

(2005) 07 RAJ CK 0088

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6085 of 2003

Amrit Kaur (Smt.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2006) 108 FLR 731 : (2006) 1 RLW 173 : (2005) WLC 678

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Reashm Bhargava, for the Appellant; Sanjay Pareek, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The petitioner, who is the mother of late Col. Abinder Singh, claims ordinary family pension, in the instant writ petition.

2. The undisputed facts are that late Col. Abinder Singh was commissioned in the Army (Engineers) on December 21, 1968 (PRC) and died on July 19, 1999. He was survived by his wife Ranjeet Kaur and two sons viz. Harjinder Singh and Tejinder Singh. On September 26, 1999 Ranjeet Kaur also passed away before receiving the first pension payment authorised to her vide P.P.O. No. 269/1999, The dependent family pension was subsequently sanctioned to the elder son Harjinder Singh w.e.f. September 27, 1999 vide PPO No. M/F/323/99 dated December 28, 1999. On commissioning of Harjinder Singh in the Army, the dependent family pension was further granted to the younger son Tejinder Singh vide PPO No. M/F/H2/2002 dated May 28, 2002, On commissioning of Tejinder Singh in the Army in the month of June, 2004, the dependent family pension granted to him seized to stop. The petitioner in these circumstances claims dependent family pension from the date of commissioning of Tejinder Singh. However, PCDA (P) Allahabad declined the claim on the ground that parents of deceased officer were entitled for dependent pension only in the cases where

officer died as bachelor.

3. Having scanned the material on record, I noticed that the Ministry of Defence vide letter dated November 24, 1999 clarified the eligibility conditions of family pension to the dependent parents and widowed/divorced daughters of deceased Armed Force Personnel. According to the clarification the family pension will be admissible subject to the following:

(i) The parents were wholly dependent on the Armed Forces Personnel when he/she was alive.

(ii) The Armed Forces Personnel has not left behind a widow/widower, eligible son or daughter of a widowed/divorced daughters, who will have a prior claim to family pension in the order indicated.

(iii) The family pension wherever admissible to parents, the mother will receive the pension first and after her death the father will receive the family pension.

4. As per Regulation 85 of the Pension Regulations Part 1, the parents shall be entitled to the dependent family pension where:-

(i) The officer left neither a widow nor children eligible for pension or allowance, and

(ii) the parents were largely dependent on the officer at the time of his/her death.

5. From the perusal of the petition, it appears that the petitioner is the widow of late Major Gurdev Singh, who died on May 6, 1980 and she had never availed any benefit of family pension through her late husband. The petitioner was wholly dependent on her deceased son.

6. Regulation 216 which is applicable to JCOs and other ranks but not the officers, even though includes mother among eligible members of the family to receive family pension, Regulation 85 curtails right of the dependent parents to receive family pension in case officer left a widow or children.

7. Class legislation which has no reasonable basis is forbidden by the Constitution of India. It is well settled that unless the classification satisfies the test of its reasonableness and rationality, the same cannot be upheld and upon its failing in such a test the same is bound to fail. Regulation 85 so far it excludes the mother from claiming family pension is strictly in conflict with the provisions of Hindu Succession Act which places mother at par with children or widow of her deceased son and there is no disparity among their status as class-I heirs.

8. Exclusion of mother under Regulation 85 upon contingencies specified therein is violative of Article 14 and 21 of the Constitution being irrational and arbitrary. It is inexplicable as to why a mother, who has been specified as dependent for the purpose of family pension by Regulation 216, is not treated as dependent under Regulation 85. Division Bench of this Court in Narayan Singh v. State 1990 (1) RLR 137 : RLW 1990 (1) 140 held that under the same Rules, different

criteria for the same benefit cannot be adopted. Regulation 85 so far it excludes the mother from the category of dependent of her son for the purpose of family pension, being ultra vires of the Constitution, deserves to be struck down.

9. For these reasons, I allow the writ petition and direct the respondents to accord dependent family pension to the petitioner from the date of commissioning of Tejinder Singh. The respondents shall ensure compliance of this order within three months from the date of receipt of copy of this order. There shall be no order as to costs.