

Sunil Kumar Bose and anr. Vs. Ajit Kumar Bose and anr.

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Court : Kolkata

Decided On : Jan-08-1954

Reported in : AIR1955Cal245,58CWN483

Judge : K.C. Das Gupta and ;Debabrata Mookerjee, JJ.

Acts : [Government of India Act, 1935](#) - Section 241 and 241(2); ;[Provident Funds Act, 1925](#) - Section 4

Appeal No. : A.F.O.D. No. 37 of 1949

Appellant : Sunil Kumar Bose and anr.

Respondent : Ajit Kumar Bose and anr.

Advocate for Def. : Apurba Charan Mukherjee and ;Ganga Narayan Chandra, Adv.

Advocate for Pet/Ap. : Rishindra Nath Sarkar, ;Sailendra Nath Banerjee and ;Nirmal Chandra Chowdhury, Adv.

Disposition : Appeal partly allowed

Judgement :

K.C. Das Gupta, J.

1. The dispute in this case is over a- total sum of Rs. 11,593-10-0 of which Rs. 9500/- was the amount standing to the credit of Sailendra Nath Bose, a Railway servant, in the Railway Provident Fund, Rs. 1820/- also standing to his credit as the special contribution thereto, Rs. 183-10-0 due' to him as arrears of his salary and dearness allowance etc. and Rs. 90/- on account of the value of his share in the Employees' Co-operative Credit Society.

It is admitted now that after the death of Sailendra Nath Bose, Ajit Kumar Bose, Ranjit Kumar Bose and Sunil Kumar Bose jointly applied to the Railway authorities for payment of these monies but were informed by the Railway authorities that the Provident Fund money was, under the rules applicable to the deceased Railway servant as regards the Provident Fund, payable only to the minor sons. It was after this that the two sons Ajit and Ranjit started the present action in which they alleged that Sunil was not the son of their father at all and asked for a declaration that they two were the only sons of Sailendra Nath Bose and were as such entitled to get all the monies mentioned above.

An alternative case was however also made the averment of which in the plaint is in these words :

'Conceding but not admitting that the defendant No. 1 is a son of the said Sailendra Nath Bose alias S.N. Bose by his second wife the defendant No. 1 would not be, at any rate, entitled to get more than one-third of all the monies mentioned in Schedule 'A' hereto; and the plaintiffs would be entitled to get the remaining two-thirds of the same under the Provident Fund Act and the Rules framed thereunder.'

On the basis of this averment, the alternative prayer was made that if the court held that defendant No. 1 was also a son of the deceased, a declaration should be given that the plaintiffs and the defendant No. 1 are entitled to get the monies mentioned in equal shares.

2. It appears that at the time of the trial this unfortunate and scandalous allegation that Sunil Bose was not the son of Sailendra Nath Bose was given up and the plaintiffs wanted only a declaration on the basis that Sunil- was also a son of the

deceased, that they were entitled to two-thirds of the money and Sunil to the remaining one-third.

3. The learned Subordinate Judge held that the rule of the Provident Fund so far as it restricts payment to the minor sons only is invalid and that under the general provisions of the Provident Fund Act all the sons and daughters would get the deposited amount according to their respective shares. The rules to which the Subordinate Judge refers were framed by the Governor-General in Council under Sub-section (2) of Section 241 of the [Government of India Act, 1935](#). They are published as part of the Indian Railway Establishment Code and are numbered 1301 to 1339 of the first volume of the Code. Rule No. 1336 is in these words;

'1336. Subject to the provisions of Rule 1337 on the death of a subscriber before the amount standing to his credit has become payable, or where the amount has become payable, before payment has been made--

(i) the amount of the special contribution credited to the subscriber's account under Rule 1314 shall become payable to the widow or widows or/ and dependent children of the deceased subscriber in such shares as the Controlling Officer may determine.

