

Union of India (Uoi) and anr. Vs. Sandhya Devi and ors.

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Court : Jammu and Kashmir

Decided On : Sep-14-2007

Reported in : 2008(2)JKJ686

Judge : J.P. Singh, J.

Appellant : Union of India (Uoi) and anr.

Respondent : Sandhya Devi and ors.

Advocate for Def. : Mr. Sharma, Mr. S.D. Sharma

Judgement :

J.P. Singh, J.

1. Directed against Decree and Judgment dated 30th of December, 2000 of learned District Judge, Kathua, dismissing Union of India's appeal against decree and judgment dated 20th of December, 1999 of Learned Sub Judge, Kathua decreeing respondents' suit No. 22/Civil holding their predecessor-in-interest Late Prabhat Singh, entitled to disability pension and allied allowances with interest at the rate of 12% per annum, this civil second appeal was admitted to hearing on 22nd of November, 2001 on the following substantial questions of law.

1. Whether the civil court has jurisdiction to decide and grant pension in view of Section 4 of the Pensions Act, 1871 which debars the jurisdiction of the civil court?

2. Whether the provisions of Pensions Act 1981 are applicable to the respondents?

Facts leading to the filing of this appeal may be stated thus:

2. Prabhat Singh Ex. PNR No. 40595/G, the predecessor-in-interest of the respondents, was enrolled in GREF as Pioneer on 21st of January, 1962. He discharged his duties to the satisfaction of the department till he was invalided out of service due to his suffering from pulmonary tuberculosis with 100% disability on 15-1-72, which according to him was attributable to and aggravated by the Government Service. His request for allowing him pensionary benefits was not considered by GREF authorities at the time of his ouster from the Department. His repeated persuasions, however, put the department in motion and his case for grant of pension was recommended by the department to Controller of Defence Accounts (Pensions) Allahabad (CDA(P)) in April, 1988 for awarding him disability pension under the Central Civil Services (Extra Ordinary Pension) Rules. CDA (P) Allahabad, however, returned the papers, calling upon the department to seek waiver of six days period by the Government which the petitioner was short of in completing the requisite period prescribed for award of pension under the Central Civil Services (Extra Ordinary Pension) Rules. Prabhat Singh had been advised to get himself examined by the Medical Board. After the medical examination of Prabhat Singh by CMO Kathua requisite papers were sent to GREF Department, which in turn sent these papers to CDA (P) Allahabad which finally turned it down resulting in Prabhat Singh's filing a suit for declaration to the effect that he was entitled to grant of pension and other emoluments and for mandatory injunction directing the appellants to pay pension, G.P. Fund and other allied allowances to him.

3. Appellants denied Prabhat Singh's entitlement to invalid pension saying that neither was he holding a permanent post nor had he completed 10 years qualifying service required under the CCS (Pension Rules), 1972.- His entitlement to disability pension under extra ordinary pension Rules too was denied.

4. Preliminary issue framed by the Court as to whether the Civil Court had the jurisdiction to entertain the suit was decided in favour of Prabhat Singh where after

the parties were put to the factual issues. On facts, the trial court of Sub Judge, Kathua found Prabhat Singh entitled to pension and accordingly decreed the suit directing the appellants to grant him disability pension and allied allowances along with interest @ 12% per annum. Appeal taken by the Union of India before learned District Judge, Kathua failed and the findings of the trial court were up-held. Both Prabhat Singh and his wife Sandhya Devi are stated to have died during the pendency of this litigation. Union of India is contesting the decrees of the courts below against the legal representatives of Prabhat Singh who are the son and daughters of Late Prabhat Singh.

5. Mr. Nirmal Kotwal, learned Central Government Standing Counsel, submits that the impugned decrees are liable to be set aside because Prabhat Singh's suit was not cognizable by the civil courts in view of the provisions Sections 4, 5 of 6 of the Pensions Act, 1871.

6. Mr. S.D. Sharma, learned Counsel appearing for the legal representatives of Prabhat Singh, justifies the maintainability of Prabhat Singh's suit insofar as it had sought a declaration that he was entitled to disability pension from the respondents. He relies on Secretary of State v. Parashram Madhav Rao reported as to support the maintainability of respondents' suit insofar as it had sought the declaratory relief. He however, concedes that rest of the suit praying for issuance of a mandatory injunction for payment of pension, G. P. Fund and other allied allowances would not be maintainable in view of the bar enacted by Section 4 of the Pensions Act, 1871.

7. I have considered these submissions of learned Counsel for the parties and gone through the provisions of the Pensions Act, 1871 and the judgment cited by Mr. Sharma, learned Counsel for the respondents.

8. Before considering the submissions of Mr. Sharma and the judgment cited by him, reference needs to be made to the provisions of Sections 4, 5 and 6 of the Pensions Act. These Sections read thus:

4. Bar of suits relating to pensions:

Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the Government or by any former Government, whatever may have been consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

5. Claims to be made to Collector or other authorized officer - Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the appropriate Government and such Collector, Deputy Commissioner or other officer shall dispose of such claim in accordance with such rules the Chief Revenue Authority may, subject to the general control of the appropriate Government, from time to time prescribe in this behalf.

