

ITEM NO.18

COURT NO.4

SECTION IVB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).31610/2008

(From the judgement and order dated 15/01/2008 in RSA No. 2307/2007
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

KARTAR KAUR

Respondent(s)

(With appln(s) for c/delay in filing SLP and stay of execution
proceedings) (For Final Disposal)

Date: 24/05/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD
(VACATION BENCH)

For Petitioner(s) Mr. R.K. Rathore, Adv.
 Mr. Aditya Sharma, Adv.
 Mrs. Anil Katiyar, A.O.R.(Not Present)

For Respondent(s) Ms. Manjeet Chawla, Adv.

UPON hearing counsel the Court made the following
O R D E R

The delay of 175 days in filing the special leave
petition is condoned.

This petition is directed against order dated
15.1.2008 of the learned Single Judge of Punjab and
Haryana High Court whereby he declined to entertain the

2

second appeal filed by the petitioners against judgment
and decree dated 21.12.2006 passed by Additional
District Judge, Bhatinda (hereinafter described as,
"the lower appellate Court") who partly allowed the
appeal preferred by the petitioners against the
judgment and decree passed by Civil Judge (Junior
Division), Bhatinda (hereinafter described as, "the
trial Court").

The respondent's husband Shri Kartara, who was

employed as Gatekeeper in the Northern Railway, was compulsorily retired on 14.1.1970. After one year and four months, Shri Kartara died leaving behind his widow, who being a rustic village woman had no idea about her right to receive monetary benefits in lieu of the services rendered by her husband. After many years, some well-wisher appears to have advised the respondent to represent to the railway authorities for payment of family pension etc. The respondent accordingly submitted application dated 19.3.2002 to the Divisional Railway Manager, Northern Railway for grant of pension, gratuity, provident fund, medical allowance, group insurance amount and other benefits including family pension, but did not evoke any response from the concerned authority. She then filed

3

suit, which was registered as Suit No.769/2004 for grant of a declaration that she is entitled to monetary benefits i.e., family pension, gratuity etc.

In the written statement filed on behalf of the petitioners, it was pleaded that the Court at Bhatinda did not have territorial jurisdiction to entertain the suit and that the same was barred by limitation. On merits, the petitioners did not deny that Shri Kartara was employed as Gatekeeper and that he was compulsorily retired from service but they questioned the locus of the respondent to get family pension etc. by asserting that there was no proof of her marriage with the deceased.

The respondent filed replication and reiterated that being a widow of the deceased she was entitled to get family pension, gratuity etc.

On the pleadings of the parties, the trial Court framed following issues:

1. Whether Plaintiff is entitled to declaration as prayed for? OPP
2. Whether suit is within limitation? OPP
3. Whether Plaintiff has no cause of action to file present suit? OPD
4. Whether suit is bad for non joinder of necessary parties? OPD
5. Whether the suit is false and frivolous

4

- to the knowledge of plaintiff? OPD
6. Whether suit is bad for non service of notice u/s 80 CPC? OPD
7. Relief?"

After considering the pleadings and evidence of the parties, the trial Court answered issues No.1 to 6 in favour of the respondent and decreed the suit in the following terms:

"In view of my finding under the aforesaid issue suit of the plaintiff succeeds and the same is hereby decree with cost whereby plaintiff being the widow of deceased Kartara is held entitled to receive the minimum provident fund amount, gratuity, medical allowance, Group insurance benefit and other benefits from 14.7.1970 (his date of retirement being 14.1.70) and 6 months time is normally exhausted in departmentally proceedings till date of actual payment along with interest @ 6% per annum and thereafter minimum regular family pension under rules. The defendants are directed to make the payment expeditiously within three months....."

