

Jodh Singh

Vs

Union of India and Another

Petition for Special Leave to Appeal (Civil) No. 7254 of 1980

(D. A. Desai, E. S. Venkateramiah JJ)

09.10.1980

JUDGMENT

DESAI, J. –

1. Whether a special family pension awarded by the President to the widow of a deceased officer who belonged to Air Force could be the subject-matter of a testamentary disposition by the deceased in his lifetime, presents the core problem in this petition.
2. Flight Lieutenant Panj Rattan Singh, 5081 GD(P) was serving in Indian Air Force. He died in an aircraft accident arising out of and in the course of his employment on June 17, 1966. His survivors are the widow, Hardev Kaur respondent 2, his parents, the petitioner in this petition being the father of the deceased, two brothers and two sisters. Prior to his death he had made his last will and testament dated May 14, 1959, whereby he bequeathed 'absolutely and forever all his property both moveable and immovable to his father', petitioner herein, and also appointed his father as the executor under his will. Further, during his lifetime the deceased had appointed by letter dated March 5, 1960, petitioner and Gurcharan Kaur, his father and mother respectively, nominees in respect of his provident fund. He had also nominated his parents, brothers and sisters by letter dated December 10, 1958, to claim pensionary benefit which may accrue in the event of his death. By a subsequent communication dated January 29, 1966, he had declared his parents, two brothers and one unmarried sister as his dependents. The deceased had never referred to his wife as either his dependent or entitled to any pensionary benefit. It appears that his relations with his wife were far from cordial and actually he had filed a petition for annulment of the marriage which he had subsequently withdrawn with the result that the marriage was subsisting till the date of his death. Respondent 2 Hardev Kaur is thus the widow of the deceased.
3. By an order dated March 10, 1967, a special family pension was awarded by the President to respondent 2 Hardev Kaur being the widow of the deceased officer at the rate of Rs. 160 p.m. By the same order she was also awarded gratuity in the amount of Rs. 2670. The deceased was a member of a general provident fund to which he was making his subscriptions. On his death the amount standing to his credit in the provident fund account and certain other amounts were to be paid to whosoever was legally entitled to the same.
4. On a petition filed by the petitioner, the will of the deceased was admitted to probate. In the probate proceedings the petitioner, inter alia, contended that over and above all other sums payable to the heirs and/or nominees of the deceased, the special family pension at the rate of Rs. 160 p.m. and the gratuity of Rs. 2670 awarded to respondent 2 Hardev Kaur by the President formed part of the estate of the deceased and under the will as well as the nomination he was entitled to collect the

same. Probate proceeding was contested by respondent 2, widow of the deceased. The learned Single Judge while granting probate excluded the aforementioned two items from it. Both the parties preferred appeal under the Letters Patent of the High Court. While disposing of both the appeals by a common judgment a Division Bench of the Punjab & Haryana High Court modified the probate granted to the petitioner by including the gratuity amount of Rs. 2670 in the probate as forming part of the estate of the deceased but confirmed the order of the probate court in respect of special family pension awarded to respondent 2.

5. Petitioner then filed a suit against the Union of India and respondent 2 for a declaration that the order awarding special family pension to respondent 2 widow of the deceased was illegal, unjust and improper. The trial Court decreed the suit but on appeal by respondent 2 widow, the first appellate Court set aside the decree of the trial Court and the decision of the appellate Court was confirmed in second appeal by the High Court. Hence this petition.

6. The only question argued by Mr. Hardev Singh, learned counsel for the petitioner before us was that special family pension is admissible to the dependents and as respondent widow was nowhere shown as dependent of the deceased, the same could not be granted to her and in any case even if it was granted by the President in favour of respondent 2 it would still form part of the estate of the deceased and therefore, the petitioner would be entitled to the same.

7. Special family pension is granted under Rule 74 of the Pension Regulations for the Indian Air Force ('Rules' for short). Relevant portion of Rule 74 reads as under :

A special family pension to the widow of an officer and special children's allowance to his legitimate children under 18 years of age, or dependents' pension to his parents or brothers/sisters, may be granted if his death was due to or hastened by either a wound, injury or disease which was attributable to Air Force service, or the aggravation by Air Force service or a wound, injury or disease which existed before or arose during the Air Force service, provided that ...

