

Kiran Vs. Sudesh and ors

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Court : Delhi

Decided On : Jul-28-2014

Judge : Najmi Waziri

Appellant : Kiran

Respondent : Sudesh and ors

Advocate for Def. : Ms. Sumita Hazarika, Ms. Ipsita Behuru, Mr. Asish Nischal

Advocate for Pet/Ap. : Mr. S.R. Jolly

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on :

09. 05.2014 Pronounced on :

28. 07.2014 + CM(M) 352/2012 &CM APPLs. 5350/2012 and 5351/2012 KIRAN Through: Petitioner Mr. S.R. Jolly, Adv. Versus SUDESH & ORS Through: Respondents Ms. Sumita Hazarika and Ms. Ipsita Behuru, Adv. for R-1 to 4. Mr. Asish Nischal, Adv. for R5. CORAM: HON'BLE MR. JUSTICE NAJMI WAZIRI % MR. JUSTICE NAJMI WAZIRI1 This petition impugns an order dated 30th September, 2011 which dismissed the petitioners application under Order VII Rule 11 CPC seeking dismissal of the suit filed by the respondents No.1 to 4. The latter had filed a suit seeking following declarations:

(a) pass a decree declaring the plaintiffs being the legally wedded wife and children of the deceased Satpal, are the legal heirs of deceased Satpal and as such entitled to family pension and to compassionate appointment, gratuity and insurance amount and other benefits; and (b) pass such order and further relief as the Court deems fit and proper in the interest of justice.

In that suit for declaration, Central Water Commission, Government of India, and the present petitioner were arrayed as defendants No.1 and 2, respectively. The petitioner also seeks quashing of the order dated 02.12.2011 whereby the Court proceeded to frame four issues. There is no order in the Court file staying the suit proceedings.

2. In that suit, the plaintiffs case was that her first husband Mr. Rajbir, who was employed with Central Water Commission as daily wager, had passed away on 26.10.1989. Three children i.e. plaintiff nos. 2, 3 and 4 were born from that wedlock. After the demise of Rajbir, she married Satpal, who was the brother of her late husband. Satpal worked as a Chowkidar with Central Water Commission. He died on 10.06.2010. Plaintiff No.1 Sudesh and her three children sought release of GPF, gratuity etc. from the employer- Central Water Commission. However, the Commission replied stating that in their records, the present petitioner Smt. Kiran (defendant No.2) was the nominee of Sh. Satpal. In view of the conflicting claims, all payments had been withheld by the Central Water Commission leading to the filing of the suit seeking the aforesaid declaration.

3. In an application under Order 7 Rule 11 CPC the petitioner had sought dismissal of the suit on the ground that as per Section 2(q) [(sic) 3 (q)]. of the Administrative Tribunals Act, 1985 and as per entry 8 of Schedule to Appendix-1 to the Central Tribunal Rules of Practice, 1993, all cases relating to grant of pension, family pension, and other retirement benefits, all matters relating to the condition of service are to be dealt with by the Tribunal. It was further contended that as per entry 13 of the Schedule to Appendix-1 to the Central Tribunal Rules of Practice, 1993, all cases relating to compassionate appointment/ appointment of dependants of government servants too are to be dealt with by the said Tribunal. The petitioner further contended that apropos the subject matter enumerated in

Schedule to the aforesaid Appendix-1, there is a bar on the jurisdiction of all Courts other than the Supreme Court. Therefore, it was contended that insofar as the suit related to grant of pension, family pension and compassionate appointments, there would be a bar to the maintainability of the aforesaid suit.

4. The Trial Court was of the view that the issues before it were (i) whether the plaintiff No.1 was the legally wedded wife of late Shri. Sat Pal and (ii) whether the plaintiffs No.2 to 3 were their children. These two issues could not be considered as service matters as per Section 3 (q) of the Administrative Tribunals Act, 1985. It was further of the view that the nature of cases detailed in the Schedule to the aforesaid Appendix-1 are restricted only to whether an employee of the Central or State Government is entitled to grant of pension or not. It was of the view that in the suit the dispute was between two women, both claiming to be the legally wedded wife of late Sh. Sat Pal, hence it could not be deemed to be a service matter.

