(2009) 06 GAU CK 0042

Gauhati High Court (Shillong Bench)

Case No: Writ Petition (C) No. 246 (SH) of 2006

Binalish M. Sangma		APPELLANT
	Vs	
State of Meghalaya and Others		RESPONDENT

Date of Decision: June 26, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14, 141, 144
- Meghalaya Civil Services (Pension) Rules, 1983 - Rule 268D, 48, 48(1), 54(14)
- Succession Act, 1925 - Section 372(1), 372(3)

Citation: (2010) 1 GLR 437 : (2009) 3 GLT 569

Hon'ble Judges: T. Vaiphei, J

Bench: Single Bench

Advocate: A.S. Siddlque, R. Kar and S. Bhattacharjee, for the Appellant; N.D. Chullai and R. Debnath, for the Respondent

Final Decision: Allowed

Judgement

T. Vaiphei, J.

Whether the petitioner, who married the deceased pensioner after his retirement from service, is entitled to payment of the family pension under the provisions of the Meghalaya Civil Services (Pension) Rules, 1983, is the moot point in this writ petition.

2. None appears for the respondent No. 5 despite service of notice upon her through substituted service by paper publication. The controversy arose in this manner. The late Misorsing T. Sangma, was serving as Forester-I under the Department of Forest, Government of Meghalaya till 1.12.1995 when he retired from service on his superannuation. He died on 9.9.2002. It would appear that after his retirement from service, he had contracted a second marriage with the petitioner on 14.1.1996. According to the petitioner, she is the legally married wife of the

deceased and is his heir according to Garo Customary Law of Inheritance. However, when she found that her husband did not nominate anyone from his family to receive his pension, etc., she applied for and obtained a Succession Certificate (Annexure-III) from the court of Additional District Magistrate, East Garo Hills, Williamnagar. On the basis of this certificate, she filed the application dated 15.1.2003 to the Accountant General (A and E), Meghalaya (respondent No. '' 3) through the Treasury Officer, Williamnagar (respondent No. 4) for payment of the family pension to her. Even after submitting all the necessary documents, no payment has been made to her. It is under the aforesaid circumstances that this writ petition has been filed by her for payment of the family pension of her deceased husband.

3. The writ petition is opposed by the State-respondents and the Accountant General (A and E), Meghalaya by filing their respective affidavits-in-opposition. The common stands taken by the answering respondents is that though the petitioner admittedly obtained Succession Certificate from a competent court of jurisdiction, when the first-wife of the deceased, namely, Smt. Starline G. Momin (respondent No. 5) is still alive, the second wife like the petitioner is barred by Rule 48(1) of the Meghalaya Civil Services (Pension) Rules, 1983 ("the Rules" for short) from receiving the family pension of the deceased and that Note 2 to Rule 48 of the Rules, in any case, comes in the way of her claim for pension as she contracted her marriage with the deceased after his retirement. Thus, both the answering* respondents contend that the writ petition is devoid of merits, and the same is liable to be dismissed.

4. There is no dispute that the petitioner is armed with a Succession Certificate issued by a competent court of jurisdiction for collection of the debts and securities of the deceased. There is no evidence to show that this Succession Certificate has been challenged by the respondent No. 5 or has otherwise been revoked by a competent court of jurisdiction. Therefore, this Succession Certificate is operative, and must be acted upon by the authorities without any delay. Succession Certificate is issued u/s 372(3) of the Indian Succession Act, 1925. Under Sub-section (1) of Section 372; if the court is satisfied that there is ground for entertaining the application for succession certificate, he fixes a date of hearing after notice. Sub-section (2) decides the right of the applicant, whether he is entitled for grant of the certificate. Under Sub-section (3), if such Judge cannot decide such right, as the question raised both on facts or law are intricate and difficult, then in summary proceedings it can grant such certificate, if it appears to the court that the person making such application has a prima facie title thereto. In the instant case, as no dispute was apparently raised from any quarters, the petitioner was granted the certificate on the basis of prima facie title established by her. As it stands now, the certificate has not been revoked by the court issuing the same. The effect of issuing succession certificate is provided for in Section 381 of the Act which runs as follows:

381. Effect of certificate. - Subject to the provisions of this Part, the certificate of the District Judge shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of Section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted.

