

(2012) 01 AHC CK 0415
In the Allahabad High Court
Case No : Writ Petition No. 1906 of 2010

Kailash Chandra Sharma

APPELLANT

Vs

State of UP.

RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Citation : (2012) 01 AHC CK 0415

Hon'ble Judges : Devendra Kumar Upadhyaya, J

Final Decision : Allowed

Judgement

Devendra Kumar Upadhyaya,J.

The question which emerges for consideration of the Court in the instant writ petition is as to whether the petitioner, who is suffering from hearing impairment to the extent of 90%, is eligible for grant of family pension after the death of his father, who was a pensioner having retired from service of the State Government.

Sri Shachindra Pratap Singh, learned counsel appearing for the petitioner has stated that the reasons indicated in the impugned order dated 14.09.2009 rejecting the claim of the petitioner are against the prescriptions provided under the Government Orders dated 06.08.1981 and 12.11.1997 which governs grant of family pension to disabled son of a pensioner after his death. He further states that the observations made by the officer, who passed the impugned order, that a person with hearing disability to the extent of 90% cannot be said to be incapable of earning his livelihood is contrary to the medical report submitted by the Chief Medical Officer. Learned counsel for the petitioner has also stated that as per Government Order dated 06.08.1981 read with Government Order dated 12.11.1997, determination as to whether the disability is such that it makes the person incapable of earning his livelihood is to be made by the Chief Medical Officer or an Officer holding an equivalent rank.

I have heard learned counsel for the parties and also perused the documents available on record.

The facts of the case which are not in dispute are that the father of the petitioner Sri Trilok Chandra Verma while working on the post of Senior Clerk in Collectorate, Merrut, retired on 31.07.1990 on attaining the age of superannuation. He, however, died on 08.07.2006 leaving behind him the petitioner, who claims the family pension on the ground of disability. The petitioner appears to have applied on 15.07.2006 for grant of family pension as he claims that the disability from which he is suffering renders him incapable of earning his livelihood. The request of the petitioner was examined by the District Magistrate, who vide his letter dated 29.10.2007 required the Chief Medical Officer, Merrut to medically examine the petitioner and accordingly give the certificate regarding his disability. The said letter dated 29.10.2007 is on record as annexure no.9 to the writ petition. Pursuant to the letter of the District Magistrate dated 29.10.2007, the petitioner appears to have been medically examined and accordingly vide letter dated 12.12.2007, the Chief Medical Officer informed the District Magistrate, Meerut that the petitioner suffers from hearing disability to the extent of 90% because of which he is not capable of earning his livelihood. The said letter dated 12.12.2007 is also on record as annexure no. 10 to the writ petition. It appears that the matter thereafter was referred to the Board of Revenue and the Additional Land Reforms Commissioner (Accounts), Board of Revenue has passed the impugned order on 14.09.2009 rejecting the claim of the petitioner stating therein that in case of hearing impairment to the extent of 90%, the petitioner cannot be said to be incapable of earning his livelihood, as such the family pension to the petitioner will not be admissible.

It is noteworthy that the family pension on the basis of disability can be claimed by the dependent of deceased pensioner on the basis of provisions contained in two Government Orders dated 06.08.1981 and 12.11.1997. The aforesaid Government Orders provide that in case the deceased government pensioner leaves behind him his son or daughter who is either physically or mentally disabled because of which he/she cannot earn the livelihood then such a son/daughter will be entitled to family pension.

Clause 6 of the Government Order dated 06.08.1981 reads as under:

The aforequoted provision of the Government Order clearly provides that in support of the claim that the person seeking family pension on the ground of disability suffers from incapacity of the kind which does not enable him to earn his livelihood, the certificate to be issued by the Chief Medical Officer or any other Medical Officer of the equivalent rank shall be produced and the pension sanctioning authority has to be satisfied.

In the instant case, once the Chief Medical Officer, on the basis of medical examination conducted by him on the request of District Magistrate, Merrut, had opined that the petitioner suffers from hearing impairment with disability to the extent of 90%, as such, he is unable to earn his livelihood, it is not understandable as to how a contrary opinion has been expressed by the Officer while passing the impugned order dated 14.09.2009. The Chief Medical Officer,

who examined the petitioner and gave his opinion on asking of the District Magistrate, has all the expertise being a medical professional to arrive at a conclusion that the nature of disability from which the petitioner suffers, does not enable to earn his livelihood; whereas the Officer who has passed the impugned order dated 14.09.2009, is not properly and adequately equipped to form the view contrary to the view taken by the Chief Medical Officer. It is difficult to comprehend as to how the finding to the effect that in case a person is suffering by hearing disability to the extent of 90% is not capable of earning his livelihood has been arrived at by the opposite party no.4, who passed the impugned order in the face of the opinion of the Chief Medical Officer, who, in the most expressed words, has stated in his letter dated 12.12.2007 that the petitioner suffers from hearing disability to the extent of 90% and as such he is completely incapable of earning his livelihood.

From the discussions aforesaid, it is clear that the impugned order dated 14.09.2009 passed by Additional Land Reforms Commissioner (Accounts), Board of Revenue, Lucknow suffers from absolute unreasonableness and hence is liable to be quashed. Accordingly, the impugned order dated 14.09.2009 as contained in annexure no.1 to the writ petition is hereby quashed and writ in the nature of certiorari is accordingly issued.

Further, opposite parties are directed to consider the case of the petitioner for grant of family pension in the light of observations made hereinabove in this judgment within three months from the date a certified copy of this judgment is produced.

With the aforesaid observations and directions, the writ petition stands allowed with no order as to costs.