
(2009) 04 AHC CK 0570

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24354 of 2004

Sudha Rani

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0570

Hon'ble Judges : V.K.Shukla, J

Final Decision : Allowed

Judgement

V.K.Shukla, J.—Perused the office report dated 18.03.2009 qua service on respondent no. 5. Office report indicates that neither acknowledgement nor unserved notice has been received back in the office as yet, as such service on said respondent is presumed to be sufficient.

2. Present writ petition has been filed by the petitioner for quashing of the order dated 26.07.2003 passed by Deputy Inspector General of Police, U.P. Police Headquarter U.P. at Allahabad rejecting the claim of the petitioner for grant of family pension.

3. Earlier matter had travelled up to this Court in the shape of Civil Misc. Writ Petition No. 16747 of 1998 (Smt. Sudha Rani Vs. State of U.P. and others) and this Court on 21.04.2003 passed following order which is being quoted below:

" It is the case of the petitioner that after the death of her husband on 23.07.1990 she was entitled to be paid family pension but the same is being wrongly denied to her merely on certain objections having being filed by one Smt. Hema claiming that she is the widow of late Satish Chandra Sharma. However, since there was a dispute, respondent no. 3 required the petitioner to obtain succession certificate from the competent court after which alone family pension could be paid to her. It has been submitted that accordingly the petitioner, after obtaining the succession certificate on 21.04.1995 from the court of Civil Judge (Senior Division) Moradabad (A copy of which has been filed as

Annexure4 to the writ petition) filed the same counsel for the petitioner that respondent no. 3, Senior Superintendent of Police, Jhansi also gave opportunity to the said Smt. Hema to either obtain succession certificate or file objection to the succession certificate or file objection to the succession certificate issued in favour of the petitioner and obtain appropriate orders from the competent court but the same could neither been obtained nor filed by the said Smt. Hema before the respondents. It has also been categorically stated in paragraph no. 16 of the writ petition, which has not been denied in the counter affidavit by the respondents, that the group insurance money of late Satish Chandra Sharma has already been released in favour of the petitioner on 02.08.1997 and thus it has been contended that the petitioner has been accepted as the legal heir of her late husband.

In their counter affidavit, the respondents merely stated that since there was a dispute whether the petitioner or the said Smt. Hema was the widow and/or legal heir of the deceased Satish Chandra Sharma, the payment of family pension could not be made to either of them. An enquiry report regarding this was submitted before the Senior Superintendent of Police, Jhansi which has been filed as annexure CA1 to the counter affidavit, wherein it has been stated that Smt. Hema was married to Satish Chandra Sharma, however, it is not disputed that the said Smt. Hema did not produce any succession certificate or any other proof before the respondent authorities to show that she was the legal heir of the deceased and was thus entitled to payment of pension along with the rejoinder affidavit the petitioner has filed a copy of the order passed by the court of Additional Civil Judge in Misc. case no. 73 of 2000 filed by the said Smt. Hema for grant of succession certificate. By the said order dated 17.11.2000 the said Smt. Hema has withdrawn the case in view of the compromise which had entered into between the petitioner and Smt. Hema.

Having heard the learned counsel for the parties and perused the records primefacie it appears that the dispute between the petitioner and Smt. Hema has come to an end after the withdrawal of her case for grant of succession certificate in her favour. However, since the said document has been filed along with the rejoinder affidavit thus giving no chance to the contesting respondents to verify the correctness of the same, I consider it appropriate to remit the matter to respondent no. 2, the Uttar Pradesh Police Head Quarter, Allahabad through Deputy Inspector General of Police to decide the case relating to the grant of family pension to the petitioner after verifying the correctness of the order dated 17.11.2000 filed as annexure RA1 and also in the light of the observations made above.

The said respondent no. 2, the Uttar Pradesh Police Head Quarter, Allahabad through Deputy Inspector General of Police shall decide the claim of the petitioner for grant of family pension and other retiral benefits in accordance with law by a speaking order expeditiously, preferably within two months from the date of production of a certified copy of this order before the said respondent.

With these directions, this writ petition is finally disposed."

4. Pursuant to the order passed by this Court, as matter has been directed to be re considered, order impugned has been passed which is subject matter of challenge.

5. Counter affidavit has been filed and therein plea has been taken that signatures were got obtained by Smt. Hema by playing fraud upon her then pension has been released in her favour based on Government Order dated 24.08.1966.

6. Rejoinder affidavit has been filed and therein plea mentioned in the counter affidavit has been sought to be disputed and that of writ petition has been sought to be reiterated and even factum of marriage of Smt. Hema has been sought to be disputed.

7. As service of notice on respondent no. 5 has been presumed to be sufficient and pleadings qua other respondents have been completed, present writ petition has been taken up with the consent of parties, who are present before this Court, for final hearing and disposal.

8. Sri B.P.Singh, learned counsel for the petitioner submitted that in the present case entire material which was available on record has not been adverted to as directed by this Court in its judgment dated 21.04.2003 and coupled with this it has been sought to be contended that once opinion has been formed that fraud has been practised then opportunity of hearing ought to have been afforded to petitioner before passing order impugned, in this background it has been sought to be contended that order passed is unsustainable.

9. Learned Standing counsel on the other hand contended that on the basis of factual position which existed on the spot the decision in question has been taken strictly as per parameter provided for under Government Order and as there were two widow preference has been given to first one as such no interference be made.

10. After respective arguments have been advanced, factual position which is emerging in the present case is that earlier matter travelled up to this Court and this Court on 21.04.2003 asked the Deputy Inspector General of Police to decide the claim of the petitioner for grant of family pension to the petitioner after verifying the correctness of the order dated 17.11.2000 filed as AnnexureRA1 and also in the light of the observation made in the earlier part of the order. Order in question reflects that authority concerned has proceeded to mention that Smt. Hema was married in the year 1972 to late Satish Chandra Sharma and as neither she has remarried nor she has been divorced, as such in term of Government Order dated 24.08.1968 it was she who was entitled for getting pension, as such claim of the petitioner has not been accepted. This Court at earlier point of time clearly directed to consider the matter and said decision was liable to be taken after taking into account entire background of the case

including factum of compromise which was entered inter se parties in respect of retiral benefits. In the present case authority concerned has proceeded to mention that qua said compromise it was informed by Smt. Hema that same was obtained by playing fraud upon her by getting her signature. Once precise case of Smt. Hema was that fraud was played upon her, in compromise matter and said averment was being relied upon then in this background once right of the petitioner was to be adversely effected, then opportunity ought to have been provided to her, in this background decision making process dated 26.07.2003 on the face of its is faulty and against principle of natural justice and cannot be sustained.

11. Consequently order dated 26.07.2003 passed by Deputy Inspector General of Police Police Headquarter, U.P. at Allahabad is hereby quashed is set aside. Authorities concerned are directed to reconsider the matter after providing opportunity of hearing to the petitioner Smt. Sudha Rani and Smt. Hema respondent no. 5. Needless to say that reasoned decision be taken preferably within three months from the date of presentation of certified copy of this order.

12. It is made clear that if Smt. Hema is being paid family pension then same be not withheld for the interregnum period but the same shall abide by fresh decision which would be taken by the authorities concerned.

13. With the above direction present writ petition is allowed.