

(2012) 07 DEL CK 0639

In the Delhi High Court

Case No : Review Petition No. 290 of 2011 in Writ Petition (C) No. 8241 of 2009

Smt. Anita

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Hindu Marriage Act, 1955 — Section 16

Citation : (2012) 9 AD 472 : (2012) 192 DLT 449

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : R.L. Kadamb and Mr. Bankey Bihari Sharma, for the Appellant; Vijendra Mahndiyan and Ms. Pallavi Awasthi and Mr. Himanshu Bajaj, for R-2 to R-4., for the Respondent

Final Decision : Disposed Off

Judgement

Rajiv Sahai Endlaw, J.—Review is sought by the contesting respondents of the common judgment dated 28.04.2011 disposing of the writ petition in which review is sought as well as W.P.(C) No.5159/2008, directing the Air Force to release the arrears of pension (together with interest if admissible thereon) pursuant to the demise of one Sh. Jai Rajan Paniker and to in future continue to pay the said pension in accordance with law, to the petitioner Smt. Anita. The respondent / review applicant Smt. Rita claims that the said Sh. Jai Rajan Paniker who had admittedly filed for divorce from the petitioner Smt. Anita had subsequently married her and the respondents Perna Paniker and Hardek Paniker were born from the said wedlock. Pension was directed to be paid to the petitioner Smt. Anita for the reason of the marriage of Smt. Anita with the said Sh. Jai Rajan Paniker having admittedly not been dissolved and Rule 54 (6) of the CCS (Pension) Rules, 1972 providing for the right of the widow in the first instance to pension and for payment of pension to children only after the widow. Notice of the review petition was issued on the counsel for the review petitioner referring to Rameshwari Devi Vs. State of Bihar AIR 2000 SC 735 and till decision

of the review petition, the direction for payment of pension to the petitioner Smt. Anita was confined to the extent of one-third only. Subsequently on being informed that notwithstanding the judgment dated 28.04.2011, no part of the pension had been disbursed to Smt. Anita till then, vide order dated 11.05.2012 the operation of the judgment was stayed. The counsels have been heard and have also filed written arguments. Though review was sought on several grounds but the counsel for the petitioner, as recorded in the order dated 13.05.2011, pressed review only on the basis of judgment aforesaid.

2. Direction in the judgment of which review is sought, for payment of family pension to the petitioner Smt. Anita was issued only for the reason of the Rule qua pension providing for the first right of the widow thereto, even though the entitlement of the children, if ultimately held to be of the deceased Sh. Jai Rajan Paniker, though from an illegal or void marriage, u/s 16 of the Hindu Marriage Act, 1955 was noticed. The Supreme Court in Rameshwari Devi (supra) has held that "when a Hindu male dies intestate, the children of the deceased employee born out of the second wedlock would be entitled to a share in the family pension(though) only till they attain majority".

3. The counsel for the respondent / review applicant Smt. Rita also relies on Rajeshwari Vs. Silvia Florance 2002 L S (Kar) 632 where a learned Single Judge of the Karnataka High Court relying on Rameshwari Devi (supra) held that family pension is designed to provide relief to the widow and minor children and is in the nature of a welfare scheme and that merely because the family pension is required to be sanctioned only in the name of certain persons that does not mean that they are the only beneficiaries of the scheme and that ultimately pension can be sanctioned in the name of more than one person. Relying again on Section 16 of the Hindu Marriage Act, the children of the deceased government servant though borne of a void marriage were held entitled to the amount payable under the Family Pension Scheme during the period of their minority.

4. The counsel for the respondent / review applicant Smt. Rita further relies on Vijayshree Sharma Vs. Union of India 2010 LawSuit 19 where a Division Bench of the Chhattisgarh High Court also directed disbursement of family pension in equal share to the widow, two children from the wedlock and two children from a second marriage of the deceased government servant.

