
(2007) 02 MP CK 0074
In the Madhya Pradesh High Court
Case No : M. A. No. 3621 of 2006

Pallavi Sethi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Citation : (2007) 2 MPLJ 489

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Pradeep Sharma, for the Appellant; Madan Singh, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

This Misc. Appeal has been filed as against an interlocutory order dated 17-8-2006 passed in Civil Suit No. 107-A/2006 by 9th Addl. District Judge. Bhopal. The Court below as per impugned order has ordered that the payment of pension to the extent of 50% be not made to the widow of the deceased. The Court below has passed the aforesaid order on the ground that pension is property and mother has the right in the property of the deceased.

Suit has been filed by the mother claiming relief of declaration, arrears of pension and for injunction. It has been submitted by the Plaintiff that succession was allowed. 50% amount was ordered to be paid to the mother out of provident fund, leave encashment, gratuity, insurance cover, maturity benefit and AWWA grant. Plaintiff has come to know that pension is being paid to the widow of Rs. 12.000/- same has not been paid to the Plaintiff though she is entitled to the 50% of the pension. Claim has been resisted by the Defendants on the ground that succession of pension has not been pleaded in the succession case, hence Plaintiffs suit is not maintainable no such interim relief can be given not to make the payment of pension to the widow.

Counsel for the Appellant has relied upon Rule 85(c) of Pension Regulations for the Army. He has stated that pension to the parents is payable only when widow or children are not eligible for pension or allowance. The provision is quoted below:

85(c): In the case of pension for parents-

(i) the officer left neither a widow, nor children eligible for pension or allowance; and

(ii) the parent/parents were largely dependent on the officer at the time of his/her death or the father is dead or, if living, is incapable of self-support through age or infirmity and the pecuniary and other circumstances of the parent/parents are such as, in the opinion of the President, to justify the grant.

He has also referred to Regulation 216 in which a table has been given, same is quoted below:

216. - The following members of the family of a deceased individual shall be viewed as eligible for the grant of a family pension, provided that they are otherwise qualified:

(a) Widow lawfully married.

(b) Father.

(c) Mother.

(d) Son, actual and legitimate.

(e) Daughter, actual and legitimate.

The widow comes in the first category to receive the pension. Prima facie Plaintiff is not entitled to receive pension. In view of the aforesaid the widow cannot be deprived of the pension during pendency of this suit. No irreparable injury is going to be caused to the Plaintiff in case injunction is not granted as widow is in receipt of pension, there is no justification to stop the pension treating it as a property. Pension is not being paid to the mother by Union of India, it is being paid to the widow. There is no justification to stop the pension or part of the pension being paid to the widow of the deceased. It is submitted by the Respondent's counsel that widow of the deceased has remarried, though this fact is disputed by Shri Pradeep Sharma that remarriage has been performed. Whatever that may be no provision has been shown by the Respondent's counsel that remarriage divests the widow right to receive the pension under Army Regulation hence submission cannot be accepted.

Consequently I set aside the order passed by the Court below. Appeal is allowed. No order as to costs.

C.C. as per rules.