidhar Reddy.

The petitioner is the second wife of the deceased. The first wife of the deceased died on 08.08.1987 after which, he married the writ petitioner. The first wife of the deceased begot a son. The deceased, during his life time, executed a will dated 28.06.1996 by which he bequeathed all his departmental benefits to the writ petitioner and her daughter, in equal shares. The petitioner submitted an application to the department after the death of her husband for grant of family pension. Prior to the said application, there was a compromise between herself and her step-son to share the family pension in equal halves.

The compromise proceedings were processed through the first respondent, based on which the second respondent apportioned the family pension in two equal halves between the petitioner and her step-son. While so, on 28.02.2005, her step-son also died and thereafter she made a representation to the first respondent on 27.02.2006 informing about the death of her step-son. She also made a request for payment of full pension to her, by reverting the half pension that was being paid to her step-son, with a claim that she is entitled to full pension as no one else is entitled to share the pension. The first respondent forwarded her representation to the second respondent, the second respondent issued the impugned proceedings No.P18/IV/S-3046/FP 103/97-12/630, dated 14.07.2006, rejecting her request on the basis of Rule 50(5)(iii) of A.P. (Revised) Pension Rules, 1980 (hereinafter referred to as "the Rules"). It is the contention of the petitioner that the said Rule is not applicable to her case. According to the petitioner, by the time of the death of her husband, she is the only wife to him and therefore, no share can be given to any other wife under the Rules. The petitioner further contends that her family pension is not divided under Rule 50(6)(a) of the Rules and under Rule 50(7)(i) and except as provided in sub rule (6) of Rule 50 the family pension shall not be payable to more than one member of the family at the same time.

The petitioner earlier filed W.P. No.15081 of 2007 before this Court but later, she withdrew the said writ petition with liberty to make a representation to the Government under Rule 54 of the Rules. As such, she made a representation for relaxation of the condition and for payment of full pension to her. She subsequently came to know that there is no condition to be relaxed by the Government, and that the second respondent misunderstood Rule 50(6) of the Rules while issuing the impugned proceedings.

From what the petitioner averred in the writ petition, we understand that a will was executed by the husband of the writ petitioner, bequeathing his pensionary benefits equally to the petitioner and her daughter. By believing, that by virtue of the said will, herself and her daughter alone became entitled to the family pension in equal halves, she entered into a compromise with her step-son, agreeing to share half of the pension with him.

Mr.Sriram, refuting the contention that pension was shared only due to the compromise, draws our attention to the Rules, which confer a right on the step son of the petitioner, to receive pension, independent of any charity from the petitioner. We would refer to the rules later.

The validity of the will is the first aspect that falls for our consideration. Deciding the question of validity of such a will, the Apex Court in the case of **SMT.VIOLET ISSAC AND OTHERS Vs. UNION OF INDIA AND OTHERS**¹ held that the family pension scheme confers monetary benefit on the wife and children of the deceased employee, but the employee has no title to it; the employee has no control over the family pension as he is not required to make any contribution to it; the family pension scheme is in the nature of welfare scheme framed by the employer to provide relief to the widow and minor children of the deceased employee; since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same; therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition. In the said judgment, the Supreme Court held that family pension cannot be ordered to be given to a stranger other than the widow, as it depends on the status that is acquired on the happening of certain event, namely becoming widow on the death of the husband and

¹ 1991(1) SCC 725

hence, it cannot be given to any other person by executing a will or instrument.

The above ruling makes it clear that no will can be executed by the employee in respect of his pensionary benefits. Except under section 12A of the Act, which is in respect of the pension in the nature specified under section 11, no nomination is permitted to be made, under the Act.

In support of his contention, that pension is a property and hence is heritable, the learned counsel for the petitioner relies on a ruling of the Hon'ble High Court of Bihar, in a case between **SHANTA SINHA Vs. THE STATE OF BIHAR AND OTHERS**². The Hon'ble High Court of Bihar took the support of two judgments of the Supreme Court reported in the case of **DEOKINANDAN PRASAD Vs. THE STATE OF BIHAR**³ and **BHARAT PETROLEUM MANAGEMENT STAFF OFFICERS Vs. BHARAT PETROLEUM CORPORATION LTD**⁴, in coming to a conclusion that pension is a heritable property. The ratio laid down in the above two judgments is that the right to receive pension by a Government employee is a property right and it is not a bounty payable on the will and pleasure of the Government. The Supreme Court, in both the cases was dealing with the right of the Government employee to receive pension and in that context it held that the right to receive pension is a property right and not a mere bounty to be paid on the sweet will and pleasure of the Government. There was no difficulty for the Apex Court in those cases to issue a *Writ of Mandamus* directing the employer to pay the pension to the employee, as he is the only beneficiary entitled to receive the pension, being alive when he made that claim. It was construed as property of the employee lying in the hands of the employer, which the Government employee cannot be deprived of, at the will of the employer. That was based on the right of the employee to receive pension, subject to rules.

