
(2002) 02 MP CK 0112
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6373 of 2000

Dropti Bai

APPELLANT

Vs

High Court of M.P. and Another

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 2 MPJR 580 : (2002) 2 MPLJ 497

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : Neelam Goel, for the Appellant; B.N. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Question involved in the writ petition is when family pension is payable and is being apportioned to three persons whether in the event of ceaser of the entitlement of one or two of them whether the amount of family pension has to be reduced proportionately; particularly when in the absence of others whose entitlement has ceased the subsisting incumbent would have obtained full family pension.

The facts elucidate that petitioner's husband was in the service of High Court of Madhya Pradesh and was working as Peon; he died on 31-8-1978. Petitioner claimed family pension being widow; she was asked to submit succession certificate which she obtained on 12-8-1996; petitioner was second married wife of the deceased; first wife died in the lifetime of the deceased leaving behind two sons; the marriage was performed with the petitioner after death of first wife according to the hindu rituals. After death of Girdharilal the family pension was divided in two parts; one was being paid to the petitioner and the other to the minor sons left by the first wife. Petitioner alleges that from December, 1998 she was receiving a paltry sum of Rs. 778/- as pension; the other part of the pension

which was being paid to the minor sons was forfeited on their attaining the age of majority. Petitioner submits that in case of one widow without any son of the first wife; she would have obtained the amount which was being paid to her and two sons who attained majority. When the sons attained the age of majority, the amount should have been reverted back to her as it was only the apportionment of the amount of family pension which was being done; no additional pension was being paid to the minor sons.

Respondent No. 1 Registrar General, High Court of M. P. in the return contends that final settlement of pension and its payment is not within the domain of High Court of M. P.; it has been un-necessarily added as a party. The application of the petitioner was duly forwarded to Joint Director (Treasury, Accounts and Pension) way back on 18th February, 2000.

In the return respondent No. 2 contends that petitioner was granted family pension being widow of late Shri Girdharilal from December, 1988; she was receiving only Rs. 778/- as pension and the other part of the pension which was being provided to the minor sons from the first wife was stopped on their becoming major. Petitioner is not entitled to amount of pension which was being paid to the minor children of the first wife of late Shri Girdharilal. The respondent places reliance on rule 47(7) of M. P. Civil Services (Pension) Rules, 1976 (for short "the Rules of 1976") and the executive instructions issued by the State Government. At the time of death of Girdharilal as per prevailing instructions issued by the State Government 50% of the amount admissible by way of pension was given to minor sons and remaining 50% was released in favour of the petitioner.

It was further stipulated by the State Government that where the pension was being divided between more than one widow or their surviving minor children, then on attainment of the age of 25 years by the minor sons, payment of pension to such minor sons would be stopped, however, the said amount would not be reverted to the surviving widow. Circular Annexure R-2/A is relied on. Thus, the pension is being paid to the petitioner in accordance with the provisions of Rule 47(7) of the Rules of 1976 and the executive instructions.

Learned counsel for the petitioner submits that the family pension which was being apportioned ought to have been reverted to the petitioner and the petitioner has been wrongfully deprived of obtaining it; when the sons had attained the majority, that portion ought to have been given to the petitioner. The action is arbitrary and illegal and unconstitutional.

Learned counsel for the respondent No. 2 has contested the claim. It is submitted that action is in accordance with the rules and executive instructions.

In order to appreciate the rival submissions, first this fact be noted that the amount of family pension admissible to a family does not depend on the persons entitled to receive it; family pension is circulated on the basis of formula which does not depend upon the fact that in how many persons, the same has to be

apportioned. Whether it is a case of one widow; two widows or sons or daughters of a pre-deceased widow; this fact is not in dispute that amount of family pension does not depend upon the number of family members.

