

(2003) 07 AHC CK 0199

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3818 of 2001

Abha Agarwal (Dr.) (Mrs.)

APPELLANT

Vs

Vice-Chancellor, Allahabad University and Others

RESPONDENT

Date of Decision : 25-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 AWC 4482 : (2003) 3 UPLBEC 2259

Hon'ble Judges : Umeshwar Pandey, J;A.K. Yog, J

Bench : Division Bench

Advocate : R.B. Singhal, for the Appellant; R.G. Padia, Prakash Padia and R.G. Tripathi and S.C., for the Respondent

Final Decision : Allowed

Judgement

A.K. Yog and Umeshwar Pandey, JJ.—Dr. (Mrs.) Abha Agarwal/Petitioner.....represented by Sri R.B. Singhal; Vice-Chancellor, Allahabad University/Respondent No. 1; Registrar, Allahabad University/Respondent No. 2; Accounts Officer/Internal Auditor, Allahabad University/Respondent No. 3.....represented by Sri Prakash Padia; Treasury Officer, Treasury, Allahabad/Respondent No. 4.....represented by learned Standing Counsel.

Petitioner before us, Dr. (Mrs.) Abha Agarwal, has filed this petition under Article 226, Constitution of India claiming following reliefs :-

(i) issue a writ, order or direction in the nature of mandamus directing the respondents to pay on Family Pension to the petitioner payable on the basis of death of her husband, Dr. D.C. Agarwal, including DA and other adhoc reliefs w.e.f, 7.7.1992;

(ii) issue a writ, order or direction in the nature of mandamus directing the respondents to refund Rs. 44,824.55 deducted from the Bank Account of the petitioner on the basis of excess payment being given to the petitioner in the

form of DA on the Family Pension being paid to the petitioner along with interest of 18% per annum;

(iii) issue a writ, order or direction in the nature of mandamus directing the respondents to pay 18% interest on the amount which has been withheld by the respondents in the form of DA and other adhoc reliefs from the date it falls due to the petitioner;

(iv) issue any other writ, order or direction which this Hon"ble Court may deem it fit and proper in the circumstances of the case;

(v) allow the cost of the petition to the petitioner.

2. Petitioner has approached this Court pleading, inter-alia, that her husband Dr. D.C. Agarwal, an eminent personality in the field of education was serving as Reader in the Department of Applied Physics, University of Allahabad, when he died prematurely on 6th July, 1992 leaving behind his wife (the petitioner) and two minor daughters. Petitioner was also working as Lecturer in the Department of English in an affiliated College of the University (called "Allahabad Degree College, Allahabad1) since July, 1972. She was later promoted on the post of Reader and working as such in the said College when her husband died. Petitioner applied for family pension; University passed requisite orders sanctioning family pension vide order dated 8th February, 1994 at certain rates mentioned in the said order (Annexure-2 to the Writ Petition) at the rate of Rs. 1372/- per month for the period 7.7.1992 to 2.6.1999.

3. All of sudden petitioner found that an amount of Rs. 44,824.55 has been deducted from the family pension account in the Bank when she happened to see her Pass Book of the said bank account. Petitioner made request for furnishing copy of the order on the basis of which said deduction was made. She was later confronted with Government Order dated 16th May, 1988 (Annexure-4 to the Writ Petition) by the Treasury Officer/ Respondent who referred to clause (iv) of the said Government Order on the basis of which petitioner was not entitled for Dearness Allowance on family pension since she was employed. Petitioner claims to have come across a news report published in "Northern India Patrika, Sunday dated 20th November, 2000 which referred to a decision of Supreme Court holding that a widow working independently would not be deprived of benefit of Dearness Allowance on family pension (Annexure-4-A to the Writ Petition). It is contended that the petitioner cannot be deprived of benefit of Dearness Allowance on family pension on the basis of alleged Government Order in view of the Supreme Court judgment in the case of H.S.E.B. and Others Vs. Azad Kaur, (Annexure-5 to the Writ Petition).

4. On behalf of Respondent Nos. 1, 2 and 3 Counter Affidavit sworn by V.K. Singh, Legal Assistant of the University) has been filed.

5. The defence of the contesting respondents is contained in Para 7 of the Counter Affidavit, which refers to the University letter dated 8.2.1999 issued by

the Assistant Registrar (Accounts), wherein it is written "in this connection it is important that in terms of Government Order dated 16.5.88, the dearness allowance is not to be granted to such pensioners/family pensioner who are employed in any department of the State/in any officer in the State" and further it is mentioned in the said Paragraph of the Counter Affidavit, "admittedly the writ petitioner is employed as Reader in the Department of English, Allahabad Degree College, Allahabad, from before the death of her husband and she is working even today in the said capacity. Thus, she is not entitled for the benefit of double dearness allowance.....The University regrets that inadvertently the same was paid to the petitioner to the extent of Rs. 44,824.55 and the said amount has now been deducted by the Treasury Officer, Allahabad being the excess amount paid by mistake to the petitioner....."

6. In the Rejoinder Affidavit, petitioner has refuted the defence taken by the respondents-University in their counter affidavit relying upon the decision of the Apex Court in the case of H.S.E.B (supra) and it is argued that action of the respondent is arbitrary and illegal.

7. Heard learned Counsel for the parties and perused the record.

8. Learned Counsel for the petitioner Sri R.B. Singhal, Advocate, has drawn our notice to the aforementioned Apex Court judgment in the case of H.S.E.B (supra) and referred to the observations made in Paras 5 and 6 of the said judgment, which reads :-

"It can have no reference to any independent employment or any other independent source of livelihood which the family members may possess. The mere fact that the widow is independently employed is a teacher elsewhere even prior to the death of her husband, cannot deprive the family of the benefit of the ad hoc relief on family pension."

9. Again Apex Court had observed that:-

"Our attention is drawn to a decision of the Division Bench of the Punjab and Haryana High Court in the case of Swaran Kaur v. State of Punjab 1997 (1) RSJ 325 where the High Court, after ascertaining that the petitioner therein had no secured any job on compassionate grounds on account of the death of her husband, nor had any family member done so, held that dearness allowance on family pension could not be withheld. It said that the fact that the widow was in service at the time when her husband died would not deprive her of dearness allowance on family pension when the employment was not on compassionate grounds. We, therefore, agree with the reasoning and conclusion reached by the High Court in the impugned judgment."

10. We required the learned Counsels, representing the respondents to distinguish the aforesaid decision. Learned Counsel for the respondents have not been able to distinguish the judgment on any score.

11. The defence taken by the respondents has no merit.

12. Relying upon the aforesaid judgment of the Apex Court H.S.E.B (supra), we find that the act of the respondent No. 4 in deducting the amount Rs. 44,824.55 from the account of the petitioner on the alleged ground of her being in employment was illegal, arbitrary and without jurisdiction or justification. Otherwise also no such deduction should have been made without giving notice or opportunity to the petitioner. We deprecate one sided action of Respondent No. 4.

13. In the result, petition deserves to be allowed and is hereby allowed.

14. A writ in the nature of mandamus is issued directing the respondents to pay the petitioner family pension month by month in accordance with law as was being paid on the basis of the University order dated 8.2.1994 (Annexure-2 to the writ petition) and refund Rs. 44,824.55 along with 10% simple interest per annum from the date it is being deducted till the date it refunded within four weeks of receipt of a certified copy of this order. Further pensionary benefits shall also be paid month by month in accordance with law.

15. No order as to costs.