

Nitu vs Sheela Rani And Ors on 28 September, 2016

Equivalent citations: AIR 2016 SUPREME COURT 4552, 2016 (16) SCC 229, 2016 LAB. I. C. 4555, AIR 2017 SC (CIVIL) 351, (2016) 4 ESC 561, (2017) 1 ALL WC 273, (2016) 4 KER LJ 209, (2016) 151 FACLR 609, (2016) 4 LAB LN 272, (2017) 4 SCT 279, (2016) 4 JLJR 202, (2017) 1 ANDHLD 18, (2016) 9 SCALE 416, (2017) 1 SERVLJ 151, (2017) 1 SERVLR 134, (2016) 2 WLC(SC)CVL 705, (2016) 2 CLR 914 (SC), 2016 (11) ADJ 1 NOC

Author: Anil R. Dave

Bench: L. Nageswara Rao, Anil R. Dave

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9823 OF 2016
(Arising out of S. L. P. (C) No.21187 of 2015)

NITU

... APPELLANT

VERSUS

SHEELA RANI & ORS.

... RESPONDENTS

J U D G M E N T

ANIL R. DAVE, J.

1. Leave granted.

2. The learned counsel appearing for the respondents waived service of notice and at the request of the learned counsel, the appeal was heard on the same day.

3. Being aggrieved by an Order dated 21st April, 2015 passed by the High Court of Punjab & Haryana at Chandigarh in C.R. No.6012 of 2014, the widow of a government employee has approached this Court with a grievance that she is not being paid full pension in accordance with the provisions of the Family Pension Scheme, 1964 (hereinafter referred to as 'the Scheme') of the Government of Punjab.

4. The facts giving rise to the present litigation, in a nutshell, are as under :

Shri Yashpal, the husband of the appellant, was serving as a Computer DOD in the office of the District Malaria Officer under the Haryana Government. Upon his death, family pension payable to the widow had been determined at Rs.2,153/- per month. Respondent No.1, who is a real contesting respondent, is the mother of late Shri Yash Pal, who filed Suit No.30/SC of 2005 in the Court of Civil Judge (Senior Division), Rohtak for getting a succession certificate so that she can get the pension, which was payable in respect of the services rendered by late Shri Yash Pal to the Government of Haryana. In the said suit, the appellant appeared and made a claim that she, being the widow of late Shri Yash Pal, was entitled to pension, whereas sister of late Shri Yash Pal, who was also a respondent in the said suit filed a written statement stating that she had no objection if succession certificate was issued in favour of respondent no.1.

5. After hearing the parties concerned, the learned Civil Judge (Senior Division), Rohtak dismissed the suit by coming to a conclusion that the mother, who was the plaintiff in the said case and the sister of late Shri Yash Pal were not entitled to succession certificate and held that the present appellant, who was respondent No.3 in the said suit, being the widow of the deceased, was entitled to succession certificate so far as pension payable in respect of the services rendered by late Shri Yash Pal was concerned. The said judgment was delivered on 25th April, 2013.

6. Being aggrieved by the aforesaid judgment, Civil Appeal No.88 of 2013 was filed by Respondent No.1 i.e. the mother of late Shri Yash Pal in the Court of Additional District Judge, Rohtak. The said appeal was dismissed by the judgment and order dated 2nd July, 2014.

7. Being aggrieved by the judgment delivered by the first appellate Court, the respondent mother filed Civil Revision, being C.R. No.6012 of 2014, before the High Court of Punjab and Haryana at Chandigarh.

8. After hearing the parties concerned, the High Court allowed the said Revision Petition by observing that the respondent mother was entitled to the succession certificate in view of the provisions of Section 8 of the Hindu Succession Act as she was also one of the heirs of late Shri Yash Pal.

9. Being aggrieved by the aforesaid order passed by the High Court, the present appeal has been filed by the appellant – widow of late Shri Yash Pal.

