
(2009) 02 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Letters Patent Appeal No.160 Of 2003 and CMP No.228 Of 2003

Gh.Mohi-ud-Din Hurra

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 21-02-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 2

Citation : (2009) 3 JKJ 28

Hon'ble Judges : Barin Ghosh, C.J and Hakim Imtiyaz Hussain, J

Bench : Division Bench

Advocate : M.M.Din, S.Gowhar, B.A.Tak, M.Ashraf, Advocates appearing for the Parties

Judgement

Barin Ghosh, C J.

1. The appellant is the father of Mansoor Ahmad Hurrah, who was an employee of BSF and died on May 15,2000 in harness by reason of a

bomb blast. The said death entailed exgratia relief to be released by the Central Government as well as by the State Government, and such relief

was deposited with the State Bank of India, Bandipora Branch. After obtaining a succession certificate dated July 9,2002, the appellant went to

withdraw the amount of exgratia relief when he was told by the Branch Manager of the said Bank that Smt. Meema had withdrawn the said sum.

2. In the writ petition filed by the appellant, he contended that the said Bank is liable to pay to him, on the strength of the said succession

certificate, the amount of exgratia relief released by the Central and the State Governments on account of death of Mansoor Ahmad Hurrah. He

further contended that Smt. Meema, who became widow by reason of death of Mansoor Ahmad Hurrah, married her second husband, Showkat

Ahmad Hurrah and, after having been divorced by him, married for the third time Ashiq Khan. In the writ petition, the appellant contended that

Smt. Meema, therefore, was not entitled to touch any part of the exgratia relief and she was also not entitled to receive any pension on account of

death of Mansoor Ahmad Hurrah and, instead, it is the appellant who is entitled to receive the exgratia relief as well as the pension on account of

death of Mansoor Ahmad Hurrah.

3. Smt. Meema did not file any counter to the writ petition. The official respondents, however, contended in their counter affidavit that Smt.

Meema, being the widow of the deceased employee, was entitled to the entire amount of exgratia relief and, accordingly, the same has been paid

to her. They contended that since Smt. Meema was widow of the deceased employee and as the deceased employee died as a result of militant

activities in Kashmir Valley, she was granted benefit of liberalized pension equal to the last pay drawn by the deceased employee by an order

dated July 27, 2000 and the said family pension is admissible to Smt. Meena for her life or until her remarriage. It was stated that even in the event

of remarriage family pension is to be allowed at the rate of normal family pension subject to the conditions laid down for family pension under

Central Civil Services (Pension) Rules, 1972 from the date following the date of remarriage. It was contended that the appellant was not entitled to

any pension.

4. By the judgment and order under appeal, the said writ petition has been dismissed by a learned Single Judge of this Court holding that Rule 2 of

the CCS (Pension) Rules entitles a widow, in case of remarriage, to family pension from the date following the date of her remarriage. The learned

Judge left open the right of the appellant to recover the amount of exgratia relief from Smt. Meena.

5. We are told that a suit has been filed by the appellant for recovery of the amount of exgratia. In the circumstances, the only question that is

required to be gone in is whether Rule 2 of CCS (Pension) Rules or any other Rule of the said Rules authorizes family pension to a widow who has

remarried?

6. We have looked at Rule 2 of the CCS (Pension) Rules which does not say so. We have not been shown any other rule provided in CCS

(Pension) Rules which authorizes payment of family pension to a widow who has remarried. According to us, Subclause (2) of clause 4 of the

Government of India Department of Pension and Pensioners' Welfare, O.M. No.33/5/89P. & P.W. (K), dated 9th April, 1990", if read in

isolation, creates an impression that even after remarriage a widow may obtain family pension. A look at the CCS (Pension) Rules would show

that not only the widow, but even the dependent children are entitled to family pension. Benefits of liberalized pension propounded by the said

Government of India OM are available, principally, to the widow. The quantum of pension granted under the liberalized pension scheme is equal to

the last pay drawn by the deceased employee. Subclause (1) of Clause 4 of the said Government of India OM specifically mentions that such

family pension is admissible to the widow for life or until her remarriage. Therefore, the benefit of such pension is available to a widow only until

she is remarried. The moment the widow remarries, benefits of liberalized pension will come to an end, but in terms of CCS (Pension) Rules, 1972

persons otherwise entitled to pension would be entitled to the same, including the dependent children. A look at clauses 3 and 4 of the said

Government of India OM would make it abundantly clear that a dependent parent or dependent children will be entitled to the benefits of

liberalized pension to the extent mentioned in the said clauses, only when the widow of the deceased employee is not alive. Therefore, in such

circumstances, where the widow has obtained benefits under the said liberalized pension scheme but has remarried, on her remarriage the

dependent children of the deceased, who are otherwise entitled to receive pension under the CCS (Pension) Rules, 1972, would be entitled to the

same. Our attention has not been drawn to any provision contained in CCS (Pension) Rules which authorizes pension to parents of the deceased

employee.

7. In the circumstances, although we are not in a position to grant relief to the appellant, but we modify the judgment and order under appeal by

observations as made above.

8. The appeal is, accordingly, disposed of.