
(2015) 07 GAU CK 0045
In the Gauhati High Court
Case No : W.P.(C) No. 2603 of 2014

Mala Kalita

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Citation : (2015) 2 GLD 698 : (2015) 4 GLT 79

Hon'ble Judges : Tinlianhang Vaiphei, J.

Bench : Single Bench

Advocate : S.K. Singha, B. Kumar and M.K. Neog, for the Appellant; P. Saikia, SC, C. Baruah and B. Choudhury, for the Respondent

Final Decision : Partly Allowed

Judgement

Tinlianhang Vaiphei, J.—The sole question which falls for consideration in this writ petition is whether an illegitimate son is entitled to a share in the family pension of his deceased father along with his first wife? The facts giving rise to this controversy may be briefly noticed at the outset. The deceased died on 21.6.2013 due to illness when he was serving as Senior Assistant under the Directorate of Secondary Education, Assam. He is survived by his first wife (the petitioner herein), his second wife (the respondent No. 7), his four sons born from his wedlock with the petitioner and one son (Mritunjoy Kalita) born out of his wed-lock with the respondent No. 7. In the Certificate of Next of Kin dated 6.8.2013 issued by the Deputy Commissioner, Kamrup (Metro), the names of the petitioner and the five sons were shown as his legal heirs. Following the death of the deceased, the petitioner applied for family pension of her husband, but her pension papers have not been forwarded by the respondent No. 2 to the respondent No. 6 till now. In the meantime, the respondent No. 3 expressed doubts on the genuineness of the said certificate issued by the Deputy Commissioner, Kamrup (Metro) and suggested to her to share the family pension equally with the respondent No. 7, which is not acceptable to her as the respondent No. 7 is not the legally married wife of the deceased. Aggrieved by

the inaction of the respondent authorities, the petitioner is filing this writ petition for appropriate directions.

2. It is contended by Mr. SK Singha, the learned counsel for the petitioner, that payment of family pension in Assam is regulated by the provisions of Rule 143 of the Assam Services (Pension) Rules, 1969 ("the Pension Rules" for short) and according to Rule 143 of the Rules, it is the first legally married wife of the deceased alone who is entitled to the family pension of the deceased. He submits that neither his second wife nor his illegitimate children are entitled to the family pension of the deceased. To fortify his submission, he draws my attention to the decision of this Court in Suraiya Sultana Vs. State of Assam and Others, . Per contra, Ms. B. Choudhury, the learned counsel for the respondent No. 7, submits that even though the marriage between the deceased and the respondent No. 7 during the lifetime of the petitioner is not valid in law, the right of the son of the respondent No. 7 born out of her wed-lock with the deceased cannot be taken away since he is the first class legal heir. Strong reliance is placed by her on the decision of the Apex Court in Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad and Another Vs. P.S. Rao, and decision of this Court in Bulu Das and Another Vs. Moni Das and Others, in support of her contention. She, therefore, strenuously submits that this is a fit case for dismissing the writ petition and for issuing appropriate directions to the respondent authorities for payment half of the family pension to the illegitimate son of the deceased, who is living with the respondent No. 7.

3. Before proceeding further, it will be profitable to refer to the provisions of Rules 137(5) and 43 of the Pension Rules, which are as under:

"137(5) Except as may be provided by a nomination under sub-rule (6)?

(a) a pension sanctioned under this section will be allowed?

(i) to the eldest surviving widow, if the deceased is a male officer or to the husband, if the deceased is a female officer;

(ii) * * *

"143. (i) Family for the purpose of rules in this Section will include the following relatives of the officer?

(a) wife, in the case of a male officer;

(b) husband, in the case of a female officer;

(c) minor sons; and

(d) unmarried minor daughters.

Note 1.--(c) and (d) will include children adopted legality before retirement.

Note 2.--Marriage after retirement will not be recognised for the purposes of rules in this Section.

(ii) The pension will be admissible?

(a) in the case of widow/widower up to the date of her/his death or re-marriage whichever is earlier.

(b) In the case of a minor son, until he attains the age of 18 years.

(c) In the case of an unmarried daughter, until she attains the age of 21 years or marriage whichever is earlier.

Note.--In case where there are two or more widows, pension will be payable to the next surviving widow, if any. The term "eldest" would mean seniority with reference to the date of marriage.