5. Learned counsels for the parties were heard. Learned counsel for the petitioner submits that the Trial Court has no jurisdiction to entertain the suit because it relates to entitlement of grant of pension, family pension and employment on compassionate ground etc. He relies upon the following judgments in support of his contention: (i) Chief Secretary v. N. Sreedhara Murthy, 1988 (3) SLR415 which held that although the petitioner had superannuated prior to establishment of the Central Administrative Tribunal, his case would nonetheless fall within the jurisdiction of the Central Administrative Tribunal after its creation. Learned counsel then relies upon (ii) Union of India & Ors. v. Surinder Pal Sood (CR No.4541 of 2009), decided on November 17, 2009 by Punjab & Haryana High Court which too held that a suit for declaration and recovery of GPF amount would not be maintainable before the Civil Court but had to be dealt by the Central Administrative Tribunals. Learned counsel also relies upon the General Principles in (iii) S.P. Sampath Kumar v. Union of India, 1987 AIR SC386 as well as in (iv) L. Chandra Kumar v. The Union of India & Ors., 1997 (2) RSJ467 6. It is to be noted that none of the judgments stated above relates to a dispute between private parties with respect to their respective claim. The issue before the Trial Court is a declaration to the estate of the deceased Sh. Satpal. The estate would include his

post retirement service benefits, as may be available to his successor(s) but it would not be limited to the service benefits only. The estate could include other assets, both movable and immovable and this is clearly evident from the nature of the declaration sought i.e., the plaintiff No.1 was his legally wedded wife and respondents No.2, 3 and 4 were his children and all four plaintiffs were the legal heirs of deceased Sh. Satpal. The lis is between two private parties and not with the government. It is after this dispute is adjudicated upon that the subsequent claim to the post retirement benefits towards family pension, gratuity, compassionate appointment, insurance amount and other benefits etc. could be claimed by the decree holder/declared party(ies). Therefore, the jurisdiction of the Civil Court with respect to the determination of a private dispute between the parties is not excluded by Section 28 of the Act neither can this dispute be deemed to be a service matter as defined under Section 3 (q) of the said Act. In Sreedhara Murthy (supra) case, the dispute was between a superannuated employee and the government for the non-release of his post retirement benefits. In the second case i.e., Surinder Pal Sood (supra), the issue was related to a dispute between the claimant and the government directly. It too did not involve a dispute between the two private parties. Therefore, both the aforesaid judgments would be inapplicable in the present case.

7. Learned counsel for the respondent has submitted that although the petitioner (defendant No.2) may have been recorded as a nominee for the post retirement benefits etc. of late Sh. Satpal, the nomination itself would not give her rights to appropriate benefits or monies. He relied upon the Supreme Court dicta in Sarbati Devi v. Usha Rani, (1984) 1 SCC424 which while interpreting Section 39 of the Insurance Act held that:

A mere nomination made under Section 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them.

8. Learned counsel for the respondent further submits that the marriage of Sudesh was solemnised with Satpal in the presence of village elders and the local panchayat and the children namely Babli, Neeraj and Pankaj being plaintiffs No.2, 3 and 4, respectively had been adopted by Sh. Satpal. Therefore, they were the legal heirs and a declaration to this effect needed to be made by the Civil Court. He submits that the issues related to grant of pension, family pension, compassionate appointment etc. as detailed in Schedule-1 of the Central Administrative Tribunal Rule of Practice, 1993 are restricted only to the extent of whether an employee (or his legal heirs) of the Central or State Government is entitled to the grant thereof.

9. In view of the above discussion, this Court is of the view that the suit will lie before the Civil Court insofar as the suit for declaration sought declaration to the estate of the deceased Shri. Satpal, i.e. a declaration apropos his legal heirs, the entitlement to or the claim to his service benefits would be a corollary and incidental thereto. The plaintiffs claim was not related to his service benefits nor was the dispute with the employer/Government. The dispute was primarily between two private parties apropos the claim to benefits of the estate of the deceased. Therefore this issue is not covered within the meaning of Section 3(q) of the Act nor is it covered under the aforesaid Appendix-1 to the Schedule nor under Section 19 or 28 of the Act. Hence, the jurisdiction of the Civil Court is not ousted under the Administrative Tribunals Act to determine a dispute between private individuals viz. two women claiming to be declared as the wife of a deceased government employee, and also of his adopted children, as stated, to be declared as his legal heirs. That the so declared legal heirs would be entitled to the estate of the deceased, which would include his service benefits, is incidental to the main issue of declaration. This determination can be best done in a trial in the Civil Court.

10. In view of the foregoing discussion this Court is of the view that the reasons for and the conclusion arrived at in the impugned order are plausible view in law. It does not suffer from any material irregularity. The petition is without merit and is accordingly, dismissed. NAJMI WAZIRI (JUDGE) JULY28 2014/acm