

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1212 of 2017 (O&M)
Date of Decision: 03.03.2017**

State through Collector, Pathankot
and another

... Appellants

Versus

Amit Kumar and others

... Respondents

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

Present: Mr. P.S. Bajwa, Addl. AG, Punjab.

RAJIV NARAIN RAINA, J.

1. The State of Punjab is in appeal presented 49 days after the expiry of limitation. There is an application under Section 5 of the Limitation Act praying for condoning the delay. The routine and stock explanation is to blame red tape with the file moving from one desk to the other in the different departments of Government involved which took time to formalize into a decision to file appeal.

2. I asked Mr. P.S. Bajwa, learned Additional Advocate General, Punjab appearing for the State what he had to say on merits against the judgment and decree of the Civil Judge (Senior Division), Pathankot dated May 03, 2016 and the judgment in appeal passed by the learned District Judge, Pathankot on October 03, 2016 decreeing the suit filed by the legal heirs of late Rajinder Pal who died a bachelor and issueless while serving as a Peon at Ranjit Sagar Dam. He did not leave behind any Class I heir except his brothers who were Class-II heirs. Rajinder Pal executed a Will dated

November 11, 2010 in favour of his nephew due to love and affection. The testator bequeathed his entire moveable and immovable properties and all service and pensionary benefits including GP Fund, Gratuity, LIC amount, amounts lying in banks, post offices etc. The Will was registered. Moreover, late Rajinder Pal had nominated the plaintiff as legal heir in Form PF 1-B signed on February 04, 2010 lying in the office of the defendants. The nephew as sole beneficiary became the claimant of the amounts of service benefits under the will and last testament of his late Uncle.

3. On the death of Rajinder Pal the plaintiff applied to the department for release of amounts. Instead of making payment the official defendant requested the Deputy Commissioner, Gurdaspur to issue dependent certificate of late Rajinder Pal to the plaintiff being nominee. On marking the letter to ADM Pathankot for verification and report, the procedure was followed by the revenue authorities who certified that Rajinder Pal had died issueless and unmarried leaving behind plaintiff as his legal heir by virtue of testamentary succession through the Will. The report was made on April 25, 2011. The Deputy Commissioner did not find this exercise sufficient and asked the plaintiff to get himself declared as legal heir from a competent Court.

4. This is what brought the plaintiff Amit Kumar to file Civil Suit No.42 of 2012 in the Court of the Civil Judge (Senior Division), Pathankot for declaration to the effect that the plaintiff is the only legal heir/nominee/dependent/will holder of late Rajinder Pal son of late Vasu Dev by virtue of last Will and testament of Rajinder Pal duly registered in public office. He claimed the amount with interest 18% per annum from the

date of death of Rajinder Pal till its actual realization. The learned Civil Judge decreed the suit on May 03, 2016 holding the plaintiff entitled to the amounts. A direction has been issued to the State to calculate the retiral benefits and pay the same within two months from the date of decree. The plaintiff was directed to furnish an indemnity bond with defendant No.2 i.e. Executive Engineer, Dam Construction and Spillway Way Concrete Division, Ranjit Sagar Dam, Shahpurkandi. The Will stood proved as genuine. The procedure required to prove a Will was followed with witnesses appearing and deposing in support of the Will. The procedure under Section 68 of the Indian Evidence Act, 1872 was satisfied.

5. The Court also examined Rule 16.6-B (1) of the Punjab Civil Services Rules, Volume-II and especially para.3 thereof. Chapter 8, Vol. 1, Part 1 of the Rules was noticed that payment of leave encashment could be made to family or heir of deceased government employee. The plaintiff was the sole heir of deceased Rajinder Pal on the basis of Will. There were no suspicious circumstances surrounding the making of the Will and it held ground.

6. Strangely, dissatisfied with the decree, the State appealed to the District Judge, Pathankot. They insisted that the plaintiff being nephew of deceased is not entitled for service benefits except GPF not being a member of the family by definition. State urged that family includes wife or husband, as the case must be: a judicially separated wife or husband, such separation not been granted on the ground of adultery: sons up to the age of 25 years: unmarried daughters up to the age of 25 years including children adopted legally before retirement. A nephew does not falls in the definition of family

pension and therefore the trial Judge erred in decreeing the suit.

7. The learned District Judge, Pathankot revisited the entire length of the case in appeal in his elaborate judgment and discussed each of the issues under different heads of claim and the place a nephew would have of a deceased Government employee on the basis of registered Will duly upheld by the trial Court. The rights of the plaintiff are duly protected by testamentary Will and by nomination made by the deceased employee as well. There was no dispute that the amount of GPF was released to the plaintiff considering him to be legal heir in view of the report of the revenue authorities in favour of the plaintiff. The learned District Judge reasoned that because the plaintiff was entitled to GPF he would be entitled to leave encashment since he had become a legal heir by virtue of Will and nomination although he may not fall within the definition of family. The learned District Judge agreed with the findings of the trial Court and dismissed the appeal by affirming them.

8. Still dissatisfied, the State has appealed for the second time. They still insist that being a nephew of the deceased plaintiff he is not entitled to inherit service benefits other than GPF dues. The State remains obsessed with the Punjab Civil Service Rules. The interest of the State stands protected by the direction of the trial Court to furnish an indemnity bond, which sufficiently safeguard the interest of the State after the amounts are released. Rule of testamentary succession and inheritance through a Will found genuine and upheld not only by the Civil Court but with the stamp of the revenue authorities in Pathankot by a report submitted to the Deputy Commissioner, Pathankot. Such rights in Hindu law would have primacy

over service rules. Succession is no longer based on rules but by a testament of the late Government servant and his last wish and sentiment has to be honoured by the State, the sooner the better.

9. There is no substance in the appeal and it seems that it had been presented only to get the stamp of the Court. Since I am dismissing this appeal *in limini* I agree with Mr. Bajwa that special costs should not be imposed against the State from presenting a frivolous appeal only to waste the time of this Court. However, there is another request of Mr. Bajwa which I am inclined to accept that on payment of amounts to the plaintiff the liability of the State shall stand discharged and no person other than the plaintiff will ever make a claim for the decreed amounts from the State Government. In case, any one applies to claim the amounts paid in satisfaction of the decree, the State Government will file the request and consign it to record. The functionaries of the State would not be required in law and fact to even pass an order declining such prayer nor will a suit or other proceedings be entertained by any Court by another person trying to claim the moveable estate of late Rajinder Pal which has come into the hands of the plaintiff through the entire service benefits left behind by late Rajinder Pal.

10. Accordingly, the appeal is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

03.03.2017

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Whether speaking/reasoned

Yes

Whether reportable

No