The petitioners challenged the judgment of the trial Court by filing an appeal under Section 96 of the Code of Civil Procedure, which was partly allowed by the lower appellate Court vide judgment dated 21.12.2006. While upholding the decree of the trial Court, insofar as it related to the respondent's entitlement to receive family pension and gratuity, the lower appellate Court set aside the decree relating to payment of other financial benefits like provident fund, insurance, etc. The operative portion of judgment dated 21.12.2006 reads as under:

5

"34. Resultantly, appeal of appellants partly accepted. Decree of the trial court stands modified to the extent that respondent will be entitled to get family pension as per terms of letter F(E) III 86 N 1/4 dated 2.3.1988 along with due amounts of gratuity and letter F(E) 50 RTI/6 dt. 16.11.57 or F(P) 64 PN 1/42 dated 22.6.66 and F(P) 58 PN 1/5 dated 2.2.60 alone. Payment in this respect as has been delayed and

as such on delayed payment of gratuity interest allowed @ 5% PA from 14.1.70 to 14.4.70 but @ 10% PA from 15.4.70 till payment. interest on amount of arrears of family pension as due allowed @ 5% PA w.e.f. 1.1.86 to 1.4.86 but further interest @ 10% PA allowed from 2.4.86 to till recovery. The amounts already paid to respondent not be deducted from the amounts not to be calculated as per this judgment and interest will stand accordingly on the amounts already paid. Respondent not entitled to any other benefit except family pension and gratuity. No order as to costs in appeal. However, costs of the suit as awarded by the trial court....."

Further

reduced
paid.

In the second appeal filed on behalf of the petitioners, an altogether new point was sought to be raised on behalf of the petitioners, namely, that in view of the bar contained in Section 28 of the Administrative Tribunals Act, 1985 (for short, 'the Act'), the Civil Court did not have the jurisdiction to entertain the suit.

The learned Single Judge refused to entertain the new plea by observing that after a long time gap of 26 years counted from the death of the employee, it will be wholly inequitable to entertain such plea.

We have heard learned counsel for the parties at some
6

length and carefully perused the record.

It is not in dispute that till the filing of second appeal, the petitioners had not questioned the jurisdiction of the Civil Court to entertain the suit filed by the respondent on the ground that the same was barred by section 28 of the Act. We have no doubt that if such an objection has been raised at the threshold, the respondent may have been advised to withdraw the suit and file an application under Section 19 of the Act for grant of financial benefits in lieu of the service of her husband and also make an application under Section 21(3) for condonation of delay by showing sufficient cause for not

filing the application within the period prescribed under Section 21(2). However, as no such objection was taken in the written statement, the respondent was precluded from availing the remedy by filing an application before the Central Administrative Tribunal.

Therefore, the learned Single Judge of the High Court was fully justified in

refusing to entertain the new plea taken by the petitioners

and we do not find any valid ground to deprive the

respondent, who is said to have reached the age of 90

years, of the monetary benefits payable in terms of the decree passed by the lower appellate Court.

The special leave petition is accordingly dismissed.

7

The petitioners are directed to pay the entire amount due to the respondent within a period of three months.

With a view to ensure that the respondent is not

fleeced by the middleman, the following directions are

issued:

(i) Divisional Railway Manager, Ferozepur shall

depute a senior officer, who shall personally contact the respondent and inform her about her

entitlement and right to receive financial benefits in terms of the judgment of the lower appellate Court read with the order passed by the learned Single Judge of the High Court and this order.

The concerned officer shall also help the respondent in opening a saving bank account in case she already does not have such an account. This exercise must be completed within one month.

(ii) Simultaneously, Divisional Railway Manager

Ferozpur shall instruct the officers subordinate to him to calculate the amount payable to the respondent in terms of the decree passed by the lower Appellate Court as also the amount of family pension payable to her for the period from 22.12.2006 to 31.5.2011.

(iii) Within next one month, Divisional Railway

8

Manager, Ferozpur shall ensure that a cheque representing arrears of the amount payable to the respondent is deposited in her saving bank account.

(iv) Divisional Railway Manager, Ferozpur shall also ensure that a cheque representing the amount of family pension payable to the respondent for the month of June, 2011 is deposited in her bank account by 15th day of that month. For all succeeding months, the payment shall be made in the same manner by the 7th day of each month.

(v) If the petitioners fail to comply with this order, they shall have to pay interest to the respondent at the rate of 12% from the date of the judgment of the lower appellate Court.

A report showing compliance of the aforesaid directions shall be submitted in the Registry of this Court within three months. Thereafter, the matter be listed before the Bench for perusal of the report.

Copies of this order be sent to General Manager, Northern Railway, Baroda House, New Delhi and Divisional Railway Manager, Ferozpur. A copy of this order be also sent to the respondent at the address given in the memo of the special leave petition.

9

(A.D. Sharma)

(Phoolan Wati Arora)

Court Master

Court Master