
(2014) 04 JH CK 0096
In the Jharkhand High Court
Case No : LPA No. 91 of 2009

Damodar Valley Corporation

APPELLANT

Vs

Rameshwar Prasad

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Citation : (2014) 4 AJR 215 : (2014) 2 JLJR 596

Hon'ble Judges : R. Banumathi, C.J.; S. Chandrashekhar, J

Bench : Division Bench

Advocate : Satish Ughal, Srijit Choudhary and Piyush Chitresh, Advocate for the Appellant; Rajiv Nandan Prasad, Advocate for the Respondent

Judgement

1. The present appeal is directed against the order dated 5.12.2008 passed in W.P. (S) No. 5674 of 2003, whereby the appellants-corporation have been directed to pay the family pension in accordance with law. Brief facts of the case are that, late Raj Kumari was issueless widow and she had no family member to look after her. She adopted the respondent-writ petitioner in the year, 1987 while he was aged about 10 years and executed a deed of Gift in favour of the respondent on 5.1.1987 for payment of Gratuity, Provident Fund ex-gratia etc. in case of her death. On 17.6.1987, late Raj Kumari made a representation to the appellants-Corporation and introduced the respondent as her nominee for her C.P.F. Account No. W-7544, which was duly accepted by the appellants-Corporation vide its letter No. 2942 dated 3.2.1988.

2. Late Raj Kumari retired from service of the appellants-corporation on 31.7.1994 and the C.P.F. amount was paid to her but before finalization and payment of other retiral benefits she died on 8.2.1996 in the D.V.C., C.T.P.S. Hospital due to serious illness. Thereafter, the appellants-Corporation, vide letter No. AP/9432/2125 dated 3.12.1996 directed the respondent to submit the death certificate and also the succession certificate from the competent Court for being entitled to receive D.C.R.G., commuted value and pension due in respect of late Raj Kumari.

3. In pursuance thereof, the respondent moved before the District Judge, Bokaro by filing Succession Certificate Case No. 4 of 1997 and vide order dated 8.10.1999, Succession Certificate was granted in favour of respondent to collect the debts, dues and securities of late Raj Kumari. The respondent, thereafter, submitted the Succession Certificate before the appellants-Corporation and vide letter No. AO/Pen-Sanction-132 dated 13.4.2001, the respondent was accepted as the adopted son and directions were issued by the appellants-Corporation to pay the dues of late Raj Kumari towards undrawn arrear of pension of Rs. 12,474/-, D.C.R.G. of Rs. 27,750/- and commuted value of Rs. 27,194/- but the same was not paid. Thereafter, the respondent on 22.8.2001 applied for settlement and payment of family pension in the required format but nothing was paid. The respondent again on 10.1.2002 sent a representation to settle the family pension in his favour, however, the same was not paid.

4. The respondent, thereafter, filed writ petition, being W.P. (S) No. 5674 of 2003 for family pension, which was disposed of vide order dated 5.12.2008 with a direction to the appellants-Corporation to pay family pension in accordance with law within a period of two months from the date of production/receipt of copy of this order. Being aggrieved by the impugned order the appellants-Corporation have filed this Letters Patent Appeal.

5. Heard Mr. Satish Ughal learned counsel appearing for the appellants-Corporation and Mr. R.N. Prasad, learned counsel appearing for the respondent.

6. Learned counsel appearing for the appellants submitted that though the retiral benefits of the deceased-employee, namely, late Raj Kumari has been paid to the respondent, the respondent is not entitled for family pension on account of death of the deceased-employee as he is not legally adopted son of the deceased-employee. It is further submitted that in fact the adoption of the respondent and his nomination by the deceased-employee, namely, late Raj Kumari, is disputed: Since the respondent obtained the succession certificate, the appellants-Corporation granted the retiral dues of the deceased-employee to the respondent and this would not make the respondent entitled for payment of family pension. In support of his contention, learned counsel for the appellants relied upon the judgment rendered in the case of Smt Violet Issaac and Others Vs. Union of India (UOI) and Others, and also the judgment rendered in the case of Jodh Singh Vs. Union of India (UOI) and Another, .

