

Smt. Violet Issac and Others

Vs

Union of India and Others

Civil Appeal No. 653 of 1991

(P. B. Sawant, K. N. Singh JJ)

08.02.1991

JUDGMENT

SINGH, J. –

1. Leave granted.

2. Whether family pension payable under the service rules could be bequeathed by means of a will by the deceased employee during his lifetime, is the question involved in this appeal.

3. Briefly, the facts giving rise to this appeal are that, Issac Alfred was employed in the Railway Workshop, Jagadhri as a Skilled Mechanic, Tool Shop, he died in harness on October 16, 1984. On his death a dispute arose between Mrs. Violet Issac, widow of the deceased Railway employee, his sons, daughters and Elic Alfred brother of the deceased regarding family pension, gratuity and other emoluments, payable by the Railway administration. Smt. Violet Issac, widow of the deceased employee made an application before the competent Railway authority for the grant of family pension and for payment of gratuity and other dues to her, her four sons and one daughter, who are appellants 2 to 6. The Railway authorities did not pay any amount to the appellants as an injunction order had been issued by the Sub-Judge, I Class, Jagadhri in Civil Suit No. 365 of 1985 filed by Elic Alfred, brother of the deceased employee, restraining the appellants from claiming or receiving any amount which were to the credit of the deceased Railway employee towards CTD account, gratuity, family pension and other dues. It appears that the relations between late Issac Alfred and his widow Smt. Violet Issac and the children were not cordial, as a result of which he had made nomination in favour of his brother and further he had executed a will dated September 9, 1984 in favour of Elic Alfred bequeathing all his properties to him including the family pension, gratuity etc. When the appellants raised claim for family pension and other dues before the Railway authorities, Elic Alfred filed Civil Suit No. 365 of 1985 for the issue of a permanent injunction restraining the appellants from receiving or claiming any monetary benefits from the Railway administration. In his suit Elic Alfred had pleaded that in view of the will, his deceased brother's widow and children were not entitled to any benefit from the Railway authorities, instead he was entitled to the deceased's estate including the right to receive family pension and other dues. The civil court issued an injunction order restraining the appellant from receiving any amount from the Railway authorities as a result of which the Railway administration did not pay any amount to them. The appellants, thereupon, made an application before the Central Administrative Tribunal, Chandigarh for the issue of a direction for the release of the amounts on account of gratuity, group insurance, provident fund, CTD account, and family pension. The appellants pleaded that the will relied upon by Elic Alfred was a forged one and Elic Alfred was not entitled to receive pensionary benefits. On an application made by the appellants the suit pending before the civil court was also transferred to the Tribunal's file.

The Tribunal by its order dated December 11, 1989 held that since the dispute related to rival claims based on title arising from relationship in one case and from a will in the other, it has no jurisdiction to decide the same. The Tribunal further directed for the transfer of the civil suit to the civil court for trial in accordance with law. The appellants have challenged the order of the Tribunal by means of the present appeal.

4. The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules, 1964 provided for the sanction of family pension to the survivors of a Railway employee. Rule 801 provides that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or get married, whichever is earlier. The Rules do not provide for payment of family pension to brother or any other family member or relation of the deceased Railway employee. The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

5. In *Jodh Singh v. Union of India* ((1980) 4 SCC 306 : 1980 SCC (L&S) 549), this Court on an elaborate discussion held that 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. The court observed : (SCC p. 310, para 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."

The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to disposed of the same by testamentary disposition.

6. We, accordingly hold that Mrs. Violet Issac the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased on September 9, 1984 in favour of his brother Elic Alfred. As regards appellants 2 to 6 are

concerned, it has been stated on behalf of the Railway administration that they are not minors, therefore, under the Rules they are not entitled to any family pension. We, accordingly allow the appeal, set aside the order of the Tribunal and direct the respondent Railway administration to sanction family pension in accordance with the Rules to appellant 1 and to pay the arrears within two months. The respondent's suit, so far as it relates to the family pension cannot proceed but we do not express any opinion with regard to other claims raised therein.

7. It has been brought to our notice on behalf of the respondent Railway administration that the appellants have been occupying the Railway quarter which had been allotted to late Issac Alfred, even though they are not entitled to occupy the same. On behalf of the appellants, it was urged that since they had not been paid any dues by the Railway administration they were not in a position to vacate the premises. The Railway administration is free to evict them in accordance with the Rules, only after arrears of family pension are paid to Mrs. Violet Issac. The Railway administration will charge rent from the appellants at the rate on which the quarter had been let out to the deceased Railway employee.

8. There will be no order as to costs.

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