

A STATE OF JAMMU AND KASHMIR

v.

SH. BAL RAJ SHARMA AND ORS.

APRIL 19, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Jammu & Kashmir Civil Service Rules :

C *Volume I—Para 240 B(II)—Volume II—Rule 11 of Schedule I—"Family" for the purpose of pension benefits—Meaning of—Grand-son not one of the members of the family—Hence not entitled to family pension even on the basis of a will executed by his grand-mother—Son of the deceased pensioner—Already an employee—Hence he is also not entitled to family pension.*

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7699 of 1996.

From the Judgment and Order dated 10.7.92 of the Jammu & Kashmir High Court in C.P. No. 2879 of 1991.

E Ashok Mathur for the Appellant.

R.C. Pathak, Ms. Anjani Aiyagari and C.V.S. Rao for the Respondents.

F The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

G This appeal by special leave arises from the order of the High Court of Jammu & Kashmir dated July 10, 1992 made in Contempt Petition No. 2879/91. The admitted position is that one Smt. Melo Devi, a teacher, claimed her dues after her retirement. While the claims were under settlement, she filed a writ petition. Pending writ petition, she died. The son of Melo Devi, by name Bal Raj Sharma, was substituted as legal representative. When he was called upon to submit the claims, he had also set

up the Will executed by his mother in favour of his son, viz., the grandson of Melo Devi, as to his entitlement to future pension. We are informed that the claims due on her retirement and the pension to which she was entitled as on the date of her demise were calculated and the amount was deposited in the Court. The only question, therefore, is; whether her grandson is entitled to the family pension ?

'Family' has been defined in Rule 11 of Schedule 15 of the J & K CSR, Vol. II and para 240B(II) of CSR Vol. 1 thus :

"11. For purpose of these rules the term "family" shall mean -

- (a) Wife, C
- (b) Husband, in case of female officer,
- (c) (Minor) sons,
- (d) Unmarried and widowed daughters, D
- (e) Brothers below the age of 18 years and unmarried or widowed sisters,
- (f) Father, and
- (g) Mother". E

"The term "family" for the purpose of Article 240B shall mean -

- (a) Wife. in the case of male officer;
- (b) Husband, in the case of a female officer; F
- (c) Sons;
- (d) Unmarried and widowed daughters (including step children and adopted children); G
- (e) Brothers below the age of 18 years and unmarried and widowed sisters;
- (f) Father;
- (g) Mother; H

- A (h) Married daughters; and
(i) Children of a pre-deceased son".

B It would thus be seen that grandson is not one of the members of the family for which he is entitled to lay any claim on the basis of a Will said to have been executed by his grandmother. It would be seen that since her son Bal Raj Sharma is already an employee, he is not entitled to the family pension. Under those circumstances, the High Court was clearly in error in directing payment of pension to grandson and also issuing contempt for non-compliance of its order.

C The appeal is accordingly allowed. No costs. It is open to the respondent to withdraw the amounts which are stand deposited in the court.

G.N.

Appeal allowed.