

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD.

O.A.NO.1322 of 1995.

Between

Dated: 8.3.1996.

Kosuri Appalanarasamma

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Applicant

And

1. Garrison Engineer(P)/E/M, DD, Kalinga, 9, ISRD Area, Kancharapalem, Visakhapatnam.
2. Chief Engineer(Navy), Station road, Visakhapatnam.
3. Chief Engineer, Engineer's Branch, Head Quarters, Southern Command, Pune.
4. C.C.D.A.(Pension), Allahabad, Chief Controller of Defence Accounts (Pensions), Allahabad.

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Respondents

Counsel for the Applicant : Sri. A.S.Rama Sarma

Counsel for the Respondents : Sri. N.V.Ramana, Addl. CGSC.

CORAM:

Hon'ble Mr. R.Rangarajan, Administrative Member

Contd:...2/-

JUDGMENT

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri A.S.Rama Sarma, learned counsel for the applicant and Sri N.V.Ramana, learned Standing Counsel for the respondents.

2. The applicant in this OA states that she is the legally wedded wife of one late Sri Bangarayya, who died in harness on 25.11.1984 while working as DES of CE(P) E/M, Dry Dock, Naval Base Post, Vishakapatnam-A.P. She had claimed the final settlement dues of late Sri Bangarayya further stated by her that the as legally wedded wife. It is three minors sons were born to her and said Bangarayya during their lawful wedlock. She was paid ADA Arrears from 1.1.1984 to 31.8.1984 and from 1.8.1984 to 25.11.1984, but the claim for family pension, gratuity, provident fund and other allowances ~~were~~ remain unpaid on the plea that an objection was raised by another lady whose name is also the same as the applicant in this O.A.

3. The applicant in this OA had filed a petition for grant of succession certificate bearing S^uP 5/90 on the file of the I Additional District Munsiff, at Visakapatnam. The said Succession Certificate was granted in favour of the applicant herein by order of the I Addl. Dist. Munsiff, Visakapatnam dt. 22.7.1991, after examining the applicant and the other lady who is reported to be the divorced widow of the deceased employee who was also impleaded as party respondent in the said S^uP. The contesting respondents

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did not choose to prefer an appeal against the orders passed by the I Addl. Dist. Munsiff, Visakapatnam and the orders passed by him have become final.

4. Basing on the Succession Certificate, the applicant herein made representations, issued legal notices for payment of final settlement dues and family pension to her. But, R-2 in this OA had stated that 50% of the family pension is entitled to the senior widow of the deceased employee unless she was legally divorced and 50% of family pension to the eligible children from 2nd widow. The above decision was informed to the applicant ~~on the basis of the~~ letter dt. 10.8.1994 bearing No.GI/C/F/1059/1293 issued by Senior A.O. (P). The applicant submits that she is entitled for a sum of Rs.4068/- as final full settlement dues along with family pension. But, she was not paid the above said amount inspite of repeated representations and legal notices.

5. Aggrieved by the above, she has filed this OA for a direction to the respondents to pay the debts due to the applicant under the schedule mentioned in para-4(c) of the OA amounting to Rs.4068-55 ps. with interest @ 18% p.a. from the date of death of applicant's husband and for a consequential direction to the respondents to fix ~~pension~~ pension of the applicant in the scale in which the applicant's husband drawn his salary and for payment of pension due from 25.11.1984 with interest @ 18% p.a. from 25.11.1984.



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6. The main issue involved is whether the applicant is the proper legal heir of late Sri Bangarayya. This point has been considered extensively by the I Addl. District Munsiff, Visakapatnam in SOP 5/90 decided on 22.7.1991. After hearing the petitioner in SOP 5/90 who applied for grant of Succession Certificate and respondent~~s~~ who is reported divorced to be the widow of late Sri Bangarayya, came to the conclusion that the petitioner in the said SOP (who is also applicant in this OA) and children born to her and late Bangarayya are entitled for the Succession Certificate. Accordingly, he had come to the conclusion that the petitioner in that SOP who is applicant in this OA is entitled for succession certificate. When such a conclusion was drawn after elaborate trial and examining the respondent~~s~~ therein, it is not for the ~~xxxxx~~ respondents herein now to decide that the applicant herein is entitled only for 50% of the pension, and grant the other 50% of the family pension to the senior widow of the deceased employee. No rule has been quoted for division of family pension as indicated above. Even in the legal opinion tendered to R-1 dt. 31.1.1996 which is filed as additional material papers by the applicant (page-13), it has been clearly stated that the terminal benefits and family pension has to be granted on the basis of Succession Certificate granted by a competent court after resolving rival claims. It is clear from the legal opinion that the SOP issued by the competent court after hearing the rival claims is final and binding on the respondents to pay the final settlement dues and family pension. When that is the

order of the court

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legal position, the respondents cannot have any justification to divide the family pension as indicated supra.