5. The counsel for the respondent / review applicant Smt. Rita has thus argued that the petitioner Smt. Rita in any case is not entitled to more than one-third share in the family pension, the other two-third shares being of minors Prerna Paniker and Hardek Paniker aforesaid if ultimately held to be the children of the deceased Sh. Jai Rajan Paniker.

6. The counsel for the petitioner Smt. Anita on the contrary has contended that the judgment of the Apex Court in Rameshwari Devi is without reference to any pension Rules; that the pension of the deceased Sh. Jai Rajan Paniker is

governed by the CCS (Pension) Rules (supra) which entitle the widow alone to the same and the right of the children, even if of the deceased, is only in the event of the widow being not available. The judgment of the Karnataka High Court is sought to be distinguished by demonstrating the difference in the Pension Rules in that case and the CCS (Pension) Rules. It is further contended that the deceased Sh. Jai Rajan Paniker had also nominated Smt. Anita to receive the pension and which factor also distinguishes the present case from the judgments relied upon by the review petitioner. Reliance is placed on *Jinia Keotin and Others Vs. Kumar Sitaram Manjhi and Others*, and (1999) 5 SCC 237, *G.L.Bhatia v. Union of India*

7. Having considered the matter, it is found that in the face of the judgment of the Apex Court in *Rameshwari Devi*, the matter is no longer *res integra*. It cannot also be lost sight of that pension is prefaced with the word "family" which is indicative of the same being for the benefit of the family of the deceased. The said position remains unchanged under the CCS (Pension) Rules also. If ultimately minors Prerna Paniker and Hardek Paniker are held to be the children of the deceased Sh. Jai Rajan Paniker, they would, by virtue of Section 16 of the Hindu Marriage Act (supra), form members of the family of the deceased Sh. Jai Rajan Paniker and be entitled to a share in the family pension and owing to the facts aforesaid, the petitioner Smt. Anita cannot be expected to, out of the pension disbursed to her, look after their interest also. Thus, the pension of their share has to be necessarily disbursed separately to them. Not only so, a close reading of Rule 54 of the CCS (Pension) Rules also shows that the entitlement to pension is of the family of the deceased; the period for which family pension is payable is relatable to the life span of the widow / widower or till re-marriage and in the case of a son until he attains the age of 25 years and in the case of an unmarried daughter until she attains the age of 25 years or until she gets married, whichever is earlier; under Rule 54(7)(b) of the CCS (Pension) Rules, pension is provided to be payable in shares as mentioned therein. It is thus not as if the CCS (Pension) Rules provide for the widow alone to be the beneficiary of pension.

8. The counsel for the petitioner Smt. Anita has laid considerable emphasis on Rule 54(8) of the CCS (Pension) Rules which bars payment of pension to more than one member of the family at the same time except in the situations provided for in Sub-rule (7) of Rule 54. Undoubtedly the situation as is arising in the present case is not covered by Sub-rule (7) of Rule 54. However Sub-rule (7) of Rule 54 does contemplate children from different wives and provides for payment of separate pension to them. Though the Apex Court in *Rameshwari Devi* has not discussed the said Rules but I am of the opinion that the Sub-rule (7) of Rule 54, in the light of the dicta of the Supreme Court cannot be given a restricted meaning and the bar in Sub-rule (8) of Rule 54 to payment of pension to more than one member of the family cannot be interpreted so as to defeat the provisions of other laws i.e. Section 16 of the Hindu Marriage Act.

9. Accordingly, the review petition is allowed and the judgment dated 28.04.2011 is reviewed and modified by holding that the petitioner Smt. Anita at this interim stage is entitled to only one-third share of the family pension. The respondent Air Force is now directed to within eight weeks release one-third arrears of pension of the deceased Sh. Jai Rajan Paniker to the said Smt. Anita together with pro-rata interest if any admissible thereon. The learned Civil Judge before whom the suit between the parties is pending, is in the circumstances also requested to dispose of the same as expeditiously as possible.

No costs.