5. The provision extracted above plainly shows that this certificate affords full indemnity to the debtor for the payment he makes to the person holding such certificate. Thus, when the debtor pays the debts or the securities as specified in the certificate, to the holder of such certificate, then on such payment, he is absolved from his obligation to pay to anyone else as it conclusively concludes his part of his obligation and such payment is construed to be in good faith. This safeguards such debtor or person liable to pay so that he may not be later dragged into any litigation which may arise subsequently inter se between the claimants. In other words, the purpose of grant of a succession certificate is to give a valid discharge of the debt, if paid, by the debtor to the person in whose favour the certificate has been granted. The debtor has no right to say as between two heirs one is a preferential heir as against the other. The certificate is conclusive as against the debtor and gives full indemnity to him. If the debtor still refuses to make payment, he is liable to pay interest and costs of the litigation. Even if another person turns out to be the real legal heir, it does not follow that the certificate is invalid. It is true that a succession certificate is not a final adjudication of the question as to who is the next heir and as such entitled to the estate of the deceased. Nevertheless, the grant of succession certificate merely clothes the holder of the succession certificate with an authority to realize the debts of the deceased and to give valid discharge of their debt. This is the settled legal position from a long line of decision of judicial authorities, the latest being the decision of the Apex Court in Madlvi Ama Bhawani Amma v. Kunjikutty Pillai Meenakshi Pillai (2000) 6 SCC 31. In the instant case, it is the answering respondents who are the debtors, and are bound to make the payment of the family pension of the deceased in favour of the petitioner on her production of the succession certificate.

6. Mr. N.D. Chullai, the Learned Counsel for the State-respondents, however, contends that as the marriage between the deceased employee and the petitioner had taken place after his retirement, such retirement marriage is not recognized by Note 2 to Rule 48(1) of the Rules and that being the position, her claim for family pension is not admissible under the law. Undoubtedly, Note 2 of Rule 48(1) categorically places an embargo on the claim of the petitioner for the family pension, after all, a widow like the petitioner cannot come within the purview of the term "family" contemplated by Rule 48(1). Similar question came up for consideration before the Apex Court in Smt. Bhagwanti Vs. Union of India (UOI), in context of the Central Civil Services (Pension) Rules, 1972, the provision whereof is

almost pari materia to the Meghalaya Civil Services (Pension) Rules, 1983. To appreciate the controversy, the relevant provisions of Rule 54(14)(b) of the Central Rules and Rule 48 of the Meghalaya Rules are reproduced herein below:

(b) ''Family'' in relation to a Government servant means -

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant, provided the marriage took place before retirement of the Government servant:

48 (i) Family for the purpose of rules in this section will include the following relatives of the officer -

(a) Wife, in the case of a female officer;

(b) Husband, in the case of a female officer;

(c) Minor sons; and

(d) Unmarried minor daughters.

Note 1: (c) and (d) will include children adopted legally before retirement.

Note 2 .-.Marriage after retirement will not be recognized for purposes of rules in this section.

(emphasis mine)

