

State of Gujarat

Vs

Sardarabegum and Others

Civil Appeal No. 969 of 1968

(CJI A.N. Ray, M.H. Beg, R.S. Sarkaria, P.N. Shinghal, Jaswant Singh JJ)

19.04.1976

JUDGMENT

SARKARIA, J. -

1. This appeal on certificate granted under Article 133(1)(b) of the Constitution is directed against a judgment of the Gujarat High Court.

2. The facts are : One Sardar Shermia Bapumia was the holder of what he alleged to be a political pension. He was paid such a pension till July 31, 1953 at the rate of Rs. 500 per month. On the coming into force of the Bombay Personal Inams Abolition Act, 1953 (to be hereinafter referred to as the Act), from August 1, 1953, payment of this pension was discontinued.

3. Bapumiya thereupon filed an application under Article 226 of the Constitution in the High Court praying for a writ of mandamus or any other appropriate writ or direction ordering the respondent State and its officers to pay to the petitioner and his heirs in perpetuity, a sum of Rs. 500 with effect from August 1, 1953. It was contended that the pension was a political pension and not a personal inam and consequently, the pension did not fall within the definition of "personal inam" in the Inams Abolition Act and could not be abolished thereunder. Subsequently, at the instance of writ applicant, the High Court by its order, dated February 27, 1963, deleted the words "in perpetuity" at end of the prayer clause (A) in the writ application. By the same order in view of the statement made by the Additional Government Pleader on behalf of the respondent State to the effect, that the pension that was being paid to the petitioner was not a personal inam and as such, could not be abolished under the Act, the High Court passed an order directing the respondents, their servants and agents to pay to the writ applicant and his heirs the sum of Rs. 500 p.m. as and by way of political pension with effect from August 1, 1953.

4. Being aggrieved by this order, dated February 27, 1963, the appellant herein filed on April 10, 1964, a review petition, which was subsequently amended on December 21, 1965, for a review of the said order on the ground that there was an error on the face of its. It was stated that the appellant had committed a bona fide mistake due to the ignorance of the authorities in not taking up the defence that the aforesaid political pension stood resumed under the provisions of the Bombay Saramjams Jahagirs and other Inams of Political Nature Resumption Rules, 1952 made in exercise of powers under the Bombay Rent Free Estate Act, 1852 and the Land Revenue Acts 1 and 2 of 1863 with effect from 1952.

5. The appellants also filed an application No. 570 of 1964 for sub-stituting the legal heirs of the deceased writ applicant in the main petition. The review application and this application (570 of

1964) were heard together, and rejected by the High Court as per order, dated December 8, 1966.

6. The High Court has declined the review application mainly on the ground that it was timebarred under Article 124 of the Limitation Act and no sufficient ground for condonation of the delay had been alleged or made out.

7. Mr. Dhebar, appearing for the appellant, contends that the order under appeal suffers from patent error, which the High Court should have suo motu rectified in the exercise of its inherent jurisdiction. These errors, according to the Counsel, are : First no mandamus could have been validly issued to enforce the claim to arrears of political pension. Secondly, in any case, the High Court has granted the writ applicant relief in excess of what he had asked for. It is stressed that by getting the words "in perpetuity" in the prayer clause (A) of the writ application detected, the writ applicant had limited his claim to his lifetime and consequently, the High Court was not justified to direct the State to pay pension, at the same rate, to the heirs of the deceased for the period beyond the latter's lifetime.

8. Although it is not usual for the High Court to issued a writ of mandamus for enforcing a claim for arrears of such a pension, yet we cannot lose sight of the fact that this order was made pursuant to the concession made by the applicant, herein. It is therefore, not fair to allow the appellant to back out of that confession, particularly after the death of the pensioner.

9. There is however a good deal of force in the second limb of the argument. The order of the High Court, in so far as it directs payment of pension to the heirs of the deceased pensioner also, as distinguished from the arrears of pension due to the deceased himself, goes beyond the mutual concession made or agreed to by the parties. While the State conceded the writ applicant's claim to the pension at the rate of Rs. 500, the writ applicant also by way of a reciprocal concession, gave up his claim to get the pension "in perpetuity" and got these words deleted from the prayer clause of his writ application. The inevitable implication of such deletion was that the claim of the writ applicant had become limited to pension payable for the lifetime of the writ applicant. The High Court therefore manifestly erred inasmuch as it directed the State to pay pension at the rate of Rs. 500 per month, even to the heirs of the deceased in their own right. This patent error - which was perhaps due to inadvertence - could and should have been suo motu corrected by the High Court in the exercise of its inherent jurisdiction even after the expiry of the ordinary period of limitation. If any, prescribed for a review application.

10. For the foregoing reasons we party allow the appeal, and modify the order of the High Court limiting the amount payable thereunder to the respondents herein, to arrears of pension due to the deceased at the rate of Rs. 500 per month, for the period from August 1, 1953 to the date of the death of the pensioner, Sardar Shermia Bapumia, which admittedly took place on January 1, 1964. In the circumstances of the case, we will leave the parties to pay and bear own costs.

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