

T. Sakuntala Vs. B. Satya Murthy and Another

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Court : Andhra Pradesh

Decided On : Oct-13-1998

Reported in : 1999(2)ALD2; 1998(6)ALT829

Judge : B.S. Raikote, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 60; [Pensions Act, 1871](#) - Sections 11; Civil Pensions (Commutation) Rules - Rule 6(2)

Appeal No. : CRP No. 4172 of 1997

Appellant : T. Sakuntala

Respondent : B. Satya Murthy and Another

Advocate for Def. : Mr. S. Appadharareddy, Adv.

Advocate for Pet/Ap. : Mr. K.V. Upendra Gupta, Adv.

Judgement :

ORDER

1. This revision petition is filed being aggrieved by the judgment and order dated 17-9-1997 passed by the Additional Subordinate Judge, Eluru in E.A. No.217 of 1997 in E.P. No.82 of 1997 in OS No.74 of 1991. By the impugned order, the Court below rejected the petition filed by the decree-holder, on the ground that the pension of the respondents cannot be attached. The Court below relied upon a

judgment of the High Court of Sindh reported in AIR (29) 1942 page 19 and also the judgment of the High Court of Madras reported in 1940 MWN page 1150. The learned Counsel for the petitioner strenuously contended that under Section 60 of CPC, pension is not attachable, but the commuted pension can be attached. Whereas, on the side of the respondents, reliance is placed on the judgment of Supreme Court reported in Union of India v. Wing Commander, R.R. Hingorani, (1987) 2 SCJ 60, and also the judgment of the Madras High Court reported in C. Gopaiachariar v. Deepchand Sowear, AIR 1941 Mad.207, contending that the commuted pension also cannot be attached, since it is also a pension amount.

2. From the reading of the judgment of the High Court of Madras, (supra), I find that the High Court of Madras interpreting Section 11 of the [Pensions Act, 1871](#), held that even the commuted pension cannot be attached in pursuance of an execution of a decree. I think it appropriate to extract the relevant portion of the said judgment as under:

'In the present case it was urged in the Courts below, and the same contention is repeated in this Court, that the commuted portion of the pension is not attachable by reason of the provisions of Section 11, Pensions Act, which runs as follows:

No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attached or sequestration by process of any Court in British India, at the instance of a creditor, for any demand against the pensioner, or in satisfaction of a decree or order of any such Court.

Reliance is specially placed on the clause 'and no money due or to become due on account of any such pension or allowance' because in view of the Bench decision in 58 Mad 469 ('35) 22 AIR 1935 Mad 249, it is not really possible for the petitioner to contend successfully that the commuted portion of the pension is still pension so as to bring these cases under the first portion of the Section. The question therefore is whether the commuted portion of the pension - I am using these words; 'commuted portion of the pension' as they are the words employed in the rule relating to this subject which defines the legal effect of an order of

commutation, namely Rule 6(2) of Civil Pensions (Commutation) Rules - is 'money due or to become due on account of pension.'

The point is not covered by any authority; in any case no authority bearing on it has been quoted before me and no judicial interpretation of the words 'on account of ' has been brought to my notice. The phrase is a phrase used in ordinary parlance and it is certainly not a term of art which has acquired a definite or precise meaning in law. The ordinary dictionary meaning of the phrase has to be ascertained and applied to the facts of the present case. The meaning given in the New English Dictionary as well as in Webster's Dictionary is 'for the sake of 'by reason of' or 'because of. Now can it be said that the commuted portion of the pension is not money due on account of the pension? Though the pension has been commuted, still can it be said that money due because of, or by reason of such commutation is not money due on account of the pension? It is brought to my notice by the learned Advocate for the petitioner that Section 10 which relates to commutation of pension is part of Chapter III which is headed 'Mode of Payment'. In other words, the commutation of pension is regarded as a mode of payment of pension. If so, can it be reasonably urged that payment of the commutation amount is not payment on account of the pension, though not of the pension itself, because after commutation it ceases to be pension? I see no good reason why it should be deemed to be otherwise. No doubt money is due immediately under the commutation order, but the commutation order itself is on account of a pension which was commuted or a portion of the pension which was commuted. The intention behind the provisions of Section 11, Pensions Act, is applicable to the commuted portion as well as to the uncommuted portion of the pension and the language of Section 11 does not appear to exclude from its protection, the money that is due under a commutation order commuting a part of the pension, I am therefore of opinion that in these cases that attachments were contrary to the provisions of Section 11, Pensions Act, and it follows therefore, that these petitions must be allowed and the attachments must be set aside with costs in all the Courts.'

From the other judgment of the Hon'ble Supreme Court cited (supra), I find that the judgment of the High Court of Madras cited (supra) has been approved by the

Supreme Court. By interpreting the said Section 11 of the Pensions Act and also the Circular No.F7(28) E.V/53 dated August, 25, 1985, the Hon'ble Supreme Court ruled as under:

'It bears out the construction that the words 'money due or to become due on account of pension' occurring in Section 11 of the [Pensions Act, 1871](#) includes the commuted portion of the pension payable to an employee after his retirement. It must accordingly be held that the Government had no authority or power to unilaterally deduct the amount of Rs.20,482.78 p. from the commuted pension payable to the respondent, contrary to Section 11 of the [Pensions Act, 1871](#).

13. For these reasons, the appeal partly succeeds and is allowed. The judgment and order of the High Court are set aside.'

In view of the above law declared by the Supreme Court, it is clear that even the commuted pension in the hands of the pensioner also has the same protection as the pension. In this view of the matter, the commuted pension also cannot be attached in terms of Section 60 CPC, since it has to be read with Section 11 of the [Pensions Act, 1871](#). It is not in dispute that [Pensions Act, 1871](#) is still in force. Having regard to these circumstances, the conclusions of the Court below that the commuted pension at the hands of the judgment-debtors is not liable for attachment do not call for interference.

3. For the above reasons, I do not find any merits in this revision petition and it is accordingly dismissed. No costs.