Under sub-rule (2-A) of Rule 47 of the Rules of 1976, the amount of family pension shall be fixed at monthly rates. Rule 47 applies as provided under sub-rule (1) to a Government servant entering service in a pensionable establishment on or after 1st April, 1966, and to a Government servant who was in service on 31st March, 1966 and came to be governed by the provisions of the Family Pension Scheme for State Government Employees. The amount under sub-rule (2) of Rule 47 is to be determined without prejudice to the provisions contained in sub-rule (3) where a Government servant dies while in service after having rendered not less than seven years service provided he had been medically examined and found fit for appointment in the Government or after retirement from service and was on the date of death in receipt of pension or compassionate allowance where the pay of Government servant is below Rs. 400/-; the amount of monthly family pension is 30 per cent of pay subject to a minimum of Rs. 60 and a maximum of Rs. 100, as fixed initially. In the case where the pay of Government servant was Rs. 400/and above, but not exceeding Rs. 1200/-, 15 per cent of pay subject to minimum of Rs. 100 and maximum of Rs. 160 and above Rs. 1200/-, 12% of pay subject to a minimum of Rs. 160/- and maximum of Rs. 250/-. sub-rule (3) also provides that a Government servant who is governed by Workman's Compensation Act dies while in service after having rendered not less than seven years continuous service, the rate of family pension payable to the family shall be equal to 50% of the last pay drawn or twice the family pension admissible under sub-rule (2) whichever is less. Sub-rule 3(b) of rule 47 of the Rules of 1976 provides where a Government servant who is not governed by the Workman's Compensation Act dies after retirement how the pension is to be determined. The formula is further given in sub-rule 3(c). What is to be emphasized is that computation of family pension does not depend upon number of persons entitled to its apportionment. Sub-rule (7) and sub-rule (8) of rule 47 are necessary to be quoted below:-

7(a)(i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of family pension shall become payable to her eligible child;

Provided that if the widow is not survived by any child, her share of the family pension shall cease to be payable.

(b) Where the deceased Government servant or pensioner is survived from another wife who is not alive, the eligible child or children shall be entitled to the share of the family pension which the mother would have received if she had been alive at the time of death of Government servant or pensioner.

(c) Where a female Government servant is survived by a husband and an eligible

minor child from the first husband the family pension will be paid to both in equal shares. In the absence of the second husband, share of his pension will be paid to his eligible minor child from deceased female Government servant.

(8) (i) Except as provided in sub-rule (7) the family pension shall not be payable to more than one member of the family at the same time.

(ii) If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.

(iii) If sons and unmarried daughters are alive, unmarried daughters shall not be eligible for family pension unless the sons attain the age of 25 years and thereby become ineligible for the grant of family pension.

It is apparent from the bare reading of sub-rule (7) of rule 47 of the Rules of 1976 that family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares; on the death of a widow, her share of family pension shall become payable to her eligible child provided that if the widow is not survived by any child, her share of the family pension shall cease to be payable. In the instant case only one widow of the late employee survived; other died in his lifetime before performance of the second marriage with the Petitioner. In the case of two widows, sub-rule (7) of Rule 47 of the Rules of 1976 provides that if two widows are receiving the pension, on the death of a widow, her share of family pension shall become payable to her eligible child; if the widow is not survived by any child, her share of the family pension shall cease to be payable. This proviso to sub-rule 7(a) of rule 47 of the Rules of 1976 is not applicable in the instant case as family pension was not payable to more widows than one in the instant case. In the instant case, sub-rule 7(b) of rule 47 was attracted on the death of deceased Government servant. Deceased Government servant had one wife and eligible child or children from first wife, thus, the children from the first wife became entitled to receive the amount of pension which mother would have obtained if she had been alive at the time of death of the Government servant or pensioner. There is no such proviso added to clause (b) of sub-rule (7) of rule 47 of the Rules of 1976 as is added to clause (a) of sub-rule (7) of rule 47 which provides the family pension shall cease to be payable if the pension was apportioned to two widows to the extent of share of one widow if she is not survived by any child. Sub-rule (8) provides that except as provided in sub-rule (7), family pension shall not be payable to more than one member of the family at the same time. If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child. If sons and unmarried daughters are alive, unmarried daughters shall not be eligible for family pension unless the sons attain the age of 25 years and thereby become ineligible for the grant of family pension. Under sub-rule (10) of Rule 47 of the Rules of 1976 where family pension is granted under this rule to a minor, it shall be payable to the guardian on behalf of the minor. It is not the case of both

husband and wife were in the Government employment, as such sub-rule (11) of Rule 47 of the Rules of 1976 has no application which deals with the concept of two family pensions.

Under clause (b) sub-rule (14) of rule 47 of the Rules of 1976 "family" in relation to the Government servant means:-

14(b)(i) Wife or wives in the case of a male Government servant or husband in the case of a female Government servant. Where a female Government servant or a male Government servant dies leaving behind widower or widow and eligible child or children and the widower or the widow, as the case may be, remarried before the death of the Government servant, the family pension payable to a child or children in respect of the deceased shall be payable to the surviving person provided he or she is the guardian of such child or children. Where the surviving person has ceased to be guardian of such child or children, such family pension shall be payable to the person who is the actual guardian of such child or children.

(ii) son or an unmarried or widowed or divorced daughter till such son or daughter attains the age of 25 years or upto the date of his/her marriage/remarriage as the case may be, whichever is earlier, subject to the income criteria as prescribed by the State Government from time to time.

