

Testamentary Disposition of Family Pension — Legal Validity

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Two judgements of the Supreme Court of India are discussed below, in which the issue examined by the Court was whether the family pension can be bequeathed by Will.

I. Smt. Violet Issac and Others (Appellants) vs. Union of India & Others (Respondents) —(1991) 1 Supreme Court Cases 725 — Civil Appeal No. 653 of 1991, decided on February 8, 1991.

Brief facts

An employee of the Railways, by name Issac Alred died in harness in the year 1984. On his death, a dispute arose between Smt. Violet Issac his widow, sons and daughters on the one hand and Elic Alfred, brother of the deceased employee, on the other, regarding the dues payable such as family pension, gratuity etc. by the Railway Administration. The widow and children moved an application before the competent Railway authority and staked their claim to the said dues. In the meantime, Elic Alfred, brother of the deceased filed Civil Suit No. 365 of 1985 in the Court of Sub-Judge, Jagadhri for the issue of permanent injunction restraining the appellants from receiving or claiming the said dues from the Railway Administration. The pleadings in the suit disclosed, that the deceased employee 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. In his Suit, Elic Alfred had pleaded that in view of the Will, the widow and children cannot claim any monetary benefit from the Railways, and that on the strength of the will he was the only person entitled to the deceased's estate including the right to receive family pension and other dues. The Civil Court issued an order of injunction against the appellants as prayed for in the Suit and in compliance of the same the Railway Administration refused to pay any amount to them.

Thereafter, the appellants approached the Central Administrative Tribunal, Chandigarh praying for the issue of a direction for the release of the dues to them. On their application the Suit pending before the Civil Court was also transferred to the Tribunal's file. In its order dated December 11, 1989 the Tribunal held that it has no jurisdiction to decide the dispute related to rival claims and further directed that the Civil Suit be transferred to the Civil Court for trial in accordance with law.

Against the said order of the Tribunal, the appellants filed the above Civil Appeal No. 653 of 1991 before the Supreme Court.

Issue

Whether family pension payable under the service rules could be bequeathed by means of a Will by the deceased employee during his lifetime?

Decision

The Court in its judgement observed that Family Pension Rules, 1964 provide 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 in their absence to the minor children of a Railway servant who may have died while in service.

Under the Rules, son of the deceased can be given family pension till he reaches the age of 25 years, and an unmarried daughter is also eligible till her age is 25 years or gets 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. Hence, except those designated under the Rules no other person is entitled to receive family pension. The Court observed that the Family Pension Scheme confers monetary benefits on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee does not have any control over the family pension since he is not required to make any contribution to the same. The Family Pension Scheme is in the nature of a welfare scheme and as 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, the Court held that the family pension does not form part of the estate of the employee enabling him to dispose of the same by testamentary disposition.

The Court referred to and relied upon the judgement in *Jodh Singh vs. Union of India* (1980) 4 SCC 306 in which the Supreme Court had held that family pension payable to the widow by no stretch of imagination could ever form part of the estate of the deceased and it could never be the subject matter of testamentary disposition. Accordingly, the Court passed judgement in favour of Mrs. Violet Issac, widow of the deceased Railway employee holding that she 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. The appeal was allowed and the order of the Tribunal was set aside and the respondent Railway administration was directed to sanction family pension in accordance with the Rules to the appellant and to pay the arrears within two months. The Court also held that the respondent's suit, so far as it relates to the family pension cannot proceed.

II. Jodh Singh (Petitioner) vs. Union of India and Another (Respondents) (AIR 1980 SC 2081) — Civil Appeal No. 7254 of 1980 —decided on October 9, 1980.

Brief Facts

Fit. Lt. Panj Rattan Singh who was serving in Indian Air Force died in an air-craft accident arising out of and in the course of his employment on June 17, 1966. His survivors are the widow Hardev Kaur, his parents and his brothers and sisters. Prior to his death, he had executed his last will and testament dated 14th May 1959 whereby he bequeathed absolutely and for ever all his property both moveable and immoveable to his father, the petitioner before the Court, and also appointed his father as the executor under his Will. Further, during his lifetime the deceased had appointed, by issuing letters, his

parents as nominees in respect of his provident fund and had also nominated his parents, brothers and sisters to claim pensionary benefit which may accrue in the event of his death. It appears that his relations with his wife were not cordial and he had never referred to his wife as either his dependent or entitled to any pensionary benefit.

The President of India has passed an order dated March 10, 1967 granting a special family pension to respondent No. 2 Hardev Kaur, being the widow of the deceased Air Force Officer at the rate of Rs. 160/- p.m. By the same order, she was also awarded gratuity of an amount of Rs. 2,670/-. The petitioner, father of the deceased filed petition for probate of the Will made by the deceased. In the probate proceedings, the petitioner, *inter alia*, contended that the said special family pension and gratuity awarded by the President to respondent No. 2 Hardev Kaur formed part of the estate of the deceased and under the Will as well as the nomination he was entitled to collect the same. The Learned single Judge of the High Court while granting probate excluded the aforementioned two items from it. Thereafter the petitioner filed a suit against the Union of India and the respondents for a declaration that the order awarding special family pension to the widow of the deceased was illegal, unjust and improper. The trial Court decreed the suit but on appeal by respondent No. 2, widow the appellate Court set aside the decree of the trial Court and the decision of the appellate court was confirmed by the Punjab and Haryana High Court in second appeal. Hence, the petitioner has filed the above petition for Special Leave to Appeal (Civil) No. 7254 of 1980 before the Supreme Court.

Issue

Whether the special family pension awarded by the President to the widow of a deceased Air Force Officer could be the subject matter of a testamentary disposition by the deceased in his lifetime.

Decision

It was the contention of the petitioner before the Court that special family pension is admissible to the dependants, and as respondent widow was nowhere shown as dependant of the deceased, the same could not be granted to her and it would form part of the estate of the deceased and the petitioner would be entitled to the same. The Court pointed out that special family pension is granted under Rule 74 of the Pension Regulations for the Air Force. The said Rule 74 provided that 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 either a wound, injury or disease which was attributable to air force service. The Court observed that special family pension is not admissible to the employee but to the specified members of the employees' 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 keeping in view the provisions of the said Rule 74. It is 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. It is the status of a widow which makes her eligible for special family pension and not the fact that there was some estate of the deceased which devolved on his death to the widow. Further the Court held as follows :

“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.”

Regarding the contention of the petitioner that in this case the deceased has not shown his wife as one of his dependants, the Court observed that 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. Therefore, it is irrelevant whether the deceased had shown his wife as his dependent or not. In respect of the real controversy, whether the special family pension could be bequeathed by Will, the Court observed that special family pension is payable to the widow on the death of the officer and 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. The Court held that 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 although related to the deceased, cannot form part of the estate of the deceased which he can dispose of by executing a Will. The Court gave judgement against the petitioner holding that it is unquestionably established that special family pension sanctioned to the widow of an Indian Air Force Officer by the President of India under Rule 74 of the Rules could not be subject matter of testamentary disposition. The special leave petition was accordingly dismissed.