21 29.03.2023

Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.CT 2 of 2023

Union of India and others
Vs.
Sudeshna Das and another.

Ms. Rajashree Roy,
Mr. Ramen Bose.
... for the petitioners.

Ms. Nandini Maitra,
Mr. A. Chakraborty.
... for the respondent.

An interesting fact has emerged in the instant case relating to family pension as the retired employee married twice during his lifetime. There appears to be a factual dispute to the fact whether the second marriage was solemnized during the subsistence of first marriage and, therefore, rendered the second marriage invalid in the eye of law.

Though the respondent being the applicant before the Tribunal asserted that the first wife of the deceased Government servant died in the year 1981 and the second marriage with her mother was contracted in 1989, but it appears that the authorities as well as the parties proceeded without any demur on the fact that the second marriage was solemnized during the lifetime of the first wife.

Be that as it may, it further appears from the record that the said Government servant left behind him surviving as on date two daughters; one from the wedlock of the first wife and other from the wedlock of the second wife. The respondent claimed to be a daughter of the second wife.

A plea was taken by the Union of India that since the marriage with the mother of the respondent was solemnized after the retirement and in absence of any declaration having made by the retired employee in this regard, the family pension cannot be given to the respondent.

We do not delve to go deep into the matter after noticing the salient facts, which, in our opinion, are required to be considered for answering an issue involved in the instant writ petition. Even if the Government employee has contracted marriage twice yet has the children, who is entitled to succeed to the estate left by him after his death. The law applicable in this regard does not make any distinction between a child born from the first marriage and the child from the second marriage. They both are regarded as children and if the family pension is extended to them, the entitlement can be discerned therefrom.

Rule 54 of the Central Civil Services (Pension) Rules, 1972 contained an exhaustive provision relating to family pension. Several eventualities have been provided for granting the family pension to the children and the widow, as the case may be. We are basically founded our consideration on sub-rule (7) and (8) of Rule 54 of the said Rules. Sub-rule (7) of Rule 54 postulates that where the family pension is required to be paid to more widows than one then such pension shall be given in equal shares to each of such widows. It further provides that only upon death of the widow, the share of family pension shall be payable to her legible child. The proviso inserted to sub-clause (2) of clause (9) of sub-rule (7) of Rule 54 makes the position more clear that in the event the widow is not survived by any child then the share of family pension shall not lapse, but be payable to other widows in equal share.

Interestingly, clause (d) of sub-rule (7) of Rule 54 brings more equality amongst the twin children by providing the family pension in equal share, obviously because of the lack of any scientific standards to determine who is elder and who is younger. Sub-rule (8) of Rule 54 manifest that in the event the family pension is payable to the children then the same should be paid 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 grant of family pension.

What can be seen from the joint reading of the aforesaid provision that the eligibility and ineligibility to receive family pension is *sine qua non* for extending such benefits and, therefore, a reasonable and rational decision is required in this regard to uphold the legislative mandate rather than to frustrate it.

A point is sought to be taken before us that the moment the family pension is given to the first wife, the child of the second wife i.e. the respondent is not entitled to her share of pension having not begotten from her. There appears to be a misconstruction of the aforesaid provision as it talks about the eligibility of the child to receive pension. Even if the child is born from her womb, if she or he is not eligible, it does not fulfil and/or satisfy the conditions enshrined therein. Furthermore, right to pension originates from service condition of the Government employee and, therefore, is referable and relatable to the Government employee.

The provision relating to pension is a beneficial piece of legislation and, therefore, the canon of interpretation requires a more pragmatic and a liberal interpretation so that the beneficiaries of such welfare legislation are not deprived of the right perceived at the time of promulgation thereof. It is a foremost duty of the Court to harmonize the two provisions in such a manner that it would render both the provisions to operate or make workable than to render it redundant or otiose. The object is further laudable in this regard on a meaningful reading of the provisos inserted to sub-rule (7)(a)(2) of Rule 54 where in absence of child, the another widow shall be entitled to her share of family pension.

It is fallacious to suggest that strict literal interpretation is required in this regard, but, in our opinion, a purposive interpretation is to be effectuated to uphold the workability of the provisions contained in the beneficial piece of legislation. The object is manifest that in the event the widows are no longer in the world after the death of the Government employee, the family pension can be extended to the children in the order of their seniority with the caveat that in the event the elder wife is ineligible to receive the pension, the pension can be given to the next in order of birth.

The facts emerged in the instant case leaves no ambiguity in the mind that the respondent is younger daughter and there is a surviving elder daughter of the deceased Government employee. We have been taken to the pleading in the tribunal application wherein she has categorically averred that the elder daughter, who is unfortunately a widow upon the death of her husband is receiving pension from the State of Assam and, therefore, makes her ineligible to receive further pension. The aforesaid statement is dealt with by the petitioners in paragraph 16 of the reply wherein it is said that in absence of any office record available at that time, which establishes the fact over the identity of the person, it is not possible to make any comment therein.

There is no express denial of the fact on receiving the pension by the elder daughter upon the death of her husband rather the stand taken in the reply appears to be evasive. The elder daughter has not come forward to lay her claim in this regard. The ineligibility has to be judged on the above parameter and if a child is already receiving pension, she is not supposed to receive further pension as the purpose of providing a family pension get frustrated. The moment the ineligibility is surfaced on the touchstone of the principles of pleading, the Rule provides that the younger one is entitled to a family pension.

We do not accept the stand of the Tribunal in directing the share of pension amongst the two daughters, which, in our opinion, is contrary to the Rules. The moment the Rule is silent and does not include such eventuality, it is not the duty of the Tribunal or the Court to substitute the Rule or to make a Rule in this regard. The aforesaid observation get further fructified for the simple reason that the legislatures were conscious of a certain eventuality and incorporated the provision relating to sharing of the family pension and consciously avoided and/or omitted to include the situation like one in the instant case.

The doctrine of casus omissus can also be applied in this regard where legislatures have consciously omitted to include something within the Act upon including the identical situation but to operate in distinct sphere. It manifest the intention of the legislature that the eventuality so omitted cannot be kept in parity with the other eventualities incorporated in the provisions.

Since we found that the elder daughter is ineligible to receive the pension by virtue of the provisions contained in sub-rule (8) of Rule 54 of the said Rules, the respondent, the younger daughter, is entitled the family pension.

The order of the Tribunal is modified to that extent.

So far as the grant of family pension to the said respondent is concerned, it shall take effect from the death of first wife, who was initially entitled the family pension under the aforesaid Rules.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)