
(2013) 12 GUJ CK 0035

In the Gujarat High Court

Case No : Special Civil Application No. 7607 of 2013

Bilkishbanu and 1 Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0035

Hon'ble Judges : A.J. Desai, J

Bench : Single Bench

Advocate : Yogendra Thakore, for the Petitioners No. 1 - 2, for the Appellant; Rahul Dave, Assistant Government Pleader for the Respondent(s) No. 1 - 2, Ms. K.J. Brahmbhatt and Ms. Varsha Brahmbhatt, Advocates for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

A.J. Desai, J.—By way of present petition under Articles 14 ,16 and 226 of the Constitution of India, the petitioner No. 1—who is wd/o Yasinkhan Pathan—the deceased employee of respondent No. 2 and petitioner No. 2 minor son of petitioner No. 1 and another minor daughter of petitioner No. 1 who took birth after the sad demise of her husband and during the pendency of present petition has prayed that respondent No. 2 be directed to release the family pension in favour of her and continue to pay the family pension regularly. It is also prayed that respondent No. 2 be directed to pay arrears of family pension. It is the case of the petitioner that petitioner No. 1 got married to one Yasinkhan Pathan on 27.04.2008 and started residing with him at her matrimonial home.

1.1 On 10.09.2012 the husband of petitioner No. 1 sustained serious burn injuries pursuant to accident which took place at the resident of husband of the petitioner No. 1 and he succumbed to the said injuries after a period of one month. Since respondent No. 3 who is mother-in-law of petitioner No. 1 i.e. mother of her deceased son has filed an application for getting probate before the learned Civil Judge relying upon the Will executed by the deceased, the

respondent authority asked the petitioner No. 1 to get appropriate orders from competent Court since there was dispute towards the properties belonging to the deceased husband. Hence, this petition.

2. Pursuant to notice issued by this Court, respondent No. 3 filed affidavit-in-reply and opposed the petition. It is the case of respondent No. 3 that there was dispute in the marriage of her son and petitioner No. 1 and pursuant to which, petitioner No. 1 was residing separately at her parental home. It is the case of respondent No. 3 that even though petitioner No. 1 was pregnant at the time of accident, she did not inform the parents of her husband and did not inform her husband though he survived for a period of one month. Considering the behaviour of petitioner No. 1, her deceased son executed a Will on 05.10.2010 and the same was notarized at Mehsana. As per the Will all the movable and immovable properties have been bequeathed to respondent No. 3 i.e. mother of the deceased employee and therefore, petitioner No. 1 is not entitled to family pension. It is the case of respondent No. 3-mother that her son was not aware about the pregnancy of petitioner No. 1 when the accident took place. It has been contended in the affidavit-in-reply that after death of husband of petitioner No. 1, petitioner No. 1 got entered her name in the property rights which ultimately has been treated as disputed entry and pursuant to objection raised by mother.

3. Mr. Thakore, learned advocate for the petitioner submitted that it is an admitted position that when accident took place the present petitioner No. 1 was residing with her husband at her matrimonial home and same is supported by the dying declaration which was recorded by the Executive Magistrate. He would submit that no complaint has been lodged against petitioner No. 1 either by her deceased husband or by his relatives. He would submit that an application which has been filed by respondent No. 3 has been objected by the petitioner No. 1 by way of filing of written statement before the Civil Court in the said proceedings. He would submit that even the Will is believed, the petitioner No. 1 cannot be denied the family pension since the family pension is paid under a scheme is in the nature of a welfare scheme. The affected parties are the widow and minor children in case of death of an employee. In support of his submission he has placed reliance on the decision of this Court in the case of Jyotiben Natvarlal Bhatt and Another Vs. State of Gujarat and Others, wherein it has been held by the learned Single Judge that even if a Will is executed by the deceased employee in favour of other persons than the wife and minor children, the widow would be entitled for family pension and not other persons. He has also relied upon the provisions of Gujarat Civil Services (Pension) Rules, 2002 and submitted that the petition requires consideration and respondent No. 2 may be directed to pay the amount of family pension or pass appropriate orders to release the family pension.

4. On the other hand, Ms. Varsha Brahmbhatt, learned advocate for respondent No. 3-mother-in-law of petitioner No. 1 has opposed this petition and submitted

that the deceased son of respondent No. 3 had executed a legal Will which has been notarized and as per the Will her son's wish would be respected and family pension shall not be released in favour of petitioner No. 1. She has taken me though the several papers by which she tried to establish that there was dispute between the husband and wife and submitted that the petition may be dismissed.

5. Heard learned advocates for the parties. It appears that when the accident took place the petitioner No. 1 was residing with the deceased. It is also an admitted position that there is no material to establish that there was any difference between the petitioner No. 1 and her husband or they were residing separately at the time of accident. As far as validity of the Will under Indian Succession Act is concerned, this Court would not like to express any opinion and the case is required to be disposed of in accordance with the facts and law by the competent civil court.

6. As far as family pension is concerned, in case of Jyotiben Natvarlal Bhatt and Another (supra) relying upon the case of Smt Violet Issaac and Others Vs. Union of India (UOI) and Others, it has categorically held that widow would be entitled for family pension even as per the provisions of Gujarat Civil Services (Rules), 2002. Hence, I am of the opinion that the petition requires consideration and the same is allowed. The respondent No. 2 shall release the family pension in favour of petitioner No. 1 who is wd/o Yasinkhan Pathan, who was working with respondent No. 2 at the time of accident and his death within a period of six weeks from the date of receipt of the order. The arrears of the amount of family pension shall also be paid to petitioner No. 1 within a period of 6 weeks from the date of receipt of the order. However, it is made clear that the litigations which are pending before the trial Court shall be decided by the concerned Court strictly in accordance with law without being influenced by the present order of this Court since the petition was filed for getting family pension only and has been decided relying upon the provisions of Rules as well as the decision as referred hereinabove is made absolute. Direct service is permitted.