7. Learned counsel appearing for the respondent submitted that in terms of Rule 54(6)(ii) of the Central Civil Services (Pension) Rules, 1972 the respondent is entitled for family pension till he attains the age of 25 years. It is further submitted that since the deceased-employee, namely, late Raj Kumari had executed the Gift deed in favour of the respondent and she had nominated the respondent to receive the gratuity and provident fund amount and since he has also obtained the succession certificate, the respondent is entitled for grant of family pension till he attained the age of 25 years.

8. We have considered the rival contentions of the learned counsel for the parties and perused the documents on record.

9. The respondent cannot claim payment of family pension on the basis of gift deed dated 5.1.1987 and the succession certificate dated 8.10.1999. In Smt Violet Issaac and Others Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court held that an employee has no right to bequeath the right for family pension or to execute a Will in favour of any person to extend the benefit of family pension. Since the family pension would be payable on the death of the employee it would not form part of the retiral dues of the employee enabling the employee to execute a Will or a gift deed. In paragraphs 4 and 5 of the judgment rendered in the case of Smt Violet Issaac and Others Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court held as under:--

4. The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules, 1964 provide for the sanction of family pension to the survivors of a Railway employee. Rule 801 provides that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or gets married, whichever is earlier. The Rules do not provide for payment of family pension to brother or any other family member or relation of the deceased Railway employee. The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway Administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

5. In Jodh Singh vs. Union of India, this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved

on his death to the widow. The court observed:--

Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition.

The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition.

10. As per Rule 54(6)(ii) of the Central Civil Services (Pension) Rules, 1972 only the son or the legally adopted son of the deceased-employee is entitled to get the family pension till he attains the age of 25 years. Admittedly the respondent is not the son of the deceased-employee and he only claims to be the adopted son.

11. We are of the view that in absence of any valid deed of adoption, adopting the respondent as her son by the deceased-employee namely, late Raj Kumari, the respondent cannot be said to be entitled for grant of family pension as per Rule 54(6)(ii) of the Central Civil Services (Pension) Rules, 1972. Though, the other retiral benefits of the deceased-employee has been given to the respondent, but that would not entitle the respondent to receive the family pension. The nomination of a person to receive certain benefits such as gratuity, provident fund etc. does not make the nominee the legal heir of the Government employee and the nomination only entitles the nominee to receive the amount on behalf of the legal heirs. The benefits of a Government employee have to be distributed as per the statutory rules and law of succession. Of course, the gratuity, provident fund and other benefits have been given to the respondent but that it is in pursuance of the gift deed dated 5.1.1987 executed by deceased-employee, namely, late Raj Kumari and the succession certificate dated 8.10.1999. A perusal of the succession certificate dated 8.10.1999 issued by the District Judge, Bokaro would indicate that the appellant had applied for a certificate under the Indian Succession Act, 1925 in respect of the following debts and securities namely;

12. It is also admitted by the appellant himself that the above retiral benefits of the deceased-employee namely, late Raj Kumari have already been paid to the respondent. The succession certificate dated 8.10.1999 was thus, restricted to the right of the respondent for receiving the above retiral dues of the deceased-employee which he has already received. Thus, the succession certificate would not confer a right upon the respondent to receive family pension as the said succession certificate does not confer a status on the respondent as the adopted

son of deceased-employee late Raj Kumari. In view of the aforesaid discussion and the fact that there is no valid document of adoption of the respondent accepted by the appellants-D.V.C., the direction given by the learned Single Judge for payment of family pension to the respondent cannot sustain in law and accordingly, order dated 5.12.2008 passed in W.P. (S) No. 5674 of 2003, in so far as, it relates to the direction to the appellants-corporation to pay the family pension in accordance with law, is set aside. In the result, this Letters Patent Appeal is allowed in the aforesaid terms.