
(1996) 10 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No"s. 15290-91 of 1993

K. Saraswathi Ammal

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 28-10-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1997) 1 LLJ 553 : (1996) 2 MLJ 630

Hon'ble Judges : Shivraj V. Patil, J

Bench : Single Bench

Judgement

1. The facts to the extent they are relevant and required for the disposal of these writ petitions are the following :

The petitioner is a widow. Her son K. Ekambaram was working as Section Supervisor (Telecom) in the Department of Tele Communication under the second respondent. He had joined the service on February 1, 1955. He had completed 37 years of service. He was eligible for pension. He was a bachelor and died on June 10, 1992. After his retirement he was given monthly pension for the months of April and May 1992 as he had taken voluntary retirement with effect from April 1, 1992. He was the only son of the petitioner providing her daily bread. She applied to the second respondent by her letter dated July 22, 1992 to pay her family pension amount stating the fact of the death of her son. Petitioner received the intimation from the second respondent bearing No. TA/Pen/C. 601/16 dated October 19, 1992 that as per Rule 54 of the Central Government Pension Rules, the mother of the deceased employee is not eligible for family pension. Thus the petitioner is aggrieved by the refusal of family pension to her. Hence she has filed these two writ petitions.

2. In W.P. No. 15290 of 1993 the petitioner has sought for a writ of declaration declaring that "mother and father of the deceased unmarried son are entitled to family pension under Rule 54 of the Central Government Pension Rules". In W.P. No. 15291 of 1993 the Petitioner has sought for quashing the intimation of the

second respondent dated October 19, 1992 aforementioned refusing her family pension.

3. Having regard to the contentions raised by the parties and the nature of the relief sought for, both the writ petitions are being disposed of by this common order.

4. The petitioner in the writ petitions has raised the following grounds, viz.

i. Failure to include the father and mother of deceased unmarried son in Rule 54 of the Central Government Pension Rules. (for short, the Rules) is arbitrary and violative of Article 14 of the Constitution of India :

ii. Since pension is payable in consideration of pre-retirement service, it would amount to invalid discrimination if family pension is sought to be restricted only to the spouse and children excluding the mother and father of unmarried son.

iii. Under Rule 49(13)(b)(iii) of the Tamil Nadu Pension Rules, father and mother of unmarried son/daughter are eligible for family pension. But no such provision is made in Rule 54 of the Rules. Similarly placed persons should not be discriminated and as such Rule 54 of the Rules excluding mother and father of the deceased employee is discriminatory and violative of Article 14 of the Constitution.

5. The respondents have filed counter affidavit resisting the claim of the petitioner. It is submitted that the jurisdiction in service matters including terminal benefits is vested in the Central Administrative Tribunals under Sections 14 and 28 of the Administrative Tribunals Act 1985. K. Ekambaram son of the petitioner was appointed on February 1, 1955 and he was working as Section Supervisor in the office of the Director, Maintenance, Southern Telecom Sub Region, Madras. He applied for voluntary retirement on April 1, 1992. As per the eligibility he was given the following retirement benefits :

i. D.C.R.G. .. Rs. 37,950/-

ii. Commutation ... Rs. 49,157/-

iii. G.P.F ... Rs. 483/-

iv. Monthly pension (after commutation) Rs. 761/-

6. The stand of the respondents is that as per so Rule 54 of the Rules, the petitioner was not entitled for family pension. Her son K. Ekambaram died as bachelor. He had only nominated, the petitioner for the purpose of receiving retirement benefits such as Gratuity in the event of his death. Since the petitioner is the mother of the bachelor son Ekambaram, under Rule 54 of the Rules, family pension could not be given to her. It is further stated that respondents had referred the matter to the Ministry of Finance, Department of Pension and P.W., New Delhi. They gave the advice that the parents of the Government Servants are not entitled, since the parents do not come within the

definition of family for the purpose of family pension. It is further submitted that the petitioner's son, who was a central Government Servant, was governed by 10 the Rules, and reference to any other rule is neither applicable nor binding on the respondents. Thus the respondents have prayed for dismissal of the writ petition.

7. Shri A. Muthukrishnan, learned counsel for the petitioner contended that the petitioner's son Ekambaram retired after 37 years of service. He earned pension, which pension he could claim as a matter of right : non inclusion of parents of unmarried son or daughter in Rule 54 within the meaning of family for the purpose of family pension is clearly violative of Article 14 of the Constitution of India. Tamil Nadu State Pension Rules provided for family pension to parents of unmarried son or daughter; on the same analogy the petitioner also could be given pension. Pension is a property and after the death of her son Ekambaram, the petitioner could succeed and get family pension as Class I heir under 35 the Hindu Law; and the petitioner being a widow who was solely depending on her son, will be put to great hardship if family pension is not given to her. In the event, it is held that the petitioner is not entitled for family pension, atleast direction may be given to the respondent to pay some amount in lumpsum exgratia on compassionate grounds.

