(2016) 03 SIK CK 0002

In the Sikkim High Court

Case No : Writ Petition (C) No. 61 of 2015

Naima Khatun — APPELLANT

Vs

The State of Sikkim and Others — RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:
Constitution of India, 1950 — Article 300-A

Citation : (2016) LIC 1905

Hon'ble Judges : Sunil Kumar Sinha, C.J.

Bench : Single Bench

Advocate : Doma T. Bhutia and Mina Bhusal, Advocates, for the Appellant; J.B. Pradhan, Additional Advocate General, Santosh Kr. Chettri and Pollin Rai, Asstt. Govt. Advocates, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Sinha, C.J.

1. Mohammad Ishaque was a fitter in Sikkim Nationalised Transport (SNT). He died in harness on 22.11.2012. He was survived by his second wife, Naima Khatun and three sons from his first wife i.e. Mukhtar Alam, Shabir Alam and Zabir Alam. After his death, a Pension Payment Order (PPO) was issued by the competent authority showing that Naima Khatun, Petitioner herein and Zabir Alam, the third son of late Mohammad Ishaque shall get the family pension to the extent of 50% each. It was also shown in the PPO that Zabir Alam shall be entitled to get family pension till 15.10.2014, i.e. the date on which he attains the age of 25 years. The Petitioner, accordingly, was receiving family pension on the said PPO, as per Rule 40 of the Sikkim Services (Pension) Rules, 1990 (for short, "the Rules of 1990"). After Zabir Alam attained the age of 25 years, the Petitioner claimed that now the entire family pension i.e. 100% be paid to her, as she remained as the sole survivor in the category of persons to receive family pension according to Rule 40 of the said Rules. The above claim of the Petitioner was refused by the Respondents under the provisions of Rule 40 (6) of the Rules

of 1990, particularly on proviso to sub-clause (ii) of clause (a) of sub-rule (6). Hence this Petition.

2. Dr. Doma T. Bhutia, learned counsel appearing on behalf of the Petitioner, mainly argued that in case of the Petitioner, clause (b) of sub-rule (6) of Rule 40 will apply and the widow of the deceased, i.e. the Petitioner herein, would be entitled to get full family pension after attainment of the age of 25 years by the third son of the deceased through his first wife i.e. Zabir Alam. She relied on various decisions of the Supreme Court including a decision rendered by the High Court of Madhya Pradesh in Dropti Bai v. High Court of M.P. and another: , 2002 (2) M.P.L.J. 497.

3. On the other hand, Mr. J.B. Pradhan, learned Additional Advocate General appearing on behalf of the Respondents, opposed these arguments and submitted that as per clause (a) of sub-rule (6) of Rule 40 of the Rules of 1990, the Petitioner shall not be entitled to get full pension even after attainment of age of 25 years by the third son of the deceased.

4. I have heard learned counsel for the parties.

5. In State of Jharkhand and others v. Jitendra Kumar Srivastava and Another: , (2013) 12 SCC 210, relied by the counsel for the Petitioner, the Supreme Court quoted some portions of the Judgment rendered in D.S. Nakara v. Union of India: , (1983) 1 SCC 305, which goes to show about the goals of pension. I would also like to quote two paragraphs for ready reference:

"19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad v. State of Bihar: , (1971) 2 SCC 330 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone''s discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab v. Iqbal Singh: , (1976) 2 SCC 1."

6. In Jitendra Kumar, the Supreme Court after taking note of the above

Judgments held that the pension is a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India. The other point which is ruled by the said Judgment is also very clear i.e. the pension is a right of the Government servant and is governed by the rules and if the Government servant is coming within the relevant rules, he would be entitled to claim pension.

7. Undisputedly, the claim of the Petitioner is governed by the provisions of the Rules of 1990. In these Rules, Rule 40 falling in Chapter VI deals with the Family Pension. It appears from various orders passed by the State authorities that according to them the Petitioner was not entitled to receive full pension after attainment of age of 25 years by Zabir Alam under the provisions of Rule 40(6)(a). Whereas the contention of Dr. Doma Bhutia is that in case of the Petitioner, instead of sub-rule (6) (a) (i) of Rule 40, sub-rule 6 (b) would be applicable and there being no proviso to clause (b) as is in clause (a), the Petitioner would be entitled to get full pension after attaining the age of 25 years by Zabir Alam. She has strongly relied on the decision of Dropti Bai (supra).

8. In Dropti Bai, M.P. Civil Services (Pension) Rules, 1976 was applicable. It may be noted from the Judgment that sub-rule (7) of Rule 47 of the M.P. Rules is almost similar and in pari materia with sub-rule (6) of Rule 40 of the Sikkim Services (Pension) Rules, 1990. When we look into both the Rules, they are almost similar even word by word. For ready reference, we quote both the Rules at a glance.

