

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

C.R. No. 187 of 2017

1. Smt. Girija Devi Upadhyay, W/o. Karmchand Upadhyay, aged about 48 years
2. Karmchand Upadhyay, S/o. Late Rupnarayan Upadhyay, aged about 58 years,
Both are R/o. Jut Mill Street Raigarh, Tahsil and Dist.- Raigarh Chhattisgarh.

---- Petitioners

Versus

1. Smt. Sudha Upadhyay, Wd/o. Suresh Kumar Upadhyay, aged about 28 years,
2. Ku. Arya Upadhyay, D/o. Suresh Kumar Upadhyay, aged about 4 years,
Through : natural guardian Smt. Sudha Upadhyay (mother)
Both are R/o. Uattri Ringh Road Kedarpur, Ambikapur Dist.- Sarguja Chhattisgarh.
3. Commanding Officer, 26 R.R./C.O.-56 A.P.O. Kumau Head Quarter Thar Thari, Dist- Udhampur (Kashmir).
4. Officer-In-Charge, Record Office, M.I.R., Make in regiment, Ahmednagar Maharashtra (M.H.) 414001.

---- Respondents

For Petitioners	: Shri Mohit Kumar, Advocate on behalf of Shri Sanjay Agrawal, Advocate.
For Respondents No.1 and 2	: Shri Jitendra Shrivastava and Shri Sanjay Patel, Advocates.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

02-09-2021

1. This civil revision has been brought being aggrieved by the order dated 29-07-2017, passed in Civil Appeal No.5/2016, by the learned Second Additional District Judge Raigarh, dismissing the appeal and upholding the order dated 17-12-2015, passed by the First Civil Judge Class-I,

Raigarh, in Succession Case No.15/2011.

2. The facts of the case in brief are these, that deceased Suresh Kumar Upadhyay was a member of Indian Army who has expired. The amount of gratuity, general provident fund and others are pending to be disbursed by respondent No.3 and 4 to the successors of the deceased soldier. The applicants are parents of the deceased Suresh Kumar Upadhyay. An application under Section 372 of the Indian Succession Act, 1925 (In short "the Act, 1925") was filed before the Court of Civil Judge Class-I Raigarh praying for issuance of succession certificate for disbursement of the amount of service benefits of the deceased to the applicants and respondents No.1 and 2 jointly.
3. The learned Court of Civil Judge, Class-I passed the order dated 17-12-2015, in which, it was held that applicant No.1 has no entitlement to receive the amount as he is not the first class successor according to Section 10 of the Hindu Succession Act, 1956. The application was partly allowed by granting succession certificate in favour of applicant No.2 and respondents No. 1 and 2. The applicants preferred appeal which has been decided by the impugned order, in which, the order of the Court below has been upheld and the appeal has been dismissed.
4. It is submitted by the learned counsel for the petitioners that the impugned order and the order of the Civil Judge Class-I, Raigarh both are erroneous, illegal and arbitrary. It is submitted that the Army regulations provides that the dependents of the deceased soldier shall have entitlement to receive the gratuity and the amount in G.P.F. The claim of the applicants and respondent No.1 and 2 has been enquired by the District Sainik Welfare Officer Ambikapur, Surguja and it was recommended that respondent No.1 may be paid 75% of the Special Family Pension, 75% of AGI benefit, 100% of Death-cum-Retirement Gratuity and 100% of amount payable from AWWA, Regimental

Association and Army Headquarters. Recommendation was made to make payment of only 25% of the Special Family Pension and 25% of AGI benefit to applicant No.1 (applicant No.2 before the Court below). It is submitted that the applicants have entitlement for equal share in the service benefits of their son, therefore, the order of the appellate Court and the Court below both are erroneous and unsustainable. Prayer has been made to allow the revision petition.

5. Learned counsel for respondents No. 1 and 2 has opposed the revision petition and the submission made in that respect. It is submitted that respondent No.1 being the wife of the deceased soldier has entitlement to receive all the benefits and it is also held in the appellate order that the applicants are required to prove that they were fully dependent on the deceased-son, whereas, there is finding otherwise in the report given by the District Sainik Welfare Officer, Ambikapur. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **Nitu Vs. Sheela Rani and others**, reported in **(2016) 16 SCC 229**, in which it is held that parents of deceased officer are not included in the definition of family, if the deceased soldier was married at the time of his death. It is also held in this judgment that the provisions of Hindu Succession Act, 1956 are not applicable in the case of family pension. It is also submitted that concurrent finding has been given by both the courts below. Therefore, the petition filed is unsustainable.
6. I have heard the learned counsel for both the parties and perused the documents placed on record.
7. The first question for consideration before this Court is whether the pension, gratuity and other deposits with respect to any service are subject matter of grant of certificate under the Indian Succession Act.

