

(1978) 04 AHC CK 0049
In the Allahabad High Court
Case No : First Appeal No. 125 of 1976

Deep Sikha Aga

APPELLANT

Vs

Rani Aga and others

RESPONDENT

Date of Decision : 26-04-1978

Acts Referred:

Pension Regulations for the Air Force Act, 1961 — Regulation 74(b)(iii), 79, 93, 95

Citation : (1978) 04 AHC CK 0049

Hon'ble Judges : J.L.Sinha, J and R.B.Misra, J

Final Decision : Partly Allowed

Judgement

J.M.L. Sinha, J.

This is a first appeal arising out of the judgment and decree dated 23rd of December, 1975, passed by the Additional Civil Judge, Allahabad.

One Sri A.K. Aga was employed in the Indian Air Force, and held the rank of a Flying Officer. The appellant is the widow of the said Sri A.K. Aga, while plaintiff respondent no. 1 and defendant respondent no. 4 are his mother and father respectively. On 3rd of February, 1973, the plane in which Sri A.K. Aga had taken off from Jorhat Air Field was reported missing and on 7th July, 1973, it was declared that Sri Aga died after the wreckage of the plane was found. The appellant then laid a claim to the various pensionary and other awards in her capacity as the widow of Sri A.K. Aga. The claim made by the appellant was in the first instance not accepted by the Army Authorities, but later through their letter dated 15th November, 1973, the Air Headquarter decided to recognise the appellant as the next of kin of the deceased, Sri A.K. Aga. Since this could entitle the appellant to receive all pensionary and other awards arising out of the death of Sri A.K. Aga, Smt. Rani Aga, respondent no. 1, filed a suit in the court of the Additional Civil Judge, Allahabad for issue of a permanent injunction restraining the Union of India and the Chief of Air Staff, respondent nos. 2 and 3, from paying or delivering any discretionary benefits, arising out of the death of Sri Aga, to the appellant and further for a declaration that she was entitled to all the

discretionary benefits, award, special pensions, etc.

The suit was resisted by the appellant inter alia on the ground that, in her capacity as the widow of Sri A.K. Aga, she was entitled to get all discretionary and other benefits arising out of the death of Sri Aga and further that, since the respondent no. 4, the husband of the plaintiffrespondent, runs a restaurant and bar which is a profitable venture, she is, fully capable of supporting her and is consequently not entitled to get any discretionary benefit.

The suit was also resisted by the Union of India and the ground of defence set up by them mainly was that the plaintiffrespondent had not established any circumstance entitling her to the payment of the family pension in the presence of a widow.

The trial court framed the following issues:

1. Whether the relief"s claimed by the plaintiff are governed by the law of inheritance of Hindu law or by the Pensions Regulations for the Air Force of 1961 and as amended from time to time.
2. Whether the plaintiff has a superior right than that of the defendant no. 3 to receive the various payments from defendant nos. 1 and 2.
3. Whether the suit is barred by the provisions of section 34 of the Specific Relief Act ?
4. Whether the suit is undervalued and court fee paid is,insufficient ?
5. Whether the suit is not maintainable ?
6. Relief.

In view of the statement made by the learned counsel for both parties, the trial court in answer to issue no. 1 held that the matter was governed exclusively by the Rules and the Regulations framed in that behalf, namely, Pension Regulations for Air Force, 1961, as amended from time to time. The other issues framed in the case having been answered in favour of the plaintiff, the trial court decreed the suit in the following terms:

"The plaintiff"s suit is hereby decreed with costs against the defendant. It is hereby declared that the plaintiff is entitled to get the family gratuity and exgratia award unless the President exercises his discretion in favour of the defendant no. 3. The defendant nos. 1 and 2 are restrained from making payments of these amounts as determinable per rules and regulations to the defendant no. 3 for all times to come, unless the President of India in his discretion directs otherwise."

Feeling aggrieved against the judgment and decree of the learned Additional Civil Judge, Smt. Deep Sikha Aga (defendant no. 3), the widow of" the deceased officer has come up in appeal before this court.

Learned counsel for the plaintiff respondent made a statement before us at the time of the hearing of the appeal that the plaintiffrespondent did not lay any claim to Special Family Pension and that the plaintiffrespondent confines her claim only to the DeathcumRetirement Gratuity, Family Gratuity and Exgratia Award.