(ii) if a nomination made by the subscriber in accordance with Rule 1334 subsists the amount standing to his credit in the Fund, excluding any amount which becomes payable under Clause (i), or that part thereof to which the nomination relates, shall become payable to his nominee or nominees in accordance with such nomination; provided that if the amount exceeds rupees five thousand and the nominee is not a dependent, it shall be payable only on production by the nominee of probate or letters of administration evidencing the grant to him of administration to the estate of the deceased or a succession certificate entitling him to receive 'payable' of the amount;

(iii) if no nomination subsists, or if the nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall, subject to the provisions of Clause (1), become payable to the members of his family in equal

shares, and if there are no such members shall become payable;

(a) if the amount does not exceed rupees five thousand to any person appearing to the Accounts Officer to be entitled to receive it;

(b) if the amount exceeds rupees five thousand, to any person who produces probate or letters of administration evidencing the grant to him of administration to the estate of the deceased or a succession certificate entitling him to the payment of the amount.

Provided that no share shall be payable to--

1. sons who have attained legal majority;
2. sons of deceased son who have attained legal majority;
3. married daughters whose husbands are ' alive;
4. married daughters of a deceased son whose husbands are alive;
5. if there is any member of the family other than those specified in Clauses (1), (2), (3) and (4).

Provided further that the widow or widows and the child or children of a deceased son shall receive between them in equal parts only the share which that son would have received if he had survived the subscriber and had not attained the age of legal majority at the time of the subscriber's death.' _

4. It is necessary to consider first of all an argument which does not appear to have been raised before the Court below but has been raised before us by Mr. Mukherjee on behalf of the respondents that the provision in Rule 1336 as regards the manner in which the amount standing to the credit of an employee in his Provident Fund would be disposed of is not a condition of service and consequently the framing of such a rule was beyond the authority given to the Governor-General under Section 241, [Government of India Act, 1935](#). In my judgment, there is no substance in this contention. The provisions that there will be a Provident Fund for employees, that the employees will have to make

contributions thereto and that the employer also will make, contributions are clearly conditions of service. How it can be said that the manner in which those contributions would be disposed of on the cessation of the employee's service or on his death are not conditions of service, I am unable to understand. I am clearly of opinion that the rules are intra vires the Governor-General in Council.

5. Both parties appear to have proceeded before the Court below on the basis that if any rules apply to the Provident Fund they are the rules that appear in Nos. 1331 to 1339 in the Indian Railway Establishment Code. These rules were framed in 1940. It has been sought to be argued before us by Mr. Mukherjee that the evidence on the record does not clearly show that these rules are applicable.

It has been provided in Chapter 23 that

'the rules in this chapter are not applicable to those railway servants whose services were taken over by the Central Government from the Assam-Bengal, Bengal-Nagpur, Bombay, Baroda and Central India, Burma, East Indian, Great Indian Peninsula, Madras and Southern Mahratta and South Indian Railway Companies and who have been permitted to remain under the rules of those Companies as amended from time to time.'

It is admitted before us that the Central Government took over the administration of the East Indian Railway from 1-1-1925. In paragraph 1 of the plaint, there is an averment, the correctness of which does not appear to have been disputed by the defendants that

'Sailendra Nath Bose. 'served in the Eastern Bengal Railway as a ward-keeper from 1918 to 1924; then he joined the C. I. C. Railway and -served there for about two years as a stockholder and subsequently as D. S. K. P. thereafter he served in the Burma Railway for sometime, then his services were requisitioned by the East Indian Railway where he served in different capacities and was ultimately posted as ward-keeper at Jamalpore.'

It seems clear from this that the East Indian Railway had already been taken over by the Central, Government before he joined services there and that his services

were requisitioned by the Central Government for the East Indian Railway at a time when he was serving in the Burma Railway. If, therefore, it is shown that he had been permitted to 'remain under the rules of this Burma Railway, the conclusion would follow that he would not be governed by the rules in Chapter 23 of the Code.