8. Smt. Thilakavathi, for Shri P. D. Dinakaran, learned counsel for the respondents argued in support and justification of the action of the respondents. She submitted that Rule 54 of the Rules does not include the parents of unmarried son or daughter to get pension; the petitioner being mother of unmarried son who was the employee of the Central Government, is not at all eligible for family pension under Rule 54. No doubt the pension is not a bounty and it is paid on account of pre-retirement service by an employee. The pension was not denied to the son of the petitioner, Ekambaram. In fact the pension was paid for two months to him as per the rules. The petitioner citing Rule 49 of the Tamil Nadu State Pension Rules, cannot claim family 5 pension to her for the reason that her son was governed by the rules applicable to Central Government servants, and the State pension rules were not at all applicable to him. Hence the claim of the petitioner on this account is untenable. The contention that Rule 54 is discriminatory and violative of Article 14 of the Constitution is not well-founded. Comparing to the State Pension Rules, Rule 54 of the Rules cannot be said to be discriminatory because State Pension Rules govern the State Government servants and the Rules govern the Central Government servants. Further merely because the parents of unmarried son or daughter are excluded in Rule 54, does not become discriminatory as Rule 54 deals with a class of persons. The petitioner cannot be granted pension when Rule 54 itself has excluded her. Thus the learned counsel sought for dismissal of the writ petition.

9. I have considered the submissions made by the learned counsel for the parties.

10. The learned counsel for the petitioner cited some decisions to contend that pension is not a bounty payable on the sweet will and pleasure of the

Government, the right to receive pension is a property under Article 31(1) of the Constitution and that by a mere executive order the State has no power to withhold the same. This proposition of law is not disputed by the learned counsel for the respondents.

11. Rule 54 of the Rules excluded the parents of an employee dying unmarried. It is clear from the said rule that the petitioner is not entitled for the family pension. Hence no fault can be found with the action of the respondents in denying the pension to the petitioner. Rule 54 is not violative of article 14 of the Constitution of India. The petitioner cannot cite Rule 49 of the Tamil Nadu State Pension Rules to claim the pension under Rule 54 when admittedly her son, being a central Government employee was governed by the Rules.

12. Pension was not denied to the petitioner's son. As a matter of fact pension was given to him for two months to which he was entitled as a matter of right as the pension was not a bounty. The petitioner could inherit or succeed to the property in the hands of her deceased son. Her son Ekambaram got whatever he was entitled to including the pension. Since the petitioner did not come within the purview of Rule 54 there is no question of claiming family pension by her. Rule 54, sub Rule 14(b)(i) and (ii) of the Rules do not include the mother of unmarried son within the definition of family for the purpose of family pension.

13. The Supreme Court in State of Gujarat through Chief Secretary and Others Vs. Sarti Devi, has held that the mother of the deceased employee is not a member of the deceased's family and as such was not entitled to family pension. In that case also mother of the deceased employee was excluded from the definition of family. Paragraph 6 of the said Judgment reads :-

"The question is whether mother is a dependent. In view of the express definition of the family, mother has not been included as a member of the family to claim any family pension from the Government, much less after the maximum period of ten years. Under these circumstances, in either event, the decree of trial court as affirmed by the Appellate Court and second appeal, are clearly illegal."

In this view, and having regard to the facts and circumstances of the case on hand also, I have no hesitation to hold that there are no merits in the writ petitions.

14. The declaration sought for by the petitioner, that mother and father of the deceased unmarried son are entitled to family pension, cannot be given when the very Rule has excluded them. The impugned intimation dated October 19, 1992 cannot be quashed as it is perfectly in order having regard to Rule 54 of the Rules.

15. Having regard to the nature of relief sought for in the writ petition No. 15290 of 1993 for declaration relating to Rule 54 of the Rules and taking note of the fact that the writ petitions were admitted in 1993, I reject the contention of learned counsel for the respondents that the Central Administrative Tribunal

alone has jurisdiction to deal with the subject matter.

16. Of course in the Supreme Court decision aforementioned, having regard to the aged mother who had no other source of income an order was made for ex-gratia payment of Rs. 6,000/-. It is open to the petitioner to approach the respondents for some ex-gratia payment, and the respondents may sympathetically consider if any such representation is made by the petitioner.

17. In the result, for the reasons stated above, finding no merits in the writ petitions, I dismiss them, but with no order as to costs.