(2004) 02 MP CK 0045

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12352 of 2003

Smt. Saraswati Pandey APPELLANT

Vs

Secretary, State of M.P. and Another RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Madhya Pradesh Civil Services (Pension) Rules, 1976 — Rule 44(5), 45, 46, 47, 48(6)

Citation : (2004) 2 MPHT 261 : (2004) 2 MPLJ 501

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Hansraj Bharti, for the Appellant; S.K. Yadav, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

In certain situations in life a person does not envision the disturbing future which ultimately finds its roots embedded in the incidents of the past and struggle begins in the future canvass, sometimes a smooth one and some other time creating a rough weather trying to chain and tie a person like an octopus disallowing the person to get away, even an inch, from the bizarre episode of the past. To elaborate : the past haunts like a ghost but there is no magic or any kind of sorcery to emerge like a resplendent light to enlighten the already blinded future. Thus, the conduct becomes a governing and pivotal fulcrum.

Filtering unnecessary details the facts which are necessitous to be stated are thus :--

The petitioner was the wife of late Ram Khilawan Pandey who was working in the Government Engineering College, Rewa. Said Ram Khilawan met with an accident in the month of June, 1997 and breathed his last. After his death the petitioner claiming to be his widow approached the authorities for extending her the benefit of retiral dues but all her prayers fell into deaf years. In this factual backdrop it is contended that non-consideration of the case by the respondents for the purpose of grant of retiral benefits is sensitively vulnerable and does not have the sanction of law.

A counter affidavit has been filed by the answering respondents contending, inter alia that the records available with the respondents show that successor of the deceased R.K. Pandey are Smt. Saraswati Pandey, Ram Narayan Pandey, Smt. Sukhrajiya Pandey and Mani Pandey. It has been putforth that Smt. Sukhrajiya Pandey has described herself as the second wife of the deceased. It is also setforth that the respondents have been apprised that the petitioner had taken divorce from the deceased as a consequence of which he had asked for change of nomination. The copy of the said application and documents regarding divorce have been brought on record as Annexure R-2. In this backdrop, it is pleaded that no decision has been taken for grant of retiral dues including provident fund.

I have heard Mr. Hansraj Bharti, learned Counsel for the petitioner and Mr. S.K. Yadav, learned Government Advocate for the State.

It is submitted by Mr. Bharti that the petitioner is entitled to get family pension as the deceased had the legal and moral obligation to maintain her. It is expounded by him that family pension is given to the dependents so that they are not driven to the streets and lead a dignified life. The learned counsel for the petitioner further proponed that the concept of maintenance allowance as envisaged u/s 125 of the Code of Criminal Procedure should be attracted so that the future life of the petitioner is safe.

Mr. S.K. Yadav, learned Government Advocate, sounding a contra note, has propounded that the Government has framed a set of Rules, namely, M.P. Civil Services (Pension) Rules, 1976 for grant of family pension and in the said rules a divorced wife remotely does not feature and, therefore, the petitioner can not be allowed to putforth any claim with regard to any retiral dues including family pension. It is further propounded by him that the language used u/s 125 of the Code of Criminal Procedure can not be allowed to entrench into the sphere of service jurisprudence as both operate in different fields and language employed u/s 125 of the Cr.PC is quite different than the pension rules which are in vogue. It is highlighted by Mr. Yadav that when the rules are extremely clear and unambiguous, nothing should be read into it as that would tantamount to causing violence to the language of the Rules.

To appreciate the rival submissions raised at the Bar it is relevant to Rule 44 (5) of the M.P. Civil Services (Pension) Rules, 1976 which reads under:--

"44. (5) For the purpose of this Rule and Rules 45 and 46 ''family'' in relation to Government servant means :--

(i) Wife in the case of a male Government servant,

(ii) Husband, in the case of a female Government servant,

(iii) Sons including step sons and adopted sons,

(iv) Unmarried daughters including step daughters and adopted daughters,

(v) Widowed daughters including step daughters and adopted daughters,

(vi) Father, including adoptive parents in the case of individuals,

(vii) Mother, whose personal law permits adoption,

(viii) Brothers below the age of eighteen years including step brothers,

(ix) Unmarried sisters and widowed sisters including step sisters,

(x) Married daughters, and

(xi) Children of pre-deceased son.

