

(2003) 09 GUJ CK 0034

In the Gujarat High Court

Case No : Special Civil Application No. 12076 of 2003

Datania Sumitraben Sunilbhai

APPELLANT

Vs

Director of Pension and P.F.

RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Citation : (2003) 09 GUJ CK 0034

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Vijay N. Raval, for the Appellant; I.M. Pandya, AGP for Respondent Nos. 1-2, for the Respondent

Final Decision : Allowed

Judgement

P.B. Majmudar, J.—Rule. Mr.I.M.Pandya, learned AGP, waives service of Rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today.

2. By filing this petition, the petitioner has prayed that the action of the department in stopping family pension is illegal and arbitrary and the department may be directed to continue the benefit of family pension. The petitioner is a widow of one Sunilbhai Datania, who died, while he was in service, on 25th March, 1994. After his death, the department has started giving benefit of family pension to the petitioner. Subsequently, the department stopped the benefit of said pension with effect from April, 2002. The said action was taken on the basis of an alleged letter of the petitioner dated 25th April, 2002, bearing thumb impression of the petitioner, wherein it is stated that the petitioner has remarried. Subsequently, the department insisted for certificate to the effect that the petitioner has not remarried. The petitioner, thereafter, has given affidavit to the department on 20th June, 2002, stating that she has not remarried and that somebody has given a false application to the department that she has remarried. In spite of the said fact, the department has insisted for certificate from City Mamlatdar to the effect that she has not remarried.

3. Under the aforesaid circumstances, the petitioner has approached this Court by way of present petition with a prayer that the department may be directed to continue the benefit of family pension and the say of the petitioner should be accepted by the department. At the time of hearing, learned advocate for the petitioner submitted that there is absolutely no evidence, by which the department has reached the conclusion that the petitioner has remarried. It is also submitted by the petitioner that, after the death of her husband, the department started paying family pension to the petitioner, after making necessary inquiry that the petitioner is a widow of the deceased and she has not remarried. Thereafter, on the basis of so-called application, purported to have been written by the petitioner that she has remarried, the said benefit of family pension was stopped. During the pendency of this petition, the petitioner was permitted to join the City Mamlatdar, Ghikantha Compound, Ahmedabad, as a party respondent, in order to find out whether the say of the petitioner is correct or not. Today, the City Mamlatdar is present before the Court and he has submitted his report, which is addressed to the District Treasury Officer. As per the said report of the Mamlatdar, it is found that the petitioner has not remarried. The Mamlatdar has relied on the statements of the neighbors and ultimately, he has found that the petitioner has not remarried. The said communication of the Mamlatdar is placed on record by learned AGP, Mr.Pandya.

4. It is a matter of regret that simply on the basis of a letter written by somebody, in the name of the petitioner, the department has, without holding any inquiry, straightway presumed that the petitioner has remarried and on that ground, stopped payment of family pension. This is nothing but adding insult to the injury. The petitioner is a widow and she lost her husband in 1994 and at that time, she has already declared that she has not remarried and on that basis, she was paid family pension. Subsequently, even without ascertaining the veracity of the fact, straightway the family pension was stopped on the ground that she has remarried. Before taking such decision, the department should have applied its mind to the facts of the case. If the petitioner had really written such a letter, there was no necessity for her to approach this Court for getting family pension. Apart from the aforesaid aspect, it was the duty of the department to verify this fact from the petitioner to find out whether she has written any such letter. It is absolutely unjust on the part of the department to presume that the petitioner-widow has remarried, even though she is asserting that she has not remarried, and the department also insisted for certificate from the petitioner that she has not remarried. Such insistence is highly uncalled for and the petitioner-widow is put to unnecessary torture, by compelling her to bring such evidence.

5. It was expected from the department to verify the thumb impression of the petitioner on the so-called alleged application, especially when the petitioner herself has denied the fact of having written such a letter. The inquiry made after the filing of this petition could have been done earlier before canceling family pension. It is hoped that, in future, the department will not insist from a widow

to bring certificate from the authority that she has not remarried. This type of insistence is highly unjust, arbitrary and contrary to decency.

6. In the instant case, I am convinced that the petitioner is denied family pension since April 2002, without any valid reasons and after withdrawing the family pension, ultimately, when the petition was filed, the inquiry was made, whether she has remarried or not. Under these circumstances, the department is directed to pay the arrears of family pension, with 12% interest, forthwith. The department is directed to continue to pay regular family pension to the petitioner. The department is cautioned not to take such hasty decision as has been taken in the instant case, without proper verification of the facts. This petition is accordingly allowed. Rule is made absolute with costs of Rs.5,000/-. Amount of costs be paid to the petitioner within a period of two weeks from today.