

(1995) 09 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : CWP No. 1162 of 1995

Champa Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 37, 55A

Citation : (1995) 4 ILR HP 2349

Hon'ble Judges : S.N. Phukan, C.J.; Bhawani Singh, J

Bench : Division Bench

Advocate : Rajiv Sharma, for the Appellant; P.A. Sharma, Sr. Central Government Standing Counsel, for the Respondent

Judgement

S.N. Phukan, C.J.—The writ Petitioner is the widow of late Mangal Dass, who retired from the Posts and Telegraphs Department and, therefore, she was getting family pension with effect from 1.3.1990. The writ Petitioner is also employed in the Department of Education, Himachal Pradesh and at present on deputation with N.C.C. as a Sweeper. She was getting pension, alongwith dearness relief, regularly with effect from 1.3.1990 under Rule 55A of the CCS (Pension) Rules but subsequently the dearness relief on pension was stopped by the department and also started recovering the payment already made, at the rate of Rs. 200/- per month. Hence, the present writ petition.

2. In the reply affidavit, the above facts are not disputed and it has been stated that recovery of dearness relief allowance was started in view of letter dated 14.3.1995, issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Pension & PW). A copy of the said letter is available at Annexure-RA to reply affidavit. It has also been stated that the above letter was issued in view of the decision of the apex Court in Union of India (UOI) and Others Vs. G. Vasudevan Pillay and Others, From the Annexure at RD to the reply affidavit, we find that an amount of Rs. 1000/- was recovered with effect from 2.4.1993 and the remaining amount of Rs. 7239/- is yet to be recovered.

3. Heard Mr. Rajiv Sharma, learned Counsel for the Petitioner and Mr. P.A. Sharma, Senior Central Government Standing Counsel, for the Respondents.

4. Rule 55A of CCS (Pension) Rules, runs as follows:

55-A. Dearness Relief on Pension/ Family Pension.

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment.

(iii) The Central Government employees who get permanently absorbed in terms of Rule 37 and opt for lump sum payment in lieu of pro rata monthly pension in terms of Rule 37, shall not be eligible for dearness relief.

5. This point came up for consideration before a Division Bench of this Court, in which one of us (Justice S.N. Phukan) was a member, in *Kamla Sharma v. State* 1995 (1) SLC 388. The said writ petition was partly allowed directing the Respondents to give dearness relief on family pension. We quote below three relevant paragraphs, namely paragraphs 12,13 and 14 of the Judgment:

12. The word used in Clause (ii) of Rule 55A of the Central Civil Services (Pension) Rules is "re-employed" and not "employed". Therefore, definitely when a Government servant is re-employed his pay is fixed under different set of rules and in so fixing the pension and pension equivalent to gratuity and other things are taken into consideration. Therefore, rule makers have used this word so that a pensioner does not get more than what is admissible under the normal rules. If the intention of the rule makers would have been that the family pensioner should not be given dearness relief on the family pension if directly recruited or employed then definitely the rule makers would have used the word "employed" and not "re-employed" Therefore, we are of the opinion that Clause (ii) of Rule 55-A of the Central Civil Services (Pension) Rules is applicable only in case a person is re-employed and this rule cannot be invoked in case of a person employed for the first time. On this ground we are of the opinion that the writ Petitioner shall also be entitled to get dearness relief on the family pension in addition to her pay and dearness relief she is getting in the post she is employed.

13. Let us look at it from another angle. A Government employee may leave behind more than one widow. If both the widows are getting family pension and only one of them is employed on compassionate ground by not allowing the dearness relief on the family pension it will deprive the other widow who. is without any job. This will be an arbitrary action on the part of the Government. Keeping in view this principle, the rule makers have definitely used the word "re-

employed" in case of the pensioner in Clause (ii) of Rule 55A.

14. In view of what has been stated above in respect of clearness relief we are of the opinion that any executive instruction given by the State Government by which the present Petitioner has been deprived of her dearness relief on the family pension is contrary to the rules and liable to be set aside which we hereby do. We direct that the Petitioner shall be given dearness relief on the family pension in addition to the dearness allowance and other relief she is entitled to the post in which she is working.

6. In G. Vasudevan Pillay's case (supra), the apex Court considered Rule 55-A(ii) in the case of Ex-Servicemen holding civil post and it was, inter alia, held that dearness relief on family pension on re-employment cannot be granted. The relevant paragraph for our purpose is paragraph 10 of the said Judgment, which is quoted below:

In some of the cases, we are concerned with the denial of Dearness Relief on family pension on employment of dependants like widows of the ex-servicemen. This decision has to be sustained in view of what has been stated above regarding denial of DR on pension on re-employment inasmuch as the official documents referred on that point also mention about denial of DR on family pension on employment. The rationale of this decision is getting of Dearness Allowance by the dependants on their pay, which is drawn following employment, because of which Dearness Relief on family pension can justly be denied, as has been done.

7. In view of the above decision of the apex court, the earlier decision of this Court in Kamla Sharma's case (supra) will not hold the field.

8. In view of the above decision of the apex court, we hold that the writ Petitioner will not be entitled to get dearness relief allowance on the family pension, as she has been re-employed. However, considering the fact that the writ Petitioner is holding the lowest post in the government service, it will cause great hardship, if recovery of balance amount of Rs. 7239/- is made. therefore, we direct the Respondents not to deduct the above amount from the family pension of the Petitioner.

9. In the result, the writ petition is partly allowed inasmuch as the Petitioner shall not be entitled to get dearness relief allowance on the family pension but the Respondents shall not recover the amount of Rs. 7239/-, which was paid before the decision of the apex court to the writ petition.

10. The writ petition stands disposed of in the aforesaid terms, leaving the parties to bear their own costs.