Rule 45 deals with the persons to whom the gratuity is payable. The said rule reads as under :--

"45. Persons to whom gratuity is payable.-- (1) (a) The gratuity payable under Clause (b) of Sub-rule (2) of Rule 44 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 46.

(b) If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid to the legal heirs of the Government servant.

Note:-- Payment of death-cum-retirement gratuity claimed on behalf of deceased Government servant or on behalf of a Government servant who died after retirement, without executing a nomination or nomination made does not subsist at the time the gratuity become payable, may be made up to the extent of rupees ten thousand under the orders of the Head of Office on the execution of an indemnity bond with such sureties of suitable permanent Government servants in Form 24, as he may require, without insisting on the production of usual legal authority, if he is satisfied of the right and title of the claimant. In any case of doubt payment shall be made only to the person producing usual legal authority.

(2) If a Government servant dies after retirement without receiving the gratuity admissible under Clause (a) of Sub-rule (1) of Rule 44 the gratuity shall be disbursed to the legal heirs in the manner indicated in Clause (b) of Sub-rule (1).

(3) The right of female member of a family, or that of brother, of a Government servant who dies while in service or after retirement, to receive the share of gratuity shall not be affected if the female member marries or remarries, or the brother attains the age of eighteen years, after the death of the Government servant and before receiving her or his share of gratuity.

(4) Where gratuity is granted under Rule 44 to a minor member of the family of the deceased Government servant, it shall be payable to the guardian on behalf

of the minor.

Note :-- In the case where payment of minors'' share of death-cum-retirement gratuity is to be made to the natural guardian of minor(s), or in the absence of a natural guardian of minor(s), to the person who furnishes a guardianship certificate, the name of the natural/legal guardian should be given in the sanction order itself to bring in the knowledge of the Accountant General the names of the persons to whom the payment is to be made, before any authority is issued by him in such cases.

Explanation :-- The legal position as to whom the share of minor in the capacity of minor''s natural/legal guardian would be payable is explained below:--

(i) Where no valid nomination subsists.-- (a) When a share is payable to minor sons or minor unmarried daughters, it should be paid to the surviving parent except in the case when the surviving parent happens to be a Muslim lady, or a step mother. Where, however, there is no surviving parent or the surviving parent is a Muslim lady/step mother, payment will have to be made to the person producing the guardianship certificate.

(b) When share is payable to widowed minor daughter(s) production of a guardianship certificate would be necessary.

(c) If in a rare case the wife herself happens to be a minor, the death-cum-retirement gratuity payable to her shall be paid to the person producing a guardianship certificate.

(d) When the death-cum-retirement gratuity becomes payable to a minor brother or minor unmarried sister, the payment should be made to the father or, in his absence to the mother of the beneficiary except in case where the mother happens to be a Muslim lady or a step mother. In this case, too, if there is no surviving parent or the surviving parent happens to be a Muslim lady or a step mother, the payment will have to be made to the person producing the guardianship certificate. If any share is payable to a widowed minor sister, the production of guardianship certificate would be necessary.

(ii) Where a valid nomination subsists.-- (a) Where the nomination is in respect of one or more of the members of the family, the position stated against para (i) would apply.

(b) Where there is no family, the nomination in favour of an illegitimate child, a married daughter or a married sister would also be valid. The position would, therefore, be as follows :--

(i) If the nominee is an illegitimate child, share will be payable to the mother, and, in her absence the production of a guardianship certificate would be necessary.

(ii) If the share is payable to a married minor girl, the share will be payable to her husband and if such girl is a Muslim, the amount should be paid to a person who produces a certificate of guardianship.

