(2013) 03 MAD CK 0080

In the Madras High Court

Case No : Writ Petition No. 24041 of 2012

Chinnapappa APPELLANT

Vs

The Secretary to Government and Others RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Hindu Succession Act, 1956 — Section 10(1)
Legal Services Authorities Act, 1987 — Section 20, 20(3)

Citation : (2013) 3 MLJ 319

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.R. Jothimanian, for the Appellant; V. Subbiah, Spl. G.P. for RR1 to 3 and Mr. V. Vijay Shankar for R-4, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner in this writ petition seeks for a direction to the respondents 1 to 4 to pay arrears of pension of Rs.

2,50,000/- as per the settlement arrived by the pension Lok Adalat, dated 8.6.2010 by the Tamil Nadu State Legal Services Authority with

interest at the rate of 18% per annum with the stipulated time. The writ petition when it came up for admission on 04.09.2012, the learned Special

Government Pleader was directed to take notice. On notice, a counter affidavit, dated 08.10.2012 was filed by the third respondent, which was

adopted by other respondents 1, 2 and 4. The petitioner is the mother of late K. Govindan, who was working as a Gang Mazdoor under the third

respondent at Mettur sub division. He died on 26.04.2001 while in service. The fifth respondent is his wife and she had received all his death

benefits, including family pension of late K. Govindan from 26.04.2001 to

26.08.2006. Afterwards, she got married to one R. Madhesan on

27.08.2006. In view of the fact that the widow of late Govindan got remarried, there is no obligation for the State Government to expand the

family pension to the 5th respondent and that the pension was stopped for her on account of her remarriage which took place on 27.08.2006.

Thereafter, no pension was paid to any one. However, the petitioner filed a suit before the District Munsif Court at Mettur being O.S. No. 162 of

2007. In that suit, she claimed for a declaratory relief, i.e., that she is the legal heir of late Govindan. In that suit, she has made present respondents

as party defendants. After trial, the learned Munsif, Mettur, by a judgment and decree, dated 7.3.2008, had decreed the suit. It was declared that

the petitioner is the sole legal heir of late Govindan and all benefits including pension payable to Govindan has to be paid to her within three months

from the date of the judgment. But the relief regarding the mandatory direction for the grant of employment was rejected. The sole ground on

which the suit was decreed was based upon Section 10(1) of the Hindu Succession Act. Since the 5th respondent had remarried, she lost the

status of widow of late Govindan. Therefore, the petitioner in the absence of any other legal heirs, becomes the legal heir as she belonged to Hindu

religion.

2. After the judgment of the civil court, the Chief Engineer (General), Highways Department sent a communication to the State Government on

various dates including 26.02.2009, 25.06.2009, 17.07.2009 and 05.04.2010. A proposal was sent to the Accountant General. But, it was

indicated that under Rule 49 of the Tamil Nadu Pension Rules, it is only in the absence of the wife, the widowed daughter or divorced daughter or

son or daughter can be paid family pension. In case where a Government servant dies unmarried, then only his parents will be eligible for family

pension. The proposal was returned by the Accountant General. Notwithstanding the same, the petitioner made a complaint before the Pension

Lok Adalat organized by the Tamil Nadu State Legal Services Authority and notice was issued by the Pension Lok Adalat to the parties. When

the matter came up before the Pension Lok Adalat, it had suggested relaxation of necessary rule in favour of the petitioner so as to make her

eligible to get family pension.

3. Based on the observation made by the Lok Adalat, the State Government had issued G.O.Ms. No. 193, Highways and Small Ports

Department, dated 01.06.2010. By the said G.O., the State Government had relaxed Rule No. 49(6)(i), 49(13)(iii) of the Tamil Nadu Pension

Rules, 1978 by exercising of power under Rule 82 of the said Rule. Before issuance of the G.O., they had also obtained an opinion of the

Government Pleader. Therefore, when the matter was called before the Pension Lok Adalat on 8.6.2010, on behalf of the State, a copy of the

G.O., was produced before the authorities. Instead of recording the G.O. and disposing of the matter, curiously, the Lok Adalat had passed the

following order:

Parties represented. Government has passed G.O. No. 193, Highways and Minor Ports Department dated 1.6.2010 in favour of the petitioner for

a sum of Rs. 2,50,000/- towards Family Pension arrears. The department will take follow up action and pay the amount to the petitioner. With this

direction petition is closed.