Not only has no attempt been made by the plaintiffs to show that Sailendra Nath Bose had been permitted to remain under the rules of the Burma Railway but no suggestions were even made that he was so permitted. As I have already indicated, the plaintiffs and their lawyers appear to have proceeded on the basis that the rules applicable to Sailendra Nath Bose are the rules in Chapter 23,

6. In absence of any evidence to show that Sailendra Nath Bose had been permitted to regain under the rules of the Burma Railway Company, it is in these circumstances proper for us to proceed on the basis that he had not been permitted and the rules in Chapter 23 of the Code were applicable to him,

7. The learned Subordinate Judge seemed to be of opinion that the provisions in Rule 1336 are contrary to the provisions of the Provident Fund Act as contained in Section 4 of the Act. The relevant portion of Section 4 provides that where the subscriber is dead, payment of the sum standing to his credit shall be made to the dependent in whom it has vested under the provisions of Section 3. Section 3 provides inter alia that a sum standing to the credit of a subscriber at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber, shall, subject to any deduction authorised by this Act vests in the dependant.

It has been held in the case of -- 'Nidhusudan Mukherjee v. Smt; Bibhabati Debi 0044/1940 : AIR1940 Cal395 , that the major child is also a dependant within the meaning of Section 4. The learned Subordinate Judge seems to infer from this that Sections 3 and 4 provide that major sons equally with minor sons are entitled to get the sums standing to the credit of the subscriber. If this was the effect of Sections 3 and 4 that would have been a good ground for holding that the rules in so far as they make contrary provisions will not prevail. In thinking however that Sections 3 and 4 provide that a major child is also entitled to get a share the

learned Subordinate Judge appears to have wholly ignored the Important words in Sub-section (2) of Section 3 'payable under the rules of the Fund to any dependant'.

It is only if under the rules of the Fund to which the subscriber was subject the sum is payable to any dependant, that it vests in him. If under the rules it does not vest in him, the points as mentioned above of Sections 3 and 4 cannot create any right in him. The Act itself contemplates rules being framed in these matters and has not provided that the Governor General would not have any power to make rules that major children would not get a share.

8. I can see no justification for holding that the provisions of Rule No. 1336 are invalid. They are, in my opinion, valid rules to which the courts of law have to give effect. On a plain reading of the rules, it is quite clear that where a share has to be determined, the provisions for payment of the sums standing to a subscriber's credit will be subject to the proviso that no such share shall be payable to (1) sons who have attained legal majority; (2) sons of deceased son who have attained legal majority, (3) married daughters whose husbands are alive and (4) married daughters of a deceased son whose husbands are alive. It is further provided that these provisos will be applicable only if there is any member of the family other than those specified above. Family has been defined in Rule 1302(6) to mean in the case of a male subscriber' the wife or wives and children of the subscriber, and the widow or widows, and children of a deceased son or the subscriber.'

9. The net effect, therefore, is that as there was admittedly no subsisting nomination by the subscriber, the amount standing to the subscriber's credit in the Fund is payable to the members of his family in equal shafes leaving out, for the calculation of the shares, the sons who have, attained legal majority. As the plaintiffs have' attained legal majority nothing is payable to them under the provisions in Rule 1336 and consequently nothing is payable to them under the Act.

10. As regards the amount of the special contribution also the Controlling Officer has, in determining the shares, to give effect to the proviso that no share shall be payable to sons who have, attained legal majority. Consequently the two plaintiffs

are not entitled to any share of the amount of the special contribution.

11. My conclusion, therefore, is that the learned Subordinate Judge was wrong in holding that the plaintiffs are entitled to any share of either Rs 9500/- as standing to the credit of Sailendra Nath Bose in the Provident Fund money or Rs. 1820/- which represent the special contribution to the Provident Fund. They, are, however, entitled to two-thirds of the amounts of Rs. 183/10/0 due to Sailendra Nath Bose at the time of his death as arrears of his salary and dearness allowance etc., and Rs. 90/- the value of his share of the Employees' Co-operative Credit Society.

12. I would, therefore, set aside the Judgment and decree passed by the court below as regards the plaintiffs' claim to any share of Rs. 9500/- and Rs. 1820/- mentioned above. I would, therefore, allow the appeal in part and order that the plaintiffs' suit be decreed in part only as regards the two-thirds share in Rs. 183/10/0 and Rs. 90/- but his prayer be dismissed as regards the remaining items. As the defendants have substantially succeeded in the appeal, they will be entitled to their costs in both the courts.

13. Hearing fee assessed at five gold mohurs.

Debabrata Mookerjee, J.

14. I agree.

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