7. In Bhagwanti (supra), the petitioner was the widow of an ex-Subedar of the Indian Army. Her husband after serving for 18 years retired on 3.8.1947 and was given pension. In 1955, his wife died and in 1965 he was married to the petitioner. The Subedar died in September, 1985 in an accident. Petitioner who has two minor children applied for family pension and the same was not granted whereupon a writ petition was filed by her. One of the questions which arose for consideration was whether the spouse-man or woman, as the case may be - married after the retirement of the concerned Government servant can be kept out of the definition so as to deprive him from the benefit of the family pension. The Apex Court held that pension is payable on the consideration of past service rendered by the Government servant. Playability of the family pension is basically on the self-same consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary. Thus, there is no justification to keep post retirement marriage out of the purview of the definition of the term "family" in Rule 54(14)(b) of the Rules. Again in Laxmi Kunwar (Smt) Vs. State of Rajasthan, similar provision engrafted in Note 2 to Rule 268-D of the Rajasthan Service Rules, 1951 was considered by the Apex Court. Relying upon Bhagwanti (supra), it was held therein that Note 2 to Rule 268-D was arbitrary and as such ultra vires of Article 14 of the Constitution of India. The respondent authorities

were accordingly directed to consider the case of the petitioner therein for grant of family pension ignoring Note 2 to Rule 268-D, which was struck down. Confronted with this definite and unambiguous pronouncement of law by the highest court of this land, the Learned Counsel for the State-respondents tries to wriggle out of the situation by maintaining that in the absence of challenge to the vires of Note 2 to the Meghalaya Rules, this Court has no alternative but to apply the unchallenged statutory law of this State on the principle that there is presumption of constitutionality of a statute. I have given my anxious consideration to this submission of the learned State counsel. Though this submission is attractive at the first blush, it has no substance on deeper examination of the issue keeping in mind Article 141 of the Constitution of India. Article 141 of the Constitution declares that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Then, Article 144 says that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. When similar provisions in the Central Civil Services (Pension) Rules, 1972 and the Rajasthan Civil Services Rules, 1951 have been declared by the highest court of this land as unconstitutional, i is not necessary to challenge similar provision enacted in the Meghala a Civil Services (Pension) Rules, 1983. To insist upon the petitioner to challenge the vires of such provision even though the similar provision has already been adjudged unconstitutional will amount to stretching the law of pleadings and practices a bit too far. The decision in Bhagwanti (supra) was rendered by the Apex Court way back in 1989. The State-respondents should have taken note of this decision and amended the Meghalaya Civil Services (Pension) Rules, 1983 so as to bring them in conformity with the law laid down therein. At this stage, I may profitably quote the decision of the Apex Court in Brahmo Samaj Education Society and Others Vs. State of West Bengal and Others, (at paragraphs 10 and 11).

10. When a larger Bench consisting of eleven judges of this Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, has declared what the law on the matter is, we do not want to dilute the effect of the same by analyzing various statements made therein or indulge in any dissection of the principles underlying it. We would rather state that the State Government shall take note of the declarations of law made this Court in this regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein.

11. In this view of the matter, it is unnecessary to examine whether the present rules are valid or not. Until such time as such rules are framed in terms of the order made by us now, the interim orders made by this Court in these proceedings will be operative.

8. In the case at hand also, I am not obliged to dismiss the writ petition on the technical ground that the petitioner does not challenge the validity of Note-2 to Rule 48(i) of the Meghalaya Civil Services (Pension) Rules, 1983, since such challenge is

not really necessary in view of the definite pronouncement of law made by the Apex Court in Bhagwanti (supra) and Laxmi Kunwar (supra) in pari materia provisions. In the result, the petitioner has made out a case for the interference of this Court. Nonetheless, there is one aspect of the matter which disturbs my mind. Though the writ petition was filed in 2006, the hearing could not be concluded due to adjournments made by the petitioner from time to time. On the peculiar facts obtaining in the history of this proceeding, to direct the State-respondents to pay interest at the rate claimed by her will amount to giving encouragement for adjourning cases without reasonable cause.

9. The result of the foregoing discussion is that this writ petition succeeds. The respondent authorities are accordingly directed to grant the family pension of the deceased employee to the petitioner w.e.f 9.9.2002 when he died together with interest at the rate of 6 per cent per annum within a period of two months from the date of receipt of this judgment. It shall be open to the respondents to require the petitioner to execute an indemnity bond to absolve them of their liability to pay a third party in future. The parties are, however, directed to bear their own costs.