8. Section 370 of the Act, 1925 places restrictions on grant of certificates.

The provision is as follows:-

“370. Restriction on grant of certificates under this Part.— (1) A succession certificate (hereinafter in this Part referred to as a certificate) shall not be granted under this Part with respect to any debt or security to which a right is required by section 212 or section 213 to be established by letters of administration or probate:

Provided that nothing contained in this section shall be deemed to prevent the grant of a certificate to any person claiming to be entitled to the effects of a deceased Indian Christian, or to any part thereof, with respect to any debt or security, by reason that a right thereto can be established by letters of administration under this Act.

(2) For the purposes of this Part, “security” means—

- (a) any promissory note, debenture, stock or other security of the Central Government or of a State Government;
- (b) any bond, debenture, or annuity charged by Act of Parliament [of the United Kingdom] on the revenues of India;
- (c) any stock or debenture of, or share in, a company or other incorporated institution;
- (d) any debenture or other security for money issued by, or on behalf of, a local authority;
- (e) any other security which the [State Government] may, by notification in the Official Gazette, declare to be a security for the purposes of this Part.”

9. In case of **Nitu Vs. Sheela Rani (supra)**, it was held that the mother of the deceased government servant has no entitlement to get any share in the pension. In case of **Smt. Violet Issac & Ors. Vs. Union Of India & Ors.**, reported in **(1991) 1 SCC 725**, the Hon’ble Supreme Court has

held that pension does not form part of the estate of the deceased. The case in hand is strictly governed by the rules and regulations as may be applicable, as the deceased in this case was a member of armed forces. Hence, in such case, the rules and regulations that are applicable to the members of armed forces have to be looked into.

10. The Defence Services Regulations, Pension Regulations for the Army Part-I of 2008 provides in Rules-66, the definition of family, which shows that family for the purpose of regulation was consist (1) wife in the case male service personnel or husband in the case of female service personnel lawfully married before or after retirement. Clause (1) (iv) of Rule 66 provides that that parents who were wholly dependent on the service personnel when he was alive shall have entitlement. But this entitlement is subject to the compliance of other regulations.
11. Rule 68 of the Regulations very clearly provides that ordinary family pension shall not be payable to more than one member of the family at the same time. The entitlement of parents for family pension is provided in Rule 70 which is as follows :-

“ORDINARY FAMILY PENSION TO PARENTS.

70. Parents who were wholly dependant on the service personnel when he was alive, provided the deceased had left behind neither a widow nor child may be granted ordinary family pension for life at normal rate as admissible under Regulation 64 (a) of these Regulations subject to the condition that their earning is not more that Rs. 2550/- per month from all sources including pay, pension or self employment.

Note-1. Mother will receive ordinary family pension first and after her death, father will be re-granted family pension. A mother who becomes widow has not re-married remains eligible.

2. Income criteria shall be taken into account for both parents when both are alive.”

12. In light of these provisions, under the Defence Services Regulations Pension Regulations for the Army, it is very much clear that entitlement of the parents of the deceased for family pension occurs only in case the army personnel is not survived by widow or children and the same is not a case here. Hence, on this basis I am of this view that the petitioners can not claim any share in the family pension with respect to the death of their son, who was army personnel. It has been clearly held in the case of **Smt. Violet Issac (supra)**, pension is not a part of estate, but the other money receivable on account of death of government servant or the personnel of security forces can be regarded as an estate of the deceased and also can be regarded as security, which is mentioned in the Section 370 Sub-Section (2) of the Act, 1925.
13. The learned Court of Civil Judge Class-I has decided the application filed under Section 372 of the Act, 1925 granting benefit in part to the petitioner No.1 only. The provisions under Section 373 (4) of the Act, 1925 provides that in case of more than one applicants, the Judge has the authority to decide as to whom the certificate is to be granted having regard to the extent of interest and the fitness in other respects of the applicants. Provisions in Chapter 10 of the Act, 1925 do not determine the right of title strictly as it may be determined by the Civil Court. Any person, who received the debts security etc. on the strength of succession certificate granted to him shall hold the same as nominee or a trustee and the persons, who were interested to claim any right with respect to the same they have the liberty to make such claim before the regular civil Court in regular civil litigation.
14. Further while deciding the application under Section 372 of the Act, 1925, the entitlement of the claims for issuance of succession certificate

is not required to be considered according to the personal law by which the parties governed. The Court has the authority to grant certificate in the name of more than one parties, if the circumstances so demand. Therefore, leaving out the petitioner No.2 in grant of succession certificate for the service benefits of the deceased excluding the pension is not appropriate order. The name of the petitioner No.2 is also required to be included in grant of succession certificate. Therefore, I am of this view that the impugned order and the order of the Civil Judge Class -I, Raigarh both are not proper. The order dated 17.12.2015 needs modification according to which, the succession certificate has to be issued in the name of the petitioners and respondent No.1 and 2 jointly.

15. In view of the forgoing discussion, this revision petition is allowed. The impugned order is set- aside and the order of the Civil Judge Class-I, dated 17.12.2015 is modified directing that the succession certificate for the services deposits and gratuity of the deceased Suresh Kumar Upadhyay shall be issued jointly in the name of the petitioners and the respondents No. 1 and 2.
16. Accordingly, this petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil/
Balram