

(2015) 03 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 13447/2012

Mohini Devi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Citation : (2015) 2 LLJ 458 : (2015) 4 LLN 236

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : V.R. Choudhary, for the Appellant; Mukesh Vyas and Dhanes Saraswat, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Sandeep Mehta, J.—By way of the instant writ petition the petitioner Smt. Mohini Devi has approached this Court praying for the following reliefs:--

"(A) the respondents may kindly be directed to grant family pension and 50% of salary of Smt. Rajeshwari in favour of the petitioner forthwith; and

(B) respondent Smt. Rajeshwari may kindly be directed to maintain and look after the petitioner in pursuance of the undertaking given by her while taking compassionate appointment; and

(C) and the respondents may kindly be directed to terminate the services of respondent Smt. Rajeshwari if she fails to abide by the undertaking given by her while taking compassionate appointment;.."

2. Facts in brief are that the petitioner's husband Devi Singh was serving in the respondent Jodhpur Vidhyut Vitran Nigam Ltd., Jodhpur (JVVNL) on the post of Helper-I. Shri Devi Singh passed away while in service on 28.7.1994. The petitioner claims that she recommended the appointment of her son Manohar Singh in her own place for compassionate appointment in place of her husband. Manohar Singh was accordingly appointed on compassionate basis on the post of

Helper-I in the JVVNL vide order dated 20.5.1997. Manohar Singh too passed away while in service on 20.3.2009. Pursuant to the death of Manohar Singh, his wife Smt. Rajeshwari was appointed as Class-IV employee in the J.V.V.N.L. on compassionate basis. While being provided compassionate appointment, she was directed by the authorities to execute an affidavit to the effect that she would maintain and look after the other dependents of the deceased employee. Failure to do so would entail termination of her service. The petitioner was asked to submit a consent letter on 9.2.2012 as to whether Rajeshwari was maintaining her or not. The petitioner thereupon submitted an affidavit to the respondent authorities claiming that Smt. Rajeshwari was not maintaining her and that she was facing great hardship on account of Rajeshwari's failure to maintain her despite the assurance given at the time of her employment. The petitioner thereafter submitted representation dated 7.5.2012 to the respondent authorities. When the representation remained unheeded, the petitioner supplemented the same by a communication dated 12.7.2012 casting aspersions against the Executive Engineer that he had threatened the petitioner to withdraw the proceedings against Rajeshwari Devi. Even thereafter when no action was forthcoming, the petitioner served a notice for demand of justice through her advocate to the respondent authorities on 5.12.2012. The notice did not yield the desired result upon which the petitioner has approached this Court by way of the instant writ petition with the aforementioned prayers.

3. Notice of the writ petition was issued to the respondents. The respondent authorities No. 2 to 4 as well as the private respondent No. 6 Smt. Rajeshwari have filed separate replies to the writ petition. The respondents No. 2 to 4, the authorities of JVVNL have asserted in the reply that the writ petition has been filed in order to seek redressal of a purely private family dispute. It is further mentioned that pursuant to the death of Shri Manohar Singh while on duty, his legal heirs filed an application for compensation under the Workman Compensation Act wherein a sum of Rs. 4,23,580/- was awarded. Out of the said amount, a sum of Rs. 2,93,580 was paid to Smt. Rajeshwari whereas Rs. 30,000/- was awarded to the petitioner and a sum of Rs. 50,000/- each was awarded to both children of late Shri Manohar Singh. It is further mentioned that the petitioner is drawing family pension of Rs. 4500/- per month (now reported to have been enhanced to Rs. 6500/- per month) pursuant to the death of her late husband Shri Devi Singh. After receiving the complaints and the notices forwarded by the petitioner, the authorities conducted an enquiry wherein both, the petitioner as well as Smt. Rajeshwari were examined. During the course of the enquiry, it was discovered that Mohini Devi was living with her younger son. Smt. Rajeshwari in her statement alleged that she was turned out of the matrimonial home after her husband's death. The petitioner and her younger son are living in the ancestral family home. Smt. Rajeshwari was maintaining two children born from her wedlock with late Shri Manohar Singh. After being widowed, she was unceremoniously turned out of the matrimonial home and as a consequence, was forced to purchase a plot and construct a house thereupon