4. It is admitted that pursuant to the G.O., the petitioner has been sanctioned pension and has been getting family pension regularly being credited

to her account in the Indian Bank. Notwithstanding the same, the petitioner in the guise of enforcing the order passed by the Lok Adalat dated

8.6.2010 has filed the present writ petition.

5. The respondents resisted the claim by stating that since the petitioner has been paid in terms of G.O.Ms. No. 193, Highways Department, dated

1.6.2010 by relaxing necessary rules, there is no question of paying any arrears for the period from 27.8.2006 to 31.05.2010. The two rules, upon

which exemption was granted, i.e., Rule 49(6)(i) and 49(13)(b)(iii) of the Tamil Nadu Pension Rules read as follows:

(6) The period for which the family pension is payable shall be as follows:-

(i) in the case of a widow or widower upto the date of death or remarriage, whichever is earlier;

(13)(b) family in relation to a Government servant means-

....

(iii) [legally adopted son and daughter, father] failing which the mother, in the case of an unmarried Government servant subject to the condition that such person declares to be dependent on the deceased Government servant.

(Emphasis added)

6. The power of exemption has been granted under Rule 82, which reads as follows:

82. Power to relax where any Department of the Government is satisfied that the operation of any of these rules causes under hardship in any

particular case, the Department may by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such

extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Finance Department.

7. Therefore, the State Government, in the present case, had granted exemption from the relevant rule, so that she may get family pension on

account of the hardship expressed by her. She cannot improve her case by filing a complaint before the Lok Adalat and get an unintended benefit

of arrears of pension. In fact, in the present case, the civil court before which she filed a declaratory relief did not even refer to the relevant rule and

it had failed to note that it did not have jurisdiction to expand the provisions of the Tamil Nadu Pension Rules, which are statutory in character.

Even if the petitioner is the only surviving legal heir, that by itself will not enable her to get family pension in the absence of any enabling provision

under the said Rule. That is why when the suit was decreed and the proposal was sent by the Chief Engineer, Highways Department, the office of

the Accountant General had correctly returned the proposal by pointing out the relevant rule. Notwithstanding the same, an opinion was obtained

from the Government Pleader and the Government also relaxed the rule in favour of the petitioner by exercising power under Rule 82. If at all, the

Pension Lok Adalat should have closed the case by recording the said Government Order, but giving direction to pay Rs. 2,50,000/- as if the

petitioner is entitled to get the family pension as a mater of right ever since the remarriage of her daughter-in-law does not arise. Neither the civil

court nor the Pension Lok Adalat applied their mind to the relevant rule on hand.

8. In this context, it is necessary to refer to a judgment of the Supreme Court in State of Punjab and Others Vs. Phulan Rani and Another, ,

wherein the power of the Lok Adalat u/s 20(3) of the Legal Services Authorities Act came to be considered in relation to the claim of pension and

in paragraph 7, it was observed as follows:

7. The specific language used in sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise

or settlement between the parties. Two crucial terms in sub-sections (3) and (5) of Section 20 are ''compromise'' and ''settlement''. The former

expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by

reciprocal modification of demands. As per Termes de la Ley, compromise is a mutual promise of two or more parties that are at controversy. As

per Bouvier it is an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can

agree upon. The word ''compromise'' implies some element of accommodation on each side. It is not apt to describe total surrender. (See N.F.U.

Development Trust Ltd., Re 1.) A compromise is always bilateral and means mutual adjustment. ''Settlement'' is termination of legal proceedings

by mutual consent. The case at hand did not involve compromise or settlement and could not have been disposed of by the Lok Adalat. If no

compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat. Therefore, the disposal of Writ Petition No. 13555

of 1994 filed by Respondent 1 is clearly impermissible.

