

STATE OF GUJARAT THROUGH  
CHIEF SECRETARY AND ORS.

A

v.

SARTI DEVI

NOVEMBER 27, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Service Law :*

*Revised Pension Rules, 1950 : Rule 3.*

C

*Pension—Family Pension—Family—Scope of—Mother—Held not included in the family—Not entitled to family pension—Direction for ex-gratia payment to mother.*

*Code of Civil Procedure, 1908 : Section 20.*

D

*Jurisdiction—Claim for family pension—Suit instituted in a Court where no cause of action had arisen—Decree held nullity.*

The respondent's son, a Constable in the Gujarat State Reserve Police died in harness. The widow of the deceased Constable was granted family pension but as she contracted second marriage the payment of pension was stopped. Thereafter the mother of the deceased Constable, the respondent, instituted a suit in the Court of Additional Senior Sub-Judge, Mohindergarh, Haryana claiming family pension which was decreed. The first appellate Court and the High Court affirmed the decree. State of Gujarat preferred appeal before this Court.

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Disposing the appeal, this Court

HELD : 1. Section 20 of the Code of Civil Procedure, 1908 envisages institution of the suit in the court within whose jurisdiction the defendants ordinarily reside etc. The deceased Constable served in the State of Gujarat. The appellant's offices are situated in Gujarat State and no part of the cause of action had arisen in Haryana. Neither counsel can waive the jurisdiction nor by consent confer jurisdiction on courts situated in the State of Haryana. Therefore, none of the courts in Haryana has any territorial Jurisdiction to entertain the suit for the payment of pension by

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A the State of Gujarat. Under these circumstances, the decree of the trial court is one of total lack of jurisdiction. It is a nullity. [693-B-C]

B 2. In view of the express definition of the family in Revised Family Pension Scheme, mother has not been included as a member of the family to claim any family pension from the Government, much less after the maximum period of ten years. Under these circumstances, in either event, the decree of trial court as affirmed by appellate Court and second appeal, are clearly illegal. The respondent-mother is an aged woman of 85 years. She has no other source except her dependence on her deceased son. In view of these peculiar facts, without treating the order of this Court as a precedent an *ex-gratia* payment of Rs. 6,000 shall be made by the State to the respondent within a period of two months from the date of the order. [694-D-F]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11662 of 1995.

D From the Judgment and Order dated 19.12.94 of the Punjab & Haryana High Court in R.S.A. No. 1660 of 1994.

V. Desai and Ms. H. Wahi for the Appellants.

E S.S. Khaduja, Y.P. Dhingra and V.S. Satija for the Respondent.

The following Order of the Court was delivered :

Leave granted.

F Lal Singh, son of the respondent who died in harness, had worked as Constable in Gujarat State Reserve Police in the year 1975. He was recruited in the year 1965 as a Constable. After his demise, his widow Savitri was granted family pension. She contracted second marriage in 1976. Consequently, the appellant stopped paying pension to the widow. In 1987, the respondent laid the suit in the Court of Additional Senior Sub-Judge, Mohindergarh, Haryana State claiming family pension. The Trial Court decreed the suit. On appeal, the District Court refused to condone the delay of 107 days and confirmed the decree of the Trial Court and when second appeal was preferred, the High Court in RSA No. 1660/94 by an order dated 17th December, 1994 dismissed it, as usual, in *limine*. Thus this appeal by special leave.

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Two questions have been raised in this appeal. First relates to the jurisdiction and the second to the entitlement of the respondent to pension. It is an admitted fact that the deceased Lal Singh served as a Constable in the State of Gujarat. Section 20, Code of Civil Procedure, 1908 envisages institution of the suit in the Court within whose jurisdiction the defendants ordinarily reside etc. The appellant's offices are situated in Gujarat State and no part of the cause of action had arisen in Haryana. Neither counsel can waive the jurisdiction nor consent confer jurisdiction on Courts situated in the State of Haryana. Therefore, none of the Courts in Haryana has any territorial jurisdiction to entertain the suit for the payment of pension by the State of Gujarat. Under these circumstances, the decree of the Trial Court is one of total lack of jurisdiction. It is a nullity.

The next question is whether respondent is entitled to the family pension. The State of Gujarat made family pension under revised family pension scheme in 1972 enabling the dependents to get pension for a maximum period of 10 years. As mentioned in the preamble of the order itself :

"Under the existing orders (The revised pension Rules 1950, as amended) a Government servant has to complete service of not less than 10 years in order to become eligible for the benefit of Family Pension and also duration of the pension is limited to a maximum period of 10 years. The existing provisions were not found to be adequate and as such the position has been reviewed and a fresh scheme has been drawn up which provides at varying rates a pension for the life to the widow of the deceased Government servants as detailed."

'Family' has been defined in Rule 3 of the Rules :

"Family" for purposes of this scheme will include the following relatives of the Government servants :

- (a) wife, in the case of a male Government servant;
- (b) husband, in the case of a female Government servant;
- (c) minor sons; and
- (d) unmarried or minor daughters.

A Note 1-(c) and (d) will include children adopted legally before retirement/death.

Note 2-Marriage after retirement will not be recognised for purposes of this scheme."

B A reading thereof clearly indicates that the family consists of the relatives, namely, the widow (if he happens to be married) of the deceased in case of male Government servant and husband in case of female Government servant and minor sons and unmarried or minor daughter. In the case of the children, legally adopted children, before retirement/death also would become members of the family. If the widow remarries, she becomes disintitled to the pension as she ceases to be the member of the family. Obviously, for this reason, the widow Savitri Devi was not given pension after her remarriage in 1976.

D The question is whether mother is a dependent. In view of the express definition of the family, mother has not been included as a member of the family to claim any family pension from the Government, much less after the maximum period of ten years. Under these circumstances, in either event, the decree of trial court as affirmed by appellate court and second appeal, are clearly illegal.

E It is stated that the mother-respondent is aged woman of 85 years. She has no other source except her dependence on her deceased son and, therefore, some consideration may be shown to the aged mother. In view of the peculiar facts, without treating this order as a precedent, we think that an *ex-gratia* payment will be made by the State. Accordingly, we direct F the appellants-State to pay a sum of Rs. 6,000 to the appellants as *ex-gratia*.

G Accordingly, the decree of the court below is set aside. It is directed that the State to pay the amount within a period of two months from the date of the receipt of this order. The learned counsel for the respondent would give the address of the respondent to the counsel for the State which would be communicated to the appellants and the amount shall be disbursed to the address so stated. The appeal is disposed of. No costs.

T.N.A.

Appeal disposed of.