
(2004) 02 GAU CK 0050
In the Gauhati High Court
Case No : WP (C) No. 4106 of 2003

Ayatun Nessa

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Citation : (2004) 2 GLR 607 : (2005) GLT 366 Supp

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : B. Ahmed, for the Appellant; N.C. Phukan and C. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

Ranjan Gogoi, J.—An interesting if not innovative question has arisen for decision in the present case in the following facts.

2. The husband of the writ petitioner who was a Constable in the Assam Police retired on medical ground on 17.2.1958 and thereafter, lived together as the husband and wife till he died on 25.1.2000. After retirement on medical ground in the year 1957, the petitioner's husband received his pension and after his death on 25.1.2000, a claim for family pension having been raised by the wife, the same was answered against her by the officer of the Accountant-General. The aforesaid refusal to grant family pension is embodied in the communications dated 9.10.2001 and 9.1.2002. The ground of such refusal appears to be that as the validity of a marriage after retirement of an incumbent for purposes of family pension had been recognized by the amendment to the Assam Services (Pension) Rules, 1969 made with effect from 18.1.1995, the petitioner would not be entitled to family pension as the marriage of the petitioner had taken place prior to the amendment of the Pension Rules. Aggrieved, the instant recourse to the writ remedy has been made by the writ petitioner.

3. I have heard Dr. B. Ahmed, learned counsel for the petitioner, Mr. N.C.

Phukan, learned Govt. Advocate, Assam and Mr. C. Choudhury, learned senior CGSC.

4. Dr. Ahmed, learned counsel for the petitioner has submitted that the amendment to the Pension Rules with effect from 18.1.1995, by which family pension has been made payable in respect of the marriages before and after the retirement of the concerned incumbent, must receive a liberal interpretation in the hands of the Courts in view of the beneficial nature of the legislation. That apart, it has been contended, on behalf of the petitioner, that the persons eligible to get family pension constitute one homogenous class and the impugned decision amounts to hostile discrimination between persons who had got married before and after the amendment to the Rules made in the year 1995. Learned counsel for the petitioner has further argued that the amendment to the Rules merely obliterates the earlier restrictions in the matter of grant of family pension and the aforesaid amendment, at best, can be understood to be fixing the time with effect from which family pension is to be allowed to a person entitled. Reliance has been placed on a judgment of the Apex Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), Further reliance has also been placed on a unreported judgment of this Court in the case of Nikunja Mohan Choudhury v. Deputy Commissioner, Karimganj.

5. The arguments advanced on behalf of the petitioner have been sought to be resisted by Mr. N.C. Phukan, learned Govt. Advocate, Assam and Mr. C. Choudhury, learned senior CGSC, appearing for the official respondents. Learned counsels have argued that the amendment to the Pension Rules made in the year 1995 having recognized a marriage solemnized after retirement, for the purpose of grant of family pension, the marriage itself must take place after the date of the amendment to the Rules for the benefit to be due. In other words, the learned counsels for the respondents have emphasized that as in the present case the petitioner had married in the year 1958 and the amendment to the Rules having recognized such marriage for the purpose of the family pension in the year 1995, the petitioner would not be entitled to family pension.

6. The rival submissions advanced on behalf of the parties have received due consideration. In the case of D.S. Nakara (supra), a scheme of liberalized pension to the Central Government employees and the employees of the Armed Forces stipulating the requirement to retire from service after a particular date was held by the Apex Court as violative of Article 14 of the Constitution. In the said decision, the Apex Court laid down that persons entitled to receive pension form one homogenous class and the effect of introducing two categories and classes by imposing a cut off date would have the effect of causing hostile discrimination. In the case of Nikunja Mohan Choudhury (supra), this Court had also proceeded on the same basis while interpreting an Office Memorandum issued in the year 1983 providing for pensionary benefits to a temporary Government servant who had retired after rendering not less than 20 years of service. The contentious advanced on behalf of the official respondents that the

Office Memorandum granting benefit of pension to temporary Government servants would only be effective for incumbents who had retired after 1.9.1982, i.e., the cut off date was expressly negated by this Court. What was held by this Court in the case of Nikunja Mohan Choudhury (supra) is that benefit of pension conferred by the Office Memorandum in question would apply to all temporary Government servants irrespective of the date of retirement and the cut off date, i.e., 1.9.1982 would be relevant only for determination of the starting point for computation of such benefits.

7. In the instant case, the benefit of family pension has been extended to the persons who have entered into marriage after retirement by the amendment made on 18.1.1995. The contention advanced on behalf of the respondents that the marriage itself must have taken place after 18.1.1995 would stand self-answered in the light of the decision of the Apex Court in the case of D.S. Nakara (supra) as well as in the unreported judgment of this Court in the case of Nikunja Mohan Choudhury. The prospectivity of the notification dated 18.1.1995 would be limited only to the computation of benefit which will have to be from the date of the notification. However, the said question will have no relevance to the present case as the petitioner's husband admittedly died on 25.1.2000 up to which date the deceased had received regular pension in his own name.

8. For all the aforesaid reasons, I am inclined to allow this writ petition. The impugned orders dated 9.10.2001 and 9.1.2002 (Annexures-5 and 6 to the writ petition) shall stand interfered with and the respondents are now directed to pay to the writ petitioner the family pension as may be due to her with effect from the date of the death of her husband, i.e., 25.1.2000. The arrears of such family pension shall be paid to the petitioner forthwith and without any delay.