Note :-- When there is no surviving parent of the minor(s) or the surviving parent is a Muslim lady or a step mother, inconvenience and hardship may be caused in producing a guardianship certificate. In such cases the payment of death-cum-retirement gratuity to the extent of Rs. 5,000 (or first Rs. 5,000 when the amount payable exceeds Rs. 5,000) in favour of a minor may be made to his/ her de facto guardian having the custody of the person of the minor(s) and his/ her property on production of an affidavit in this behalf and subject to the production of an indemnity bond in Form No. 23 on plain paper (stamp duty will be borne by State Government) with two sureties to the satisfaction of the sanctioning authorities. The balance in excess of Rs. 5,000 if any, would become payable only on the production of a certificate of guardianship."

Rule 46 deals with the nomination and the said rule clearly stipulates that if at the time of making of nomination of the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family. Rule 47 deals with the contributory family pension. Rule 48 deals with non-contributory family pension. Clause (6) (b) of the said Rule reads as under :--

"Rule 48.

(b) If there are no surviving members of the family as in Clause (a), the non-contributory family pension may be granted :--(i) to the father; (ii) failing (i) above to the mother;

(iii) failing (i) and (ii) above, to the eldest surviving brother below the age of 18 years;

(iv) failing (i), (ii) and (iii) above, to the eldest surviving unmarried sister;

(v) failing the above, to the eldest surviving widowed sisters."

Mr. Bharti has placed reliance on Section 125 of the Cr.PC. The relevant part of the said provision reads as under:--

"...... ''wife'' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

If the rules are read in a purposive and harmonious manner it is graphically clear that term ''wife'' has been given a meaning which is understood as such and no artificial meaning can be given to the said term as has been given u/s 125 of the Code. It is well settled in law the Court can not read anything to a statute which is clear and unambiguous. In this context I may refer with profit to the decision rendered in the case of Unique Butyle Tube Industries Pvt. Ltd. v. U.P. Financial Corporation and Ors. AIR 2003 SC 104 : AIR 2003 SCW 104, wherein the Apex Court in Paragraphs 11 to 13 held as under:--

"11. It is well settled principle in law that the Court can not read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a State is the determinative favour of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was reiterated in Union of India and Ors. v. Fillip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

In D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others, it was observed that Courts must avoid the danger of apriori determination of the meaning of a provision based on their own preconceived notions of ideological structure of scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and can not legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it if deemed necessary. (See Rishabh Agro Industries Ltd. v. PNB Capital Services Ltd. [2000(5)515]. "The legislative casus omissus can not be supplied by judicial interpretation process. Language of Section 6 (1) is plain and unambiguous. There is no scope for reading something into it, as was done in N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, . In State of Karnataka and Others Vs. D.C. Nanjudaiah and Others, , the period was further stretched to have the time period run from the date of service of High Court''s order. Such a view can not be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only Clause (i) and/or (ii) or the proviso to Section 6 (i), but also by a non-prescribed period. Same can never be legislative intent,"

In view of the aforesaid enunciation of law, there can be no iota of doubt that when the language of the provision is clear and unambiguous nothing should be added to it. The present provision by no stretch of imagination gives way to any absurdity. The term ''wife'' has been used in strict manner and would not include any divorced wife. The language of Section 125 of the Code of Criminal Procedure is quite different. The language employed in the Rules is absolutely clear and has to be guided by rule itself and not anything else. In the case at hand, it is clear as day that the petitioner had divorced her husband late Ram Khilawan Pandey. The decree in this regard has been brought on record and the same has not been disputed by Mr. Bharti, learned Counsel for the petitioner. In view of the aforesaid premised base, I am of the considered opinion that the petitioner can not putforth a claim with regard to retiral dues or family pension.

Ex consequenti, the writ petition, being devoid of merit, stands dismissed without any order as to costs.