So far as the family gratuity is concerned the provisions which governs its payment is that contained in Regulation 93 of the Pension Regulations for the Air Force, 1961. The relevant portion thereof reads as under:

"93. Subject to the provisions of Regulations 74 (b) (iii) and 79, a gratuity in accordance with the table below, may be granted in a special family pensionary awards to the widow/child(ren)/parent(s) of an officer, who,

(a)

(b)

(c)

(d)

Provided that a gratuity will not be granted if the death of the officer is due to his own serious negligence or misconduct. A gratuity to the child(ren) of an officer will be granted only if the officer does not leave a widow eligible for special family pension and the child (ren) is/are eligible for child (ren)'s allowance under Regulations 74, 76 and 92. A gratuity to the parent(s) of an officer will be granted if the officer does not leave either a widow eligible for special family pension or a child eligible for child allowance, irrespective of the pecuniary circumstances of the parent(s) and whether or not he/she/ they was/were dependant on the deceased officer.⁵ Regulation 74(b)(iii) says that subject to an exemption which the President may grant under Regulation 79 a widow separated from the husband at the time of death will not be entitled to pension. It would, therefore, follow that the family gratuity of a deceased officer will be payable to a widow only if she was not separated from her husband on the date of the latter's death. In case she was separated from her husband, she can get family gratuity only if the exemption is granted in that regard by the President in exercise of his power under Regulation 79. According to Regulation 93, if the deceased officer has not left behind a widow, not separated from him, the gratuity shall be payable to his children and in the absence of the children to his parents regardless of their pecuniary circumstances.

Now in the instant case it was admitted on both ends that the appellants had obtained a decree for judicial separation sometime before her husband's death. She was, therefore, a separated widow. Consequently, in view of the provision contained in Regulation 93, she cannot get the family gratuity unless the President grants an exemption in her favour in exercise of his power under Regulation 79. It was conceded before us by the learned Standing Counsel for the Union that so far the President has not granted any such exemption in favour

of the appellant. It was not disputed before us that the deceased officer did not leave behind any child.

Now, since the appellant had obtained a decree for judicial separation from her husband and was, therefore, separate from her husband at the time of his death, and since the deceased officer did not leave behind any child, the plaintiff respondent no. 1 and defendant respondent no. 4 will be entitled to the family gratuity, being the parents of the deceased officer. The pecuniary circumstances of plaintiff respondent no. 1 and defendant no. 4 are not relevant in that connection. The decree passed by the trial Court in so far as the family gratuity is concerned should, therefore be maintained.

Learned counsel for the appellant urged that, if the decree is allowed to remain worded as it stands, it may fetter the hands of the President in granting an exemption in favour of the appellant in exercise of his power under Regulation 79 even if he chooses to do so. This apprehension is not well founded. We have already quoted earlier the operative portion of the judgment and a perusal thereof would show that all that the Lower Court has said about the family gratuity is that the plaintiff respondent was entitled to get the family gratuity unless the President exercised his discretion in favour of defendant no. 3, viz., the appellant. It is, therefore, crystal clear that even if the President exercises discretion hereafter in favour of the appellant in exercise of his power under Regulation 79, it is the appellant and not the plaintiff respondent no. 1 or defendant respondent no. 4 who would be entitled to get the family gratuity.

This takes us to the DeathcumRetirement gratuity. According to the learned counsel for the plaintiff respondent, the payment of the DeathcumRetirement gratuity should also be governed by Regulation 93 to which a reference has already been made by us earlier. Learned Counsel for the appellant, however, produced before us Air Force Instruction No. 4/5 dated December 26, 1970. Para 1 of this Instruction states that a scheme for the grant of deathcumretirement gratuity to officers holding permanent Commission and Airman on regular engagement was introduced with effect from 10th September, 1970, and that it will supplement the existing pensionary awards (including gratuity), para 2 of this Instruction, inter alia, states that deathcumretirement gratuity shall be paid to the family of the deceased in the manner indicated in para 7. Relevant portion of para 7 reads as under:

"7(a) The deathcumretirement gratuity after a reduction where applicable, as provided in para 2(d) above, shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a valid nomination."