after taking family loan and some financial help from her father. She further expressed that she was ready to keep the petitioner with her and maintain her as well. Respondent No. 6 has also filed a reply to the writ petition wherein she has stated that the petitioner is drawing family pension pursuant to the death of her husband late Shri Devi Singh. As per the petitioner's bank account statement, the pension amount as on 3.3.2014 was Rs. 5748/- per month. It is further asserted in the reply that the ancestral property belonging to Devi Singh was clandestinely transferred to the petitioner's name and the right of the respondent and her children to receive a share of the ancestral property has been usurped fraudulently. A distribution deed dated 23.11.2012 was executed keeping Smt. Rajeshwari in dark and thereby the petitioner has gained access to a residential land measuring 50 x 71 ft. and agricultural land measuring 5 Bighas in the village Guda Narkan, Tehsil Pali. It is further asserted in the reply that the younger son of the petitioner viz. Gopal Singh is earning salary of Rs. 8000/- per month by working in a private unit. Smt. Rajeshwari has further mentioned in the reply that she has to maintain her two children and also to repay the installment of loan etc. and if any deduction is made from the salary, then her own source of livelihood will be badly affected and she would be unable to maintain her children. It is further claimed in the reply that she is facing immense hardship and is striving hard for bare survival from the salary amount.

4. Mr. V.R. Choudhary, counsel for the petitioner relied upon the judgment rendered in the case of U.P. State Electricity Board v. U.P. Bizali Karamchari Sangh reported in (1998 SCC (LandS)-157) and a decision of this Court in Smt. Bhanwar Kanwar v. Union of India being S.B. Civil Writ Petition No. 11813/2011 decided on 10.7.2012 and urged that the writ petition deserves to be accepted and the respondent No. 6 be directed to make payment of 50% of the salary to the petitioner by way of maintenance.

5. Mr. Mukesh Vyas, counsel appearing for the respondent No. 6 relied on the order dated 12.4.2014 passed by this Court in S.B. Civil Writ Petition No. 2317/2014 (Smt. Aruna Chouhan v. State and Ors.) and urged that the petitioner is not entitled to any relief whatsoever. He submitted that the petitioner is already drawing family pension accrued on account of her husband's death. That apart, the ancestral property in which respondent No. 6 and her children have a lawful share was clandestinely transferred solely in the petitioner's name. He submitted that undisputedly, the petitioner has gained access to huge chunk of residential land and 5 bighas of agricultural land while depriving Smt. Rajeshwari and her children of their lawful share therein, and therefore, she has ample means of maintaining herself as against the respondent No. 6 who soon after her husband's death was left to fend for herself after being turned out of the matrimonial home just after being widowed. She is living in a condition of extreme financial hardship. She is repaying the installments of house loan which she was forced to take for constructing a house and also has to make arrangements for maintenance of her two children. Therefore, he submits that the petitioner is not entitled to the relief prayed for.

6. Learned counsel representing respondents No. 2 to 4 also supported the arguments advanced by the counsel for the respondent No. 6 and submitted that the respondents conducted an enquiry into the allegations made by the petitioner and arrived to a conclusion that the respondent No. 6 has not neglected to maintain the petitioner rather it is a case of purely family dispute and nothing beyond that.

7. Heard and considered the arguments advanced at the bar. Perused the material available on record. It is not in dispute that while seeking compassionate appointment, the respondent No. 6 Smt. Rajeshwari undertook that she would maintain all the dependants of the deceased employee. As the petitioner is the only dependant of deceased Manohar Singh other than respondent No. 6 and her children, it is obvious that the respondent No. 6 was and is under an obligation to stand by her undertaking to maintain the petitioner. However, the fact that enquiry conducted by the respondent authorities has resulted into a finding regarding the employee's desire to maintain the petitioner cannot be lost sight of.

8. Counsel for the petitioner was not in a position to dispute the fact that the ancestral properties falling due for distribution amongst all the legal heirs including Smt. Rajeshwari and her children upon the death of late Shri Devi Singh had been assigned exclusively to the petitioner by way of a family settlement deed. It cannot be disputed that as the properties were ancestral in nature, respondent No. 6 Smt. Rajeshwari and her children also have a rightful share therein. It is also admitted that the petitioner is also drawing family pension in vicinity of Rs. 6,500/- per month pursuant to her husband's death. Thus, it is not a case wherein the petitioner is totally without any means of livelihood.

9. In view of the aforesaid factual scenario while considering the prayer made by the petitioner in her writ petition, this Court is required to balance the equity. Considering the fact that the petitioner is receiving substantial family pension pursuant to the death of her husband and has virtually entrenched herself on the ancestral property while depriving respondent No. 6 and her children of their lawful share, this Court is of the opinion that the respondent No. 6 should be directed to make payment of Rs. 2,500/- per month to the petitioner from her salary as maintenance in consonance with the undertaking submitted by her at the time of getting compassionate appointment. The private respondent No. 6 would be entitled to institute proper legal proceedings for getting her share in the ancestral property.

10. Accordingly, the writ petition is allowed in part. It is hereby directed that the respondent department shall deduct a sum of Rs. 2,500/- per month from the salary of respondent No. 6 and shall make payment thereof to the petitioner every month. The amount of Rs. 2,500/- will be increased annually proportionately to the rise in the salary of respondent No. 6. No order as to costs.