(iii) the parent, provided they were wholly-dependent on the Government Servant when he/she was alive and the deceased employee had left behind neither a widow nor a child subject to the dependency criteria as prescribed by the State Government from time to time.

(iv) son, unmarried or widowed or divorced daughter and parents, as the case may be, shall provide an annual certificate of income/dependency criteria as fixed by the State Government from time to time.

The respondent No. 2 places reliance on memorandum dated 12th September, 1988 which simply reiterates the provision of clause (a) of sub-rule (7) of rule 47 of the Rules of 1976. It states that where the family pension is being paid to more than one widow, it has to be paid in equal shares; if any of them dies and is not survived by a child, pension payable to such a widow ceases; the other widow shall be entitled only to the share which was being paid to her. The memorandum of Finance Department dated 12th September, 1988 (Annexure R/2-A) also does not cover the case of the petitioner because it is not the case where two widows were receiving the pension; it is not the case to which clause (a) of sub-rule (7) of rule 47 of the Rules of 1976 is attracted, but as held above, it is a case where clause (b) of sub-rule (7) of rule 47 of the Rules of 1976 is attracted. There is no provision under Rule 47 providing the ceasure of the share of the minor children on attaining the age of majority; clause (b) has no such proviso attached to it as in clause (a) of sub-rule (7) of rule 47 of the Rules of 1976. The circular and rule 47 do not provide for ceasing of the share which was being paid to the children of the pre-deceased widow of an employee on their

attaining majority. The ceasure is provided in the case of more than one widow obtaining the pension and one of them dies without leaving a child which is not the factual situation obtainable in the instant case. Thus, ceasure of pension to the extent of share of minor sons on attaining majority is not provided under the rules or the memorandum.

Respondent No. 2 Joint Director appeared in person and stated that family pension is fixed amount which was being apportioned to the petitioner and two minor sons; amount of family pension was such which would have been paid to only one widow in case she was only person obtaining it.

It is the case where only apportionment was taking place; no additional family pension was being paid by virtue of the widow; the pre-deceased widow's issues obtaining the pension. Thus, in my opinion, purposive interpretation of the rule has to be such which advance the cause of social justice and pension is not reduced particularly when it was not so enhanced owing to the existence of sons of a pre-deceased widow; had they not survived the deceased, the entire amount would have been payable to the petitioner right from the date of death of deceased employee.

Pension is neither a bounty nor a matter of grace depending upon the sweet will of employer. There cannot be any forfeiture of the pension or cessation in the present case. The pension is a payment for the service rendered by the deceased. It is a social welfare measure rendering socio-economic justice to those who had served the employer and is governed by the rules. Family pension is a benefit which is in consonance with and in furtherance of the goals of Constitution. It does not sound to reason if an example is taken that a widow is entitled for family pension of Rs. 100/-; she would receive Rs. 100/- alone and if there is one more person entitled to it, it is divided into Rs. 50/- each, and if such other person entitlement ceases widow gets only Rs. 50/-; such interpretation defeats the very intendment of socio economic justice and would be violative of Article 14 and 16 of the Constitution of India and cannot be withstand judicial scrutiny. It would amount to forfeiture of pension which is otherwise payable to a family. In the instant case, rule itself does not provide for ceasure of pension in the case of clause (b) of sub-rule (7) of rule 47 of the Rules of 1976 as discussed above nor it is provided in the memo contained in Annexure R/2-A. In the circumstances, the conclusion is inescapable that entire family pension becomes payable to the widow and the amount which was being paid on apportionment to the minor sons cannot be ceased on their attaining the majority but revert to widow. When family pension was being apportioned, it was with a view and underlying idea that every dependent should get some amount. That cannot be said to be in negation of right to obtain a particular sum which is not variable nor dependent upon the number of persons obtaining it. Simple apportionment cannot give right to the respondents to cease portion of it when only one pension and a fixed amount is payable. Apportionment is simply a facility; substantive right is to obtain the family pension payable to a family

computed under the rules. Otherwise the action would be termed to be arbitrary and impermissible.

In the result, the writ petition is allowed. The widow is entitled to receive the entire family pension admissible to a widow and there shall be no reduction of amount on the basis that other children which were getting apportionment have attained majority; in other words the share of sons shall revert back to widow and shall form part of pension payable to her. The full family pension be restored to the petitioner from the date portion of pension was ceased on attaining the majority by the sons. Arrears be paid in three months and future pension be paid regularly. Cost on parties.