According to para 22 of the written statement filed by the appellant, she was entered by the deceased officer in the records check form as his nextofkin and as heir. It is further stated in the same para that the deceased officer also made a nomination in favour of the appellant. Plaintiff respondent no. 1 filed a replication thereafter. In that replication the plaintiff respondent did not deny the fact of the

deceased officer having made a nomination in favour of the appellant. All that was stated was that the nomination cannot, and does not, have the effect of modifying the Pension Regulation, and further that "an officer by his unilateral act of nomination cannot compel the Government to make payment to any other person than those contemplated by the Regulation themselves." It would thus appear that the fact that the deceased officer had nominated the appellant in the records relating to the deathcumretirement gratuity as the person to receive the gratuity on his death is not disputed.

Since Regulation 93 applies only to "Family Gratuity" and does not apply to "DeathcumRetirement Gratuity", since the latter is governed exclusively by the Special Air Force Instructions, 1970; since, according to para 7(a) thereof the gratuity is to be paid to the person nominated by the deceased and since the nomination is in favour of the appellant, it is the appellant who is entitled to get the DeathcumRetirement Gratuity. The plaintiffrespondent no. 1 is not entitled to receive the same.

This leaves us with exgratia payment of Rs. 42,000/-. The learned Standing Counsel for respondent nos. 2 and 3 stated before us that exgratia payment is not governed by any rule and that it is purely within the discretion of the President and hence the plaintiffrespondent no. 1 has no enforceable claim with respect to it.

Now, if it is correct that payment of exgratia award is not governed by any rule whatsoever, it will follow, that the plaintiffrespondent has no enforceable claim with respect to it. In our opinion, however, the payment of exgratia award shall be governed by Regulation 95 and the connected letters. Regulation 95 specially deals with exgratia awards and it is no body's case that any officer is entitled to get the exgratia award, referred to in Regulation 95, besides the exgratia award which the President may grant in his discretion. Regulation 95 reads as follows:

"Exgratia awards may be granted from the Compassionate Gratuity Fund (Defence Service) to the widow, children, parent or brothers/sister of an officer who dies while in service but whose death is not due to a wound, injury or disease which is attributable to or aggravated by service.

The regulations regulating awards from the Fund are reproduced in Appendix from the Fund are reproduced in Appendix IV."

Appendix IV (printed at page 91) of the book "Pension Regulations for the Air Force, 1971, Part I" contains a letter of the Government of India, Ministry of Defence, dated 25th March, 1958, as amended by corrigendum dated 3rd July, 1958. Para 1 of this letter speaks of the creation of a Compassionate Gratuity Fund for the grant of exgratia awards to dependants of deceased commissioned officers who die while in service. Para 5 of the letter states that "dependants" will mean widows and children of deceased officers. (Remaining portions are not relevant). There are then two letters on the subject, one is dated 18/4/1972 and the other is dated 24/11/1972. The second letter dated 24/11/1972 only states that

payment of exgratia award to the families of armed personnel, who are paid out of the Defence Services Estimates, shall be at the uniform rate of Rs. 42,000/-. The letter dated 18/4/1972 is important. Para 1 thereof states that for the purposes of sanctioning exgratia payment, term "family" (in the case of married and widowed personnel with children) shall mean:

- (a) the widow in the case of male or husband in the case of female,
- (b) failing widow/husband, children.

Para 2 of the letter states that in the case of unmarried and widow/ widower personnel without children, where the deceased has left a will, exgratia payment shall be made to the heir/heirs mentioned in the will and if a will does not exist, it shall be paid (a) to the parent(s) regardless of whether or not they were dependant on the deceased at the time of his death, (b) failing the parents, to the minor brothers/sisters, who were dependant on the deceased at the time of his death and (c) failing the parents and minor brothers/sisters, to the legal heirs declared by court of law by a succession certificate. Para 3 of the letter states that, in cases of two eligible claimants of the same category, the amount shall be divided equally. The letter dated 18th of April, 1972, thus makes it clear that the widow of the deceased officer shall have the first claim on the exgratia award and failing the widow it shall be payable to the children. Parents shall have a right to get exgratia award only if the deceased officer was unmarried or a widower. In the instant case the deceased officer Sri A. K. Aga was a married officer having been married to the appellant. Therefore, she would exclude the plaintiff/respondent no. 1 in the matter of payment of exgratia award.

