
(2011) 08 RAJ CK 0135
In the Rajasthan High Court
Case No : Civil Writ Petition No. 795 of 2002

Kamla Devi (Smt.)

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2012) 132 FLR 261 : (2011) 4 RLW 3336

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Mathur, J.—The cause under adjudication is arising out of the facts narrated as under :

2. Shri Bhanwarlal, husband of the petitioner, on being retired from service w.e.f. 31.3.1982 was in receipt of superannuatory pension in accordance with the Central Civil Services (Pension) Rules, 1972. however, in the month of August, 1986 he disappeared, therefore, no pension was drawn by him or on his behalf upto 4.3.1994, the date from which the petitioner is receiving family pension as per G.I. Department of Pension and Pension Welfare O.M. No. 1(17)-P. and P.W./86-E dated 18.2.1993, that reads as follows:

Family pension should be sanctioned from the date of lodging FIR or expiry of leave of the employee, whichever is later.-*** At present the family pension is sanctioned and paid to the eligible member of the family one year after the date of registering the FIR with the Police and no family pension is paid for the intervening period of one year from the date the FIR is lodged to the date the family pension can be sanctioned. This practice is causing hardship to the families. It has now been decided that the family pension which, in pursuance of the earlier orders, will continue to be sanctioned and paid one year after the date of lodging the FIR, will accrue from the date of lodging the FIR or expiry of leave

of the employee who has disappeared, whichever is later. When the sanction for family pension is issued, the payment of pension from the date of accrual may be authorized. The usual procedure of obtaining the Indemnity Bond, etc., as laid down in the OM, dated 29.8.1986 [Decision (14) above] will continue to be followed. While sanctioning payment of family pension, it will be ensured by the concerned authorities that family pension is not authorized for any period during which payment of pay and allowances in respect of the disappeared employee has been made.

3. Suffice it to note that the first information report about missing of Shri Bhanwarlal was lodged at the police station having jurisdiction on 4.3.1994, as such family pension was also granted to the petitioner from that day.

4. The claim of the petitioner is for getting family pension for the period commencing from the month of August, 1986 to the month of February, 1994. It is urged that since Shri Bhanwarlal was missing since August, 1986, family pension should have been given from the date of his disappearance.

5. In response, the stand of the respondents is founded on the circular dated 18.2.1993 which prescribes for grant of family pension from the date of lodging first information report.

6. The Government of India's decision dated 18.2.1993 has not been challenged specifically in this petition for writ.

7. Heard counsel for the parties.

8. Much insistence is made by counsel for the petitioner to examine validity of the Government of India's decision dated 18.2.1993, however, looking to the peculiar facts of the case and also for the reason that no specific challenge is given to the decision aforesaid, I am not inclined to examine that, as suggested.

9. The admitted position that emerges out on pondering the facts is:

(1) from the date of retirement to the month of July, 1986 Shri Bhanwarlal, husband of the petitioner, withdrew pension;

(2) Since August, 1986 no pension was drawn by Shri Bhanwarlal; and

(3) the family pension was accorded to the petitioner from the month of March, 1994.

10. As per the applicable Rules where a Government Servant dies after retirement from service and was on the date of death in receipt of a pension, the family of the deceased shall be entitled for family pension. The respondents allowed family pension to the petitioner w.e.f. 4.3.1994, meaning thereby that they considered the date aforesaid as the date of death of Shri Bhanwarlal or in other words the respondents treated Shri Bhanwarlal alive upto 4.3.1994. In such a case Shri Bhanwarlal was entitled for receiving superannuatory pension upto the date of grant of family pension to his family.

11. As already stated above, the pension upto the date aforesaid since August, 1986 was not disbursed to Shri Bhanwarlal. The term "property" as explained in Black's Law Dictionary is peculiar or proper to any person, that which belongs exclusively to one. In the strict legal sense, an aggregate of rights which are guaranteed and protected by the government. The term extends to every species of valuable right and interest. While relying upon Davis vs. Davis, Tex. Civ. App. 495 S.W.2d 607, 611, as per the Black's Law Dictionary, property embraces everything which is or may be the subject of ownership, whether a legal ownership, or whether beneficial, or a private ownership. The pension for which Shri Bhanwarlal was entitled is a right given to him under a statute and i.e. protected by the government. The pension, thus, was under legal ownership for his own benefits of Shri Bhanwarlal. The pension for which he was entitled, thus, is his property earned by working with the respondents for a period more than the qualifying service prescribed. If the respondents are treating Shri Bhanwarlal alive upto 4.3.1994 then there is no just reason to deny him or his legal representatives for grant of his property for which he/they is/are statutorily entitled. Need not to repeat here that the employment with the State or its agencies or instrumentalities and the benefits accruing as a consequent to such employment including the pension are nothing but a form of property and denial of such a property as a matter of fact is nothing but violation of constitutional rights enshrined under Article 300-A of the Constitution of India that restrains the State from depriving citizens from their property without authority of law. Once the respondents at their own are treating Shri Bhanwarlal alive upto 4.3.1994 then they are under obligation to disburse the pension for the period concerned. If the respondents be permitted to detain the pension for the period aforesaid, then that shall be nothing but deprivation from property to a person without any authority of law.

12. It is also pertinent to mention here that the Government Servant Shri Bhanwarlal being treated alive by the respondents upto 4.3.1994, the persons claiming their rights, i.e. pension in present case, are not supposed to submit living certificate for the period in question. The petitioner being wife and also being nominee of Shri Bhanwarlal is entitled to receive all his pension dues. Her claim to receive superannuatory pension due to Shri Bhanwarlal is quite justified.

13. Accordingly, this petition for writ is allowed. The respondents are directed to make the payment of the amount of pension to the petitioner for which her husband Shri Bhanwarlal was entitled from the month subsequent to July, 1986 to the date of grant of family pension to the petitioner. The petitioner shall also be entitled for an interest upon the amount due @ 4.5% per annum. The respondents are further directed to execute the order aforesaid expeditiously as far as possible within a period of three months from today.

No order to costs.