² 1997 (1) PLJR (CWJC.No.12092 of 1995 dt.10.12.1996)

³ 1971 SC 1409

⁴ (1988) 3 SCC 32

We understand, that, to the limited extent indicated by the Apex Court in the above rulings, pension is property. Our such understanding can be tested on the rules.

Rule 50(6)(a)(i) of the Andhra Pradesh Pension Rules, in short Rules, runs as follows:

“(6)(a)(i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, (or remarriage) her share of the family pension shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall cease to be payable.

(b) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

The scheme of the above rule is to provide for the welfare of the family of the deceased Government employee or the pensioner, as the case may be. The extent to which such welfare should be provided is laid in clear terms.

The above rules make it clear that the step-son of the petitioner would be entitled to equal share in the pension, in the absence of his mother, irrespective of the compromise that was entered into between the petitioner and her step-son. When the husband of the petitioner does not have a right to execute a will in respect of his pensionary benefits, then by operation of the rules, the step-son of the petitioner becomes entitled

to half of the pension of her husband. Rule 50(6) (a)(ii) says that after the death of the widow, who receives family pension, or after her re-marriage, her share of the family pension shall become payable to her eligible child. The eligibility of the son to a family pension is up to his age of 21 years. It is because of the death of his mother, that the step son of the petitioner became eligible for half of the pension, under Rule 50(6)(ii). The petitioner and her step-son were eligible to receive equal shares of the family pension only because of the exception that is provided for in Rule 50(6). Otherwise no two members of the family would be entitled to receive pension at the same time as Rule 50(7)(i) is to the said effect. Rule 50(6) proviso says that if a widow is not survived by any child her share of family pension shall cease to be payable.

Sub-Rule (7)(i) puts an embargo on the pension being paid to more than one member of the family at the same time, except as provided in sub rule (6). Sub-Rule 7(ii) says, 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.

Proviso to the said rule says that the authority competent to sanction the family pension may in a suitable case, for reasons to be recorded in writing, pay the minor children in preference to the widower who is judicially separated. Under Sub-Rule 7(iii) if sons and unmarried daughters are alive, unmarried daughters shall not be eligible for family pension unless the sons attain the age as specified in clause (ii) of sub-rule (5) and thereby become ineligible for the grant of family pension.

The scheme of Sub-Rule 7 completely overrules the possibility of any inheritance coming into play, in respect of pension. If a property has to be inherited, it can be by more than one member of the family, which is negated by Sub-Rule 7(i). Under the Rules of succession, it is not

necessary, as laid in Sub-Rule 7(ii), that for a son to inherit the property, his mother should not be alive, if pension is a heritable property. If it is a heritable property, no discretion can be vested in the competent authority to divert the line of succession, by paying it to the minor children, in preference to the widower who is judicially separated, as was done under the proviso. Here it can also be noticed that the competent authority is not given discretion to take such decision in case of a widow who is judicially separated, thereby supporting the view taken by the Apex Court in Voilet Isaac's case, that pension is a welfare measure. Then the route of welfare cannot be changed, by operating rules of succession in the area of pension. A son and an unmarried daughter cannot take preference over a married daughter, as prescribed under Sub-Rule 7(iii), if pension is a heritable property. Thus neither the Act nor the rules do any where leave any scope to assume that pension is a heritable property.

The rulings relied upon by the Hon'ble High Court of Bihar in the case of **Deokinanda Prasad** (3rd supra) can be further looked into for understanding the intent of the Hon'ble Supreme Court, in holding that right to receive pension is property. The Supreme Court was dealing with a case of a Government employee who was absent from duty for over five years, which according to the respondents would disentitle the employee to receive pension under Rule 46 of the pension Rules. The Apex Court considered the facts of the said case and found that the petitioner therein was not given opportunity to show cause against the order proposed, which disentitled the petitioner to receive pension. In the background of such factual situation, the Apex Court held that the right of the petitioner to receive pension is property under Article 31 clause (1) of the Constitution and by a mere executive order the State had no power to withhold the same. It observed that the right to pension is a valuable right vesting in a Government servant. The appreciation made by the

Apex Court, of the contention of the petitioner therein, vis-à-vis the pension rules would show that the Apex Court did not intend to hold anything contrary to the pension rules. As against the pension being treated as a bounty payable on the sweet will and pleasure of the Government, the Apex Court held that it is not as such and that it is a property, being a valuable right vesting in a Government servant. Taking help of the above ruling, the High Court of Bihar went a step further and held that pension is property and hence it is heritable. The High Court of Bihar also considered the pension rules and from a reading of para 7 of 1964 scheme, which applied only to the state of Bihar, understood that family pension and pension are synonymous and identical in sense and uses for each other. By such understanding, it held that family pension is also property. There may not be any difficulty in agreeing with the said understanding. But we certainly have difficulty to accept the understanding of the High Court of Bihar that family pension and pension are inheritable properties. The pension is provided to the Government servant or the pensioner, for the welfare of the family, the aim being to sustain the family till it can sustain itself without the help of the pension. It does not mean that the family should be permitted to draw the pension in perpetuity by passing on the right to the entire progeny and that the welfare of the whole progeny has to be provided for by the Government.