9. Almost in a similar fact situation, the Madhya Pradesh High Court held in the said Judgment that "Pension is neither a bounty nor a matter of grace depending upon the sweet will of employer. It is a social welfare measure rendering socio-economic justice to those who had served the employer and is governed by the rules. Family pension is a benefit which is in consonance with and in furtherance of the goals of Constitution. The amount of family pension admissible to a family does not depend on the persons entitled to receive it; family pension is calculated on the basis of formula which does not depend upon the fact that in how many persons, the same has to be apportioned. Whether it is a case of one widow, two widows or sons or daughters of a predeceased widow, this fact is not in dispute that amount of family pension does not depend upon the number of family members. When family pension is apportioned, it is with a view and underlying idea that every dependent should get some amount. That cannot be said to be in negation of right to obtain a particular sum which is not variable nor dependent upon the number of persons obtaining it. Apportionment is simply a facility; substantive right is to obtain the family pension payable to a family computed under the rules.

The deceased Government servant had one wife and two children from first wife entitled to receive the amount of pension which their mother i.e. the first wife would have obtained if she had been alive at the time of his death. The family pension was therefore divided in two parts; one as being paid to the petitioner second wife of deceased and the other to the minor sons left by the deceased first wife. Where only apportionment was taking place; no additional family pension was being paid by virtue of the widow; the pre-deceased wife''s issues obtaining the pension. On attaining the age of majority by the two minor sons of first wife their part of pension was forfeited. Sub-rule 7(b) of Rule 47 of the M.P. Civil Services (Pension) Rules was attracted on the death of deceased Government servant. There is no such proviso added to clause (b) of sub-rule (7) of Rule 47 of the Rules of 1976 as is added to clause (a) of sub-rule (7) of Rule 47 which provides that the family pension shall cease to be payable if the pension was apportioned to two widows to the extent of share of one widow if she is not survived by any child. The conclusion is inescapable that entire family pension becomes payable to the widow. The widow is entitled to receive the entire family pension admissible to a widow and there shall be no reduction of amount on the basis that other children which were getting apportionment have attained majority; in other words the share of sons shall revert back to widow and shall form part of pension payable to her."

10. The M.P. High Court while quoting sub-rules (7) and (8), held in paragraph 14 as under:

"14. It is the case where only apportionment was taking place; no additional family pension was being paid by virtue of the widow; the pre-deceased widow''s issues obtaining the pension. Thus, in my opinion, purposive interpretation of the rule has to be such which advance the cause of social justice and pension is not reduced particularly when it was not so enhanced owing to the existence of sons of a predeceased widow, had they not survived the deceased, the entire amount would have been payable to the petitioner right from the date of death of deceased employee."

11. The view taken by M.P. High Court appears to be genuine. I find the instant case to be fully covered by the above Judgment rendered by M.P. High Court. In the instant case, the deceased after the death of his first wife, had performed marriage with the Petitioner and the Petitioner was his second wife. The deceased was survived by three sons through his first wife and the Petitioner being his second wife. Had there been a case of apportionment between the two wives of the deceased, sub-rule 6 (a) of Rule 40 of the Rules of 1990 would have been made applicable and in that case, on account of effect of the proviso added to sub-rule (6) (a) (ii) of Rule 40, the pension received by the non-surviving widow would have been ceased to be payable if she would have no eligible child.

12. But here the deceased was survived by a widow and an eligible child from another widow, who died in his life time. Thus clause (b) of sub-rule (6) of Rule 40 will apply which admittedly does not have any proviso as is there in clause (a) (ii) of sub-rule (6) of Rule 40. This deliberate omission by the legislature has to be taken note of and the rules have to be followed in their strict sense as it is a cardinal principle of law that the language of the statute should be read as it is.

Therefore, in the instant case, the simple interpretation which shall serve the purpose would be that in absence of any rule the share of pension of the child from other widow would not be ceased to be payable and it would certainly become payable to the surviving widow. The above interpretation of sub-rule (6) (a) and (b), after their comparison, appears to be reasonable and purposive.

13. For the forgoing reasons the writ petition is allowed. The Petitioner is entitled to receive the entire family pension and there shall be no reduction of amount on the ground that the third son of the deceased had attained majority and his share in family pension shall be ceased to be payable. It is held that the share of the third son of the deceased now shall also be payable to the Petitioner. The full family pension shall be restored to the Petitioner with effect from 15.10.2014 i.e. from the date of attainment of majority by the third son of the deceased Zabir Alam. Arrears be paid within three months from today and the pension be paid regularly.

14. No costs.