10. The learned counsel appearing for the appellant submitted that the appellant is the only person who is entitled to the pension as per the provisions of the Scheme. The learned counsel submitted that pension is paid in pursuance of the aforestated Scheme and therefore, pension cannot be treated as other assets of the deceased and according to the provisions of the Scheme, only the appellant is entitled to the pension. In the circumstances, according to the learned counsel, the High Court has committed an error by observing that all legal heirs have a share in the pension payable in respect of the services rendered by late Shri Yash Pal.

11. The learned counsel relied upon the provisions of the Scheme which provide that only the widow is entitled to the pension and none else. He referred to the provisions of the Scheme and submitted that the impugned order passed by the High Court deserves to be quashed and set aside as it is not in consonance with the provisions of the Scheme.

12. On the other hand, the learned counsel appearing for the respondent mother submitted that she being a class-I heir of a Hindu and as late Shri Yash Pal died intestate, she is entitled to one-half share of the properties of late Shri Yash Pal, as he was survived by his widow and the mother. The learned counsel, therefore, submitted that the impugned order passed by the High Court is just and proper.

13. The learned counsel appearing for the State supported the case of the appellant and submitted that in the Scheme, the term “family” has been defined and in the instant case, the widow of the deceased is the only person who is entitled to pension and therefore, the impugned order deserves to be quashed and set aside so that the entire amount of pension can be paid to the appellant.

14. We have heard the learned counsel appearing for the parties and have also perused the provisions of the Scheme.

15. Let us look at the provisions of the Scheme, in pursuance of which the pension is to be paid in respect of services rendered by late Shri Yash Pal. Clause 4(ii) of the Scheme defines the term “family”, which reads as under :-

4(ii). “Family” for the purpose of this scheme includes the following relatives of the officer:-

wife, in the case of a male officer; husband, in the case of a female officer; minor sons;

unmarried minor daughters; widowed/legally divorced daughters; and the parents of an unmarried officer.”

16. So far as the respondent mother is concerned, she has not been included in the definition of the term “family” for the reason that as per the provisions of sub-clause (f), parents of an unmarried officer would be a part of the family and therefore, the respondent mother would not be included in the family of late Shri Yash Pal as he was married.

17. So far as the provisions of the Hindu Succession Act, 1956, are concerned, it is true that the properties of a Hindu, who dies intestate would first of all go to the persons enumerated in class I of the schedule as per the provisions of Section 8 of the said Act and therefore, so far as the properties of late Shri Yash Pal are concerned, they would be divided among the respondent mother and the appellant wife, provided there is no other family member of late Shri Yash Pal alive, who would fall within class 1 heirs, but position in this case, with regard to pension, is different.

18. It is pertinent to note that in this case the pension is to be given under the provisions of the Scheme and therefore, only the person who is entitled to get the pension as per the Scheme would get it. Similar issue had arisen before this Court in the case of Violet Issaac (Smt.) v. Union of India (1991) 1 SCC 725 and after considering the relevant provisions, this Court came to the conclusion that family pension does not form part of the estate of the deceased and therefore, even an employee has no right to dispose of the same in his Will by giving a direction that someone other than the one who is entitled to it, should be given the same. In the instant case, as per the provisions of the Scheme, the appellant widow is the only family member who is entitled to the pension and therefore, the respondent mother would not get any right in the pension. Of course, it cannot be disputed that if there are other assets left by late Shri Yash Pal, the respondent mother would get 50% share, if late Shri Yash Pal had not prepared any Will and it appears that late Shri Yash Pal had died intestate and no Will had been executed by him.

19. For the aforesaid reasons, in our opinion, the High Court committed an error by giving a direction that the respondent mother should also get 50% share in the pension. In view of the aforesaid legal position, the entire pension would be payable to the appellant widow.

20. In the circumstances, the impugned order is set aside and it is directed that the pension shall be paid only to the appellant widow and not to the respondent mother.

21. The appeal stands disposed of as allowed with no order as to costs.

.....J. (ANIL R. DAVE)J. (L. NAGESWARA RAO) NEW
DELHI SEPTEMBER 28, 2016.