7. In the counter filed by the respondents, no reasoning is given for not treating the applicant herein as proper legal heir for payment of final settlement dues and family pension of the deceased employee though she had produced a Succession Certificate granted by competent court. Reasoning given in this connection in the counter affidavit is very sketchy and ~~does~~ not touch even the issue. The respondents herein submit that they are not parties in the proceedings in S^uP 5/90 but in the letter dt. 7.11.1995 bearing No. 183159/KB/DES/Z-A/E1D (page-11 of additional material papers filed by the applicant), it has been stated that "they are not interested in establishing legal rights of any of the parties concerned" and parties were advised to settle the legal heir disputes. If such a stand is taken there is no reason ~~is~~ ⁱⁿ now complaining that they are not made a party to the proceedings in S^uP 5/90. The concerned parties have been impleaded in the S^uP and the competent court had come to the conclusion that the petitioner therein ~~who~~ ^{is also} applicant herein and her legally born children are the successors of the deceased employee. Hence, there is no doubt that the final settlement dues and family pension have ~~to~~ ^{the full} be paid to the applicant herein and her legally born children through the deceased Bangarayya. The ~~now~~ grant of family pension and other pensionary benefits to legally

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wedded wife of the deceased viz. the applicant herein is in accordance with rules.

8. The learned Standing Counsel pleaded that the other-rival claimant, who is the senior widow is shown in the official records as beneficiary for the provident fund and other settlement benefits and hence dividing the family pension equally is in order. The whole issue of getting the Succession Certificate arose because of rival claims. If there is no rival claimants then what is pleaded by the learned Standing Counsel ~~may~~ hold good. But, when the claim is disputed and the Court of Competent jurisdiction has granted the Succession Certificate to the applicant herein, it is not proper to insist that the nominee in the record should also get a share in the final settlement dues and family pension. Hence this contention fails.

9. The Succession Certificate was issued by the I Addl. Dist. Munsiff, Visakapatnam on 22.7.1991. Thereafter the applicant had sent a copy of the Succession Certificate to the respondents. Hence, she is entitled for the interest on the unpaid final settlement dues of the deceased employee from the date on which the copy of Succession Certificate was received by the respondents.

10. The applicant herein is also entitled for grant of family pension in accordance with rules and she is entitled to get arrears of family pension from the date of death of her husband. She is entitled to get interest on arrears of family pension for the period earlier to the

Copy to:-

1. Garrison Engineer(P)/E/M, D.D., Kalinga, 9, ISRD Area, Kancharapalem, Visakhapatnam.
2. Chief Engineer(Navy), Station road, Visakhapatnam.
3. Chief Engineer, Engineer's Branch, Headquarters, Southern Command, Pune.
4. Chief Controller of Defence Accounts, (Pensions), Allahabad.
5. One copy to Sri. A.S.Rama Sarma, advocate, CAT, Hyd.
6. One copy to Sri. N.V.Ramana, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

Rsm/-

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date of receipt of a copy of Succession Certificate by the respondents, from that date and further arrears after that date from the date the family pension is payable.

11. In the result, the following directions are given:-

Unpaid amount of final settlement dues due to the deceased employee should be paid to the applicant herein in accordance with rules with interest @ 12% p.a. from the date on which a copy of Succession Certificate was received by the respondents. The applicant has to be paid full family pension, after fixing the same in accordance with rules from the date of death of her husband. She is entitled for interest on the arrears of family pension due before the date of receipt of copy of Succession Certificate by the respondents from the date of receipt of a copy of the Succession Certificate by them and further arrears after that date from the date the family pension is payable.

12. The OA is ordered accordingly. No costs.


(R. Rangarajan)
Member (Admn.)

Dated 8 March, 1996.

Grh.


A. R. Rajaratnam
Dy. Registrar (J)

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29/3/96
DA-132210
TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

R. Ragada Som
HON'BLE SHRI A. B. GORTHI : MEMBER(A)

HON'BLE SHRI

DATED: 8/3/96

ORDER/JUDGMENT

M.A. NO. / R.A. / C.A. NO.

IN
O.A. NO. 1322/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

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