Proviso to rule 50 sub rule (6) is to the effect that if the widow is not survived by any child her share of the family pension shall cease to be payable. Rule 50(6)(a)(ii) provides for the payment of pension in equal shares to all the widows of the Government employee. The rules carry the benefit of pension, in the absence of widow, to her eligible child. The eligibility of the child, if it is a son, is until he attains the age of 21 years and if it is a daughter until she attains the age of 30 years or until she gets marriage, whichever is earlier. The rules take care of the

sustenance of the family by providing pension to a son up to his age of 21 years and to a daughter up to the time of her marriage or 30 years, whichever is earlier. Those are the probable ages by which a son and a daughter are expected to stand on their own, hence the benefit of pension was extended till such ages.

High Court of Bihar applied the rules of succession to the pension. The court was impressed by the argument of the counsel for the petitioner therein, that the Hindu Law has laid down principles relating to the survivorship of two or more widows; in sub section (iv) of Section 43 of the Hindu Law two or more widows succeeding as co-heirs to the estate of their deceased husband take as joint tenants with rights of survivorship and equal beneficial enjoyment; thus, if a Hindu dies leaving two widows, they are entitled as between themselves to an equal share of the income, and on the death of either of them, the other is entitled to the whole of the income by survivorship, and though co-widows take as joint tenants, no one of them has a right to enforce an absolute partition of the estate against the others so as to destroy their right of survivorship; that under the Hindu Succession Act the property of an intestate shall be divided among the heirs in class I of the schedule in accordance with rule(1) the intestate's widow, or if there are more widows than one, all the widows together shall take one share; Rule 54(7) of CCS (Pension) Rules and under its proviso if the widow is not survived by any child, her share of family pension shall not lapse but shall be payable to other widow in equal share, or if there is only one such widow in full; whereas, the scheme for the payment of family pension to the survivors of the State Government employees of Bihar provides that if at the time of her death the widow leaves no eligible minor child, the payment of her pension will cease.

The Bihar High Court though could accept the rule to the extent of distribution of the family pension to the family as per the benefit provided by the rules so much so that where an officer is survived by more than one widow, they all have been given equal shares and on the death of a widow, her eligible minor children have also been given protection by grant of pension of the share of her mother, could not appreciate the last sentence wherein it provides that *“If at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease”*. The High Court of Bihar felt that if an interpretation, that a Hindu widow even to the extent of her coverage by the definition of the family as contained in sub-para (ii) of para 7, cannot claim pension, has to be given, then the said clause has to be held as arbitrary and discriminatory. But, we consider that this is not an area where misplaced sympathies can be invoked. The welfare measures underlying the scheme of the pension Rules, cannot be expanded by bringing law of succession into interaction. The observation of the High Court of Bihar which imply that the second marriage of the Government employee is a misdeed, itself would render an answer for us to uphold the propriety of the pension rule, in providing pension for the second wife and her eligible children. Expectations of the widows, who are alive by the date of death of the Government employee, have to be only as per their entitlement under the Act and Rules. The rules provide for the payment of pension to which the widow or widows are entitled, to their eligible children, after their death. The rules take care of the welfare of the widows and their eligible children. It is not as if a widow is deprived of something for which she is entitled to as per the rules. Her share in the pension is pre-determined. If the rule has to be read in the manner that a widow who survives the other widows would get the full pension, it may leave room for unethical expectations. The family of the deceased Government employee as it exists by the date of his death, is taken into consideration and the welfare of such family is taken care of by the rules.

In this case, as on the date of the death of the Government employee, the widow of the Government employee and her step-son were the eligible persons to receive the pension equally. The step-son having died, the widow comes before us seeking for a reversion of that half of the pension, which was being paid to her step-son, to her. Even if we go by the ratio laid down by the Hon'ble High Court of Bihar, it is the legal heirs of her step-son who would become entitled to his pension. The questions that then would arise are, whether her deceased step-son had any legal heirs, whether he is married and whether he had any children. These questions cannot be decided in this writ petition. However, in this case the pension has taken two routes through the two wives of the deceased. Since the second wife is alive, she takes half and since the first wife is no more, her son takes the other half. If the widow dies her daughter, if eligible under the rules, would get her half and if the son of the first wife dies, his eligible successors under the rules, would get his half. If there are no eligible persons in the two branches, the pension would cease. The rules do not contemplate any reversion.

With the above findings, this writ petition is liable to be dismissed and is accordingly, dismissed. There shall be no order as to costs.

JUSTICE V.RAMASUBRAMANIAN

JUSTICE T.RAJANI

Date: 30.08.2017
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