Now a few words about the history and background in which Regulation no. 95 appears to have been framed and the aforesaid letters appear to have been issued. From Civil Services Regulations Vol. II Appendix 12, which contains Central Civil Services (Extraordinary Pension) Rules, it appears that if any government officer dies while travelling on duty in an I. A. C. planes, his family shall get exgratia payment. The government thereafter took a decision that exgratia awards would also be admissible to families of government servants if they die while travelling on duty by a Service or any other government air craft. The government further took a decision that such exgratia payment can extend upto Rs. 42,000/-. In the year 1973 the Government of India took a further decision that exgratia payments to the families of government servants, who die, while travelling on duty by Service or other Government air crafts, in any accident shall be paid at the uniform rate of Rs. 42,000/-. This was made applicable from 24th November, 1972. This decision, however, applied only to civilian officers. It appears that the government therefore, framed Regulation no. 95 to provide for the same benefit to the family of the armed personnel and thereafter, from time to time, issued letters to keep the armed personnel at par with the civilian officers of the Government of India.

Learned Counsel for the plaintiff respondent urged that in Regulation Nos. 74, 75

and 93, while speaking of other benefits, it has been expressly stated that the widow of a deceased officer shall be eligible to get the benefit only if she was not separated from her husband. Learned counsel urged that we should give the same meaning to the word "widow" occurring in Regulation No. 95, and, since it is admitted between the parties that the appellant was separated from her husband on the date of the latter's death having obtained a decree of judicial separation, she would not be entitled to get the exgratia payment. We request our inability to accept it.

It is worthy of notice that, in connection with benefits other than exgratia award, the Regulations specifically provide that they shall not be admissible to a widow, if she was separated from her husband on the date of the latter's death. Regulation no. 95, which specifically provides for exgratia award, however, prescribes no such restriction. If the makers of the Regulations had intended that the right of a widow to receive exgratia award should be restricted in the same manner as in Regulation Nos. 74, 75 and 93, they could make it explicit by using proper words. The fact that the makers of the Regulations did not do so leads to the conclusion that, in the matter of payment of exgratia award, the government did not intend to exclude a widow simply because she was living separately from her husband.

As already stated by us earlier, Regulation No. 95 and the connected letters were issued by the Government of India with a view to keep armed personnel at par with civilian officers. Relevant rules in that connection, can be seen in Appendix 12 of Civil Service Regulations Vol. II, page 149. A perusal thereof would show that exgratia payment is first to be made to wife and children of a deceased officer, and it is only failing the wife and the children that award can be made in favour of other legal heirs. Those instructions do not say that a wife, who was separated from her husband on the date of latter's death, will not be entitled to get the exgratia payment. Consequently, we see no reason why we should read such a restriction in Regulation 95 which provides for payment of exgratia award to the families of the armed personnel.

Learned counsel for the respondent also urged that after a decree for judicial separation is passed, relations of husband and wife are suspended. It was urged that the appellant having obtained a decree for judicial separation before the death of her husband, it should be held, was not deceased's "widow" in the sense in which that word has been used in Regulation 95.

It is true that after the passing of the decree for judicial separation, the relation of husband and wife is suspended. It is, however, only in the sense that one cannot compel the other to live with him/her and discharge their conjugal duties. It cannot, however, be gainsaid that, even after the passing of the decree for judicial separation, the statute between the parties continues to be that of husband and wife and it is open to them to resume the marital life if they so like. We cannot, therefore, accept that, because of the passing of the decree for judicial separation, the appellant ceased to be the wife A. K. Aga during his life

time and is not his widow therefore.

We, accordingly, hold that the plaintiffrespondent no. 1 was not entitled to any relief in regard to the exgratia award as it is not she but the appellant who is entitled to get it.

In the result, this appeal is allowed in part. The judgment and decree passed by the trial court in so far as they concerned the family gratuity are maintained, but the judgment and decree of the trial court are set aside in so so far as they concern benefit is other than family gratuity and the plaintiff's suit in that regard stands dismissed. In view, however, of the fact that the contest in the suit as well as in the appeal was between the appellant and the plaintiffrespondent no. 1, who are widow and mother of the deceased officer Sri A. K. Aga respectively, we direct the parties to bear their own costs throughout.