

(2005) 07 AP CK 0107
In the Andhra Pradesh High Court
Case No : Second Appeal No. 1009 of 2002

Zainab Bee

APPELLANT

Vs

Fatima Begum and Another

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Citation : (2005) 6 ALD 6 : (2005) 5 ALT 112

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Bajrang Singh Thakur, for the Appellant; M. Basith Ali Yavar, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The appellant and the 1st respondent are the wives of one late Sabir Khan. He was employed as a Machinist in the Government Press. He retired from service and thereafter, died on 24-01-1996. The appellant made a claim before the 2nd respondent-employer, for payment of the family pension exclusively to her, on the basis of the nomination said to have been made by late Sabir Khan in the service records, during his life time. The 1st respondent also made an application before the 2nd respondent-employer for payment of half of the family pension stating that she is the first wife of the deceased-employee. Since the 2nd respondent did not accede to her request, the 1st respondent filed O.S. No. 3876 of 1998 in the Court of the learned XVI Junior Civil Judge-cum-IV Additional Rent Controller, City Civil Court, Hyderabad for a declaration that she is entitled to receive half of the pensionary benefits of her husband. The suit was resisted by the appellant, on the strength of the nomination said to have been made by late Sabir Khan in the service records.

2. Through its judgment, dt. 13-12-2000, the trial Court decreed the suit. Aggrieved thereby, the appellant filed A.S. No. 77 of 2001. The Appeal was dismissed on 27-9-2002. Hence, the Second Appeal.

3. Heard Sri Bajrang Singh Thakur, the learned Counsel for the appellant and Sri M. Basith Aliyavar, the learned Counsel for the 1st respondent.

4. The controversy in this Second Appeal is very limited. It is not in dispute that the appellant as well as the 1st respondent were married to late Sabir Khan. The dispute arose after his death as regards the sharing of pensionary benefits. The opposition of the claim of the 1st respondent by the appellant was only on the basis of the nomination in the service records. Even assuming that there existed such a nomination in her favour, it only enables her to receive the benefits, which, in turn, are required to be shared in accordance with the relevant law of succession. Time and again, the Supreme Court held so in relation to the payment of insurance claims, the nomination does not take away the rights of individuals on the basis of succession. The trial Court took the view that once the marriage of the 1st respondent with the deceased-employee is proved, she is entitled to receive the pensionary benefits.

5. Learned counsel for the appellant raised an objection as to the very maintainability of the suit. According to him, the apportionment of pension is a service matter and the same can be agitated only before an Administrative Tribunal and that the Civil Suit is barred. Firstly, this objection cannot be entertained, because it was not raised before the trial Court or the lower appellate Court. Even otherwise, the dispute is not in relation to sanction of pensionary benefits of the deceased-employee, but the apportionment thereof. The 2nd respondent never refused to sanction the pension. The resolution of the dispute as to the entitlement between the appellant and the 1st respondent was not within his purview.

6. In that view of the matter, the Second Appeal is dismissed. There shall be no order as to costs.