6. Civil Court empowered to take cognizance of such claims. - A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

A perusal of the above quoted Sections of the Pensions Act, 1871, thus demonstrates that Section 4 of the Act debars a Civil Court from entertaining only such suits which relate to any pension or grant of money or land-revenue which has been conferred or made by the Government or by any former Government whatever may have been consideration for any such pension or grant and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted. This Section, in other words, may not debar a Civil Court from entertaining a claim where pension had not been granted by the Government or by any former Government and only a claim thereto, seeking adjudication of the Civil Court, is lodged by a suitor. The opening words of Section 4 i.e. 'except as hereinafter provided' indicates that a civil court may take cognizance of those suits which are not barred under Section 4, but cognizance of

such suits by the Civil Court shall always be subject to the procedure prescribed for filing of such suits in the Pensions Act, 1871. Section 6 of the Pensions Act specifically provides for filing of such suits in the Civil Courts but only if the suit was accompanied by a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf.

9. Section 5 of the Pensions Act provides remedy to a suitor to first prefer his claim to the Collector of the District or Deputy Commissioner or other officer authorized in this behalf by the appropriate Government, who shall proceed in accordance with the Rules framed under Section 14 (8) of the Pensions Act to decide the claim or for issuance of certificate contemplated by Section 6 of the Act entitling a suitor to approach the Civil Court for seeking adjudication of his right to pension or grant.

10. Judgment delivered by their Lordships of the Privy Council, relied upon by Mr. Sharma does not lay down any such law to hold that a suit for declaration would be maintainable in the absence of requisite certificate of the Collector under Section 6 of the Pensions Act and Rules framed thereunder. Their Lordships of the Privy Council, were dealing with a suit, which though initially filed without a certificate from the Collector, had during the pendency of litigation been amended and supported by the Collector's Certificate, justifying the maintainability of the suit. The judgment cited by learned Counsel may not thus be of any help to the respondents to justify the maintainability of the suit which, in the absence of requisite certificate under Section 6 of the Pensions Act and Rules framed thereunder was incompetent.

11. It would be profitable to refer to a judgment of the Privy Council, reported as *Hakim Shiam Sunderlal and Ors. v. The Secretary of State for India* AIR 1919 PC 127, where while dealing with the question, their Lordships held as follows:

As regards the suit itself it appears to be clearly misconceived. A competent Civil Court is authorized under Section 6 to take cognisance of a claim in respect of 'pensions and grants by Government of money or land revenue' only on receiving a certificate from the authority mentioned in the section 'that the case may be so tried.' The object of this provision evidently is that in cases of conflicting titles the Revenue Authorities should grant to the unsuccessful applicant an opportunity for

adjudication of his right by the regular. Courts of Justice. But it expressly declares that 'the Civil Court shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.'

The High Court have not interfered with the finding of the Subordinate Judge that the plaintiff was the nearest male reversioner to Dalpat Rai, but they were clearly right in setting aside the decree in so far as it affected the liability of Government in respect of the revenue of the muafi grant.

Their Lordships are of opinion that this appeal should be dismissed with costs. And they will humbly recommend His Majesty accordingly.

For all what has been said above, Prabhat Singh's suit for declaration, even if his rest of the claim in the suit was to be ignored, as suggested by Mr. S.D. Sharma, learned Counsel for the respondents, was not maintainable before the Civil Courts, in the absence of requisite certificate under Section 6 of the Pensions Act. Question No. 1, of law, framed at the time of admission of this appeal is, accordingly, answered by holding that Civil Court will not have any jurisdiction to straightaway entertain any claim relating to pension or grant unless the claimant had resort to the provisions of Sections 5 & 6 of the Pensions Act before the authorities mentioned in these two sections and obtained requisite certificate of the authorities permitting filing of a suit in the Civil Court.

12. The parties did not question the applicability of the provisions of the Pensions Act, 1871 to the case.

Question No. 2 is, accordingly, decided.

13. The decrees passed by the courts below are thus without jurisdiction as Prabhat Singh had not obtained requisite certificate under the Pensions Act and Rules framed thereunder before filing the suit. The judgments and decrees of the courts below are, accordingly, set aside while allowing this appeal.

14. Before parting, I cannot help observing about appellants' apathy in not acting according to the Central Civil Services (Extra Ordinary Pension) Rules which

entitle even temporary employees to disability pension, as 'also to the Rounding off Rule, which if applied to the facts of the present case, would supply the needed six day's short fall for the qualifying service of late Prabhat Singh, Ex-Pnr. I would not have, but for the plea of jurisdiction raised by the appellants in regard to Civil Courts jurisdiction to entertain the suit, interfered with the judgments of the Courts below, which had on facts held the predecessor-in-interest of the respondents entitled to disability pension and other allied benefits.

15. Prabhat Singh was entitled to pension the day he was invalided out of service on 15th of January 1972. His request for grant of pension had been denied erroneously by the appellants compelling him to later file a civil suit in 1992. He died fighting his legal battle without any success. His wife too continued the legal struggle but she too passed away during the pendency of this litigation. Her son and two daughters, one major and another minor, have continued with the legal battle hoping that some day justice would be done to them.

16. Keeping in view the facts and circumstances of the present case and the agony through which late Prabhat Singh and his family had passed through, I find this case to be a fit one where extraordinary writ jurisdiction needs to be exercised to advance the cause of justice.

A direction is, accordingly, issued to the appellants to consider the case of Prabhat Singh Ex-Pioneer 40595 for grant of disability pension and other pensionary benefits to which the respondents may now be entitled to, as his successors-in-interest, under the Central Civil Services (Extra Ordinary Pension) Rules and other Rules which may be applicable to the case and pass appropriate orders thereon, within a period of eight weeks.