(Emphasis added)

9. The said judgment came to be quoted with approval in the subsequent judgments of the Supreme Court in State of Punjab and Others Vs. Shri

Ganpat Raj, and in Union of India (UOI) Vs. Ananto (Dead) and Another, . The Supreme Court had referred to the judgment of Ganpat Raj''s

case and held in paragraph 7 as follows:

7. Both learned Single Judge and the Division Bench failed to take note of what has been stated by this Court in State of Punjab v. Ganpat Raj 3.

In the fitness of things, therefore, we remit the matter to the High Court to hear the writ petition afresh. Since the matter is pending since long, we

request the High Court to dispose of the matter within four months from the date of receipt of the copy of the judgment. While doing so, the effect

and relevance of judgment in Munsha case 1 shall be considered. It is made clear that we have not expressed any opinion on merits of the case.

10. Further, the Supreme Court in State of Punjab and Another Vs. Jalour Singh and Others, has held that in the absence of settlement or

compromise between the parties, the Lok Adalat cannot pass orders without any one of them agreeing for the same. In paragraphs 10 and 11, the

Supreme Court had observed as follows:

10. The order of the Lok Adalat in this case (extracted above), shows that it assumed a judicial role, heard parties, ignored the absence of

consensus, and increased the compensation to an extent it considered just and reasonable, by a reasoned order which is adjudicatory in nature. It

arrogated to itself the appellate powers of the High Court and ''allowed'' the appeal and ''directed'' the respondents in the appeal to pay the

enhanced compensation of Rs. 62,200 within two months. The order of the Lok Adalat was not passed by consent of parties or in pursuance of

any compromise or settlement between the parties, is evident from its observation that if the parties object to the proposed order they may move

the High Court within two months for disposal of the appeal on merits according to law. Such an order is not an award of the Lok Adalat. Being

contrary to law and beyond the power and jurisdiction of the Lok Adalat, it is void in the eye of the law. Such orders which ''impose'' the views of

the Lok Adalats on the parties, whatever be the good intention behind them, bring a bad name to the Lok Adalats and legal services.

11. The travails of the parties did not end with the Lok Adalat. Because the Lok Adalat directed the aggrieved party to move the High Court for

disposal of appeal on merits if they had objection to its order, the appellants moved the High Court by an application in the appeal, stating that they

had not agreed to the enhancement proposed by the Lok Adalat and praying that the order of the Lok Adalat increasing the compensation by Rs.

62,200 may be set aside as there was no settlement or compromise. The learned Single Judge failed to notice that there was no settlement or

compromise between the parties; that the order made by the Lok Adalat was not an award in terms of any settlement as contemplated under the

LSA Act; that the Lok Adalat had clearly stated that the parties may either agree to it, or move the High Court for disposal of the appeal on merits

in accordance with law; and that in the absence of any settlement and award, the appeal before the High Court continued to be pending and could

not have been treated as finally disposed of. The learned Single Judge instead of perusing the order of the Lok Adalat and hearing the appeal on

merits, proceeded on a baseless assumption that the order dated 3-8-2001 of the Lok Adalat was a binding award and therefore an application to

hear the appeal, was not maintainable and the only remedy for the appellants was to challenge the order of the Lok Adalat by filing a writ petition

under Article 227 of the Constitution.

(Emphasis added)

In the light of the legal precedents, if it is seen, the order dated 8.6.2010 which is sought to be enforced by the petitioner is a mere advisory and

not a binding Award of the Lok Adalat. Even otherwise, the Lok Adalat cannot go beyond the Government order granting exemption to the

petitioner from the relevant rules so as to enable her to get pension. In the absence of the Government order granting retrospective payment of

pension, this court cannot give any direction either to reinterpret the Government order or to enforce the so-called Award of the Lok Adalat.

Hence the writ petition is misconceived. Accordingly, the writ petition will stand dismissed. No costs.