(iii) Pension awarded under this rules in this Section will not be payable to more than one member of an officer's family at the same time. It will first be admissible to the widow/widower and thereafter to the minor children.

(iv) In the event of re-marriage or death of the widow/widower, the pension will be granted to the minor children through their natural guardian. In disputed cases, however, payment will be made through a legal guardian.

(v) The temporary increase granted on pension will not be admissible on the Family Pension granted under the Scheme in this Section."

(Underlined for emphasis)

4. Rule 137(5)(a)(i) of the Pension Rules provides that except when nomination is not made by the deceased officer under sub-rule (6) of the Rules 137, a pension sanctioned under Rule 137 will be allowed to the eldest surviving widow of the deceased. Then, Note 1 to Rule 137(5) explains that the expression "eldest surviving widow" occurring in clause (a)(i) above should be construed with reference to the seniority according to the date of marriage with the officer and not with reference to the age of the surviving widow. Note to Rule 143(ii) says that in cases where there are more than two or more widows, pension will be payable to the next surviving widow, if any and that the term "eldest" would mean seniority with reference to the date of marriage. On careful reading of the aforesaid provisions, there can be no difficulty in holding that eldest surviving wife with reference to the date of her marriage with the deceased will have the first and paramount charge upon the family pension of a deceased employee. In other words, none other than the eldest surviving widow of the deceased officer will be entitled to draw his family pension. In the instant case, there is no dispute that the petitioner is the eldest surviving widow of the deceased officer. Then, Rule 143(iii) makes it amply clear that the pension so awarded will not be payable to more than one member of an officer's family at the same time and that it will first be admissible to the widow/widower and thereafter to the minor children. This provision is couched in plain English, which admits of no interpretation. No other person including a second wife or a son, legitimate or otherwise, has any right to receive the family pension with the eldest surviving

widow till her death or re-marriage.

5. In the case at hand, it is the son of the respondent No. 7, who was born out of her wedlock with the deceased official, on whose behalf the respondent No. 7 is making a parallel claim to the family pension of the deceased. There is no dispute that the son of the deceased official born out of the wedlock with the respondent No. 7 is the illegitimate son of the deceased officer. True, under the Hindu Succession Act, 1956, children from void second marriage are nevertheless held entitled to equal share with the first wife and children of the deceased in so far as his estates are concerned. But the instant case is one where the payment of the family pension is regulated and governed by a statute, namely, Assam Services (Pension) Rules, 1969. This provision is conspicuous by the absence of any provision entitling the illegitimate son to a share in the family pension of the deceased officer when the eldest surviving wife of the deceased is still alive and has not re-married. The entitlement of an illegitimate son to succeed to the property of a deceased governed by the Hindu Succession Act, 1956 cannot be extended to the law relating to payment of family pension under the Assam Services (Pension) Rules, 1969, which operates in a different field. I am fortified in my view by the decision of this Court in Suraiya Sultana case (supra) with which I am in respectful agreement.

6. It is the cardinal principles of interpretation that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary. The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Of course, this rule like all other rules is subject to exception. No doubt, in case of ambiguity that construction which better serves the ends of fairness and justice will be accepted, but otherwise it is for the Legislature in forming its policy to consider these elements. If no alternative construction is open, the court cannot ignore a statutory provision "to relieve what it considers a distress resulting from its operation; a statute has to be given effect to whether the court likes it or not". The function of the court is to find out what is legal and not what is right? See G.P. Singh's Principles of Statutory Interpretation, 9th Edn. pp. 58, 78 and 129. In the instant case, the literal construction of Rules 137 and 143 of the Pension Rules does not lead to absurdity and, there can, therefore, be no compelling reason for departing from that golden rule of construction. In the view that I have taken, I hold that the petitioner alone is entitled to the family pension of the deceased official. However, I must hasten to add that this decision is applicable only to the monthly family pension of the deceased official and not to other benefits such death-cum-retirement gratuity, etc., for which Mritunjoy Kalita is entitled to equal share with the petitioner. The

result of the foregoing discussion is that this writ petition partly succeeds. The respondent authorities are directed to release to the petitioner the monthly family pension of the deceased official with effect from the date it became due as well as her due share in other pension benefits of the deceased officer with effect from the date they became due within a period of three months from today. Needless to say, what is payable to Mritunjoy Kalita shall also be released to him through the respondent No. 7 within the same period.