8. Could the special family pension specifically awardable to the widow of an officer and in fact awarded to respondent 2 as widow of the officer, ever form part of the estate of the deceased ? A special family pension stands apart, aloof and separate from a general provident fund set up under the Provident Funds Act, 1925. Deceased was a subscriber to the General Provident Fund set up under the 1925 Act. The amount standing to his credit in the provident fund account was treated by the High Court as forming part of the estate of the deceased and, therefore, its devolution would be according to the wishes of the deceased as disclosed in his last will and testament. The amount thus standing to the credit of the subscriber would be payable in the event of death of the subscriber or on his retirement from service.

9. Pension is a retirement benefit. It is admissible under the relevant Rules on superannuation. It is payable on superannuation to the employee himself during his lifetime after retirement. Special family pension is not admissible to the employee but to the specified members of the employee's family and that too in the event of his death while in service or after his retirement as provided in the Regulations. It is in the nature of a compensation because the death was due to or hastened by either a wound, injury or disease which was attributable to Air Force service or the aggravation by Air Force service of a wound, injury or disease which existed before or arose during Air Force service, etc. (see Rule 74). If death is not referable to any of the events mentioned in Rule 74, special family pension is not admissible. To compensate for death on account of hazards of service

rendering dependents destitute that benefit of special family pension is conferred on certain persons having a certain status arising out of and directly attributable to relation with the deceased. Special family pension under Rule 74 is admissible, amongst others, to the widow of an officer. It is not that the deceased gets pension or earns special family pension. It is on the untimely death of the deceased, the process of death having been hastened or accelerated by the hazards of service that the widow who is rendered destitute is granted special family pension. Whether the widow qualifies for special family pension is to be determined by the sanctioning authority, the President in this case. The special family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow.

10. Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject-matter of testamentary disposition.

11. It was, however, said that not all widows are entitled to special family pension but only the dependent wife who becomes widow on the death of an officer alone becomes eligible for pension and in this case the deceased had not shown his wife as one of his dependents but on the contrary the parents, the sisters and the brothers were shown as dependents of the officer. Rule 74 envisages a special family pension to the widow, a special children allowance to his legitimate children or dependents' pension to his parents, brothers and sisters. To each one of them, if he or she qualifies for special family pension, the benefit is admissible. Rule 75 envisages ordinary family pension to widow and legitimate children of the deceased officer. Rule 79 confers discretion on the President to grant a pension and/or gratuity to a widow who may not be eligible under Rule 74 or Rule 75 because she was separate from the husband at the time of his death. Thus, whether a widow has qualified for a special family pension, gratuity or ordinary family pension is a matter to be determined by the President. If the President is satisfied that the widow is eligible for pension, she cannot be denied the benefit by some other dependents of the deceased claiming that instead of the widow he or she should have been held eligible for special family pension. Therefore, it is irrelevant whether the deceased had shown his wife as his dependent or not if the President is satisfied that she as the widow of the deceased officer was eligible for special pension.

12. The real controversy is whether a special family pension admissible to a widow in her capacity as widow could ever form a part of the estate of the deceased which could be disposed of by testamentary disposition? Special family pension is payable to the widow on the death of the officer. It is not payable in his lifetime. What is not payable during lifetime of the deceased over which he has no power of disposition cannot form part of his estate. It is the event of his death that provides the eligibility qualification for claiming special family pension. Such qualifying event which can only occur on the death of the deceased and which event confers some monetary benefit on someone other than the deceased albeit related to the deceased, cannot form part of the estate of the deceased which he can dispose of by testamentary disposition. Therefore, it is unquestionably established that special family pension sanctioned to the widow of an officer of the Indian Air Force by the President of India under Rule 74 of the Rules could not be subject-matter of testamentary disposition.

13. Further, whether a gratuity specifically sanctioned in favour of the widow as widow of the deceased by the President under the Rules could be the subject-matter of testamentary disposition has not been considered in this matter because that amount has been included in the probate of the

will of the deceased and the widow has not questioned that order before us. That question is kept open.

14. With these observations we dismiss this special leave petition.

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