
(2009) 08 MP CK 0108

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 1390 of 2007

Kaladevi Shrtvastava

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 47

Citation : (2009) 4 MPLJ 628

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : L.R. Bhatnagar, for the Appellant; Mukesh Parwal, Panel Lawyer, for the Respondent

Judgement

Shantanu Kemkar, J.

Petitioner's husband late Shri Mangilalji Shrivastava was working on the post of Patwari in the Revenue Department of the State Government. He died in harness in the year 1968. After his death the petitioner being his widow was paid family pension with effect from 22-5-1969 till 10-10-1976.

According to the petitioner after the death of her husband she was maintaining her two children out of the income from her ancestral property and for that purpose she had to shift to Jaipur and in the circumstances she did not agitate the action of stoppage of family pension. However, her son died in a train accident in the year 2002. In the circumstances when she faced financial crunch she had to return from Jaipur. Thereafter she made requests to the respondents for release of the arrears of family pension and to restart the same.

The petitioner stated that to restart the family pension she submitted an application dt. 16-2-2006 (Annexure P/4) along with an affidavit (Annexure P/4-A) before the third respondent. The said application and the affidavit submitted by the petitioner to the third respondent were forwarded by the third respondent

to the second respondent for consideration. When no heed was paid to her prayer she had to file this petition under Article 226 of the Constitution of India.

The respondents filed reply and have stated that since the petitioner performed remarriage on 5-8-1976 her pension was stopped with effect from 10-10-1976. According to the respondents after remarriage the petitioner became ineligible for family pension in view of Rule 47 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1976.

By filing rejoinder the petitioner made following submission in paragraph No. 3 of the rejoinder:

That, in reply to the above submission the petitioner most respectfully submits that neither she remarried after the death of her husband late Shri Mangilalji Shrivastava nor she has given such information to the respondents. The respondent No. 3 itself inserted the fact regarding remarriage without enquiring the matter and without giving any prior notice to the petitioner. Such action of the respondents is against the principles of natural justice and cannot be sustained in the eye of law. The entry made in Annexure R/I regarding the fact of remarriage is denied in toto.

In view of the stand taken by the parties, and the affidavit (Annexure P/4-A) submitted by the petitioner stating therein that after the death of her husband she did not perform second marriage and is leading the life of a widow, following direction was issued by this Court on 6-11-2008:

On perusal of the pleadings and on consideration of the contentions raised by Learned Counsel for the parties, it is emerged that the petitioner widow of Mangilal Shrivastava was being sanctioned and extended the benefit of family pension on account of death of her husband w.e.f 22-5-1969 till the year 1976. From 1976, the family pension was stopped by the respondents on the ground that petitioner has performed remarriage. Petitioner has averred that she did not remarry, whereas the respondents have averred in their reply that the petitioner has performed remarriage. Therefore, family pension was stopped.

In view of the conflicting stand taken by the parties, I am inclined to accept the prayer made by learned Dy. GA the fact that whether the petitioner had performed remarriage after the death of her husband or not, may be enquired through the Collector Ratlam.

Accordingly, the Collector Ratlam is directed to make an enquiry as to whether after the death of petitioner's husband, the petitioner had performed remarriage or not?

Let appropriate enquiry be conducted by the Collector in this regard and the report be submitted before this Court within three months from the date of receipt of copy of this order.

Before taking any decision in the matter, the Collector shall afford an opportunity

of hearing and to produce evidence if any, to the petitioner.

List in March, 2009.

However, in spite of opportunities being given neither the enquiry was conducted nor any report was submitted by the respondents in compliance to the aforesaid order dt. 6-11 -2008.

Heard Learned Counsel for the parties and perused the annexures.

Learned Counsel for the petitioner fairly stated that having regard to the fact that the petitioner did not approach the Court promptly after stoppage of her pension, she may not be granted pension from 1976. However, he argued that the petitioner is entitled for restart of the pension at least three years prior to the date of filing of this petition in view of the fact that the cause of action in the matter of pension is recurring in nature. He argued that the respondents have stopped the payment of pension to the petitioner without giving any notice to show cause and without affording opportunity of personal hearing to her in regard to the allegation that she has remarried. He submits that the affidavit (Annexure P/4-A) filed by the petitioner as also the statement made by her in the rejoinder have not been controverted by the respondents and no enquiry has been conducted as directed by this Court. In the circumstances he argued that the respondents having failed to justify the action and reason for stoppage of the family pension this petition may be allowed and the respondents be directed to restart the family pension of the petitioner and to pay arrears of pension to her from three years prior to filing of this petition. He also prayed that a reasonable interest be also ordered to be paid to the petitioner on the arrears.

Learned Panel Lawyer appearing for the respondents submits that the petitioner having remarried in the year 1976 her pension has rightly been stopped. He submits that the petitioner is not entitled for restarting of the family pension to her on account of delay on her part in approaching the Court.

Having heard Learned Counsel for the parties and after perusal of the documents in my considered view the action of respondent No. 3 in stopping the family pension to the petitioner is not justified.

It is clear from the pleadings and the documents that before ordering for stoppage of the family pension vide order Annexure R/I no notice or opportunity of hearing was afforded to her. Such an abrupt stoppage of family pension by the respondent is a clear case of violation of the principles of natural justice. It is revealed from the reply as also from the inaction on the part of the respondents in not holding the enquiry as directed vide order dated 6-11-2008 that they have failed to justify the reason for which the petitioner's family pension was stopped.

The petitioner has made a categorical statement on affidavit (Annexure P/4-A) that after the death of her husband late Shri Mangilalji Shrivastava she did not perform second marriage. She has also stated that since the death of her husband she is leading the life of a widow. In the absence of any denial to the

said averment, I am of the view that the action of the third respondent in stopping the petitioner's family pension is illegal and arbitrary and as such the same is not sustainable.

In the matter of pension the cause of action accrues from month to month, in the circumstances her claim to restart the same cannot be rejected on the ground of delay. The petitioner is certainly entitled for restart of her family pension and for arrears at least from three years prior to filing of this pension.

Accordingly, the action of the respondents to stop the petitioners pension is quashed. The petition is allowed to the extent that the respondents shall restart the family pension to the petitioner and shall pay arrears of the same to her from 3 years prior to 23-2-2007 (the date when this petition was filed) with interest at the rate of 6% per annum. No orders as to costs.