(1994) 12 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 1372 of 1993

Kamla Sharma — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 08-12-1994

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 37, 54, 55A
Constitution of India, 1950 — Article 226

Citation : (1995) 1 ShimLC 388

Hon'ble Judges : S.N. Phukan, J;Kamlesh Sharma, J

Bench : Division Bench

Advocate : Rajeev Sharma, for the Appellant; Om Parkash, Addl A.G. and P.A. Sharma, Senior Central Govt. Standing Counsel, for the Respondent

Judgement

S.N. Phukan, J.—This petition under Article 226 of the Constitution has been filed by Smt. Kamla Sharma, widow of late Shri Sita Ram, against the State of Himachal Pradesh, Secretary Finance to the Government of Himachal Pradesh, Director of Education and Accountant General, Himachal Pradesh.

2. Briefly stated the facts are as follows. The husband of the Petitioner, late Shri Sita Ram, was discharging his duties as Shastri at Government Middle School, Losar in Lahaul and Spiti District. Late Shri Sita Ram proceeded on leave on 1-6-1983 and he was supposed to reach home within two or three days. The family of Shri Sita Ram was anxiously waiting, but unfortunately he never reached home and consequently an F.I.R. was filed before the Police Station Theog on 25-7-1983 vide F.I.R. No. 5 of 1983. The Petitioner approached the Respondent Government for family pension and also for appointment on compassionate grounds. She was appointed as a Peon on 13-8-1988 in the office of the Project Officer (Adult Education), Shimla. The Petitioner was also granted family pension due to non-existence of her husband with effect from 29-8 1986. The Petitioner claims that she is entitled to such pension with effect from 1-6-1983 The Petitioner has not been paid dearness relief on family pension and,

therefore, it has been prayed that the Respondents be directed to pay dearness allowance with effect from 13-8-1988. It may be stated that according to the Petitioner she is entitled to ex-gratia payment of Rs. 16,000 and she has claimed this amount with interest at the rate of 18 percent. The General Provident Fund was paid on 31-8-1992 and according to the Petitioner she is entitled to get this payment with effect from 1-6 1983. Therefore, she has claimed interest on this amount It may be stated that under the Government rules persons working in remote areas are entitled to draw advance salary and accordingly late Shri Sita Ram also drew some advance salary and now the Respondents have directed that the advance salary paid to the husband of the present Petitioner may be recovered. Therefore, the Petitioner has claimed that this amount may not be recovered from her and has also prayed that the amount already recovered may be refunded to her with interest at the rate of 18 percent.

3. In the reply affidavit filed on behalf of the State Government and its officials, it has been stated that the Petitioner earlier approached the State Administrative Tribunal by filing a petition which was registered as O.A. No. 921 of 1992 and by order dated 10-3-1993 the Tribunal disposed of the said petition with the direction that the said petition may be treated as a representation to the Government and, therefore, directed the State Government to consider the application on merits in accordance with law within a period of four months. However, liberty was granted to the applicant to approach the Tribunal again on the same cause of action, if aggrieved According to the Respondents as the Petitioner had already approached the State Administrative Tribunal the present petition is not maintainable. It may be stated that as per the directions of the State Administrative Tribunal the matter was considered and the result was duly communicated by the Director of Education to the Deputy Director (Legal Cell), Directorate of Education, Shimla vide letter dated 16-7-1993 vide Annexure R-1 to the reply affidavit. It has been stated that in view of the above direction of the Administrative Tribunal and the action taken by the Respondents, the present petition is not maintainable and is liable to be dismissed. According to the Respondents as per the report of the Headmaster of the school, lite Shri Sita Ram was missing from June, 1983. Copy of the said report has been annexed as Annexure R-2. It has also been stated that request was made to the Station House Officer Theog to confirm whether F.I.R. No. 5 was registered in the police station on 25-7-1993 or not. But the Station House Officer informed by his letter dated 30-12-1981 that the record in question has been destroyed and, therefore, he was unable to supply the requisite information. The copy of the letter of the Station House Officer has been annexed as Annexure R-3. According to the Respondents in the absence of the copy of the F.I.R. the Petitioner could not have been appointed on compassionate grounds as Class IV employee. However, keeping in view the poor plight she was appointed as Grade IV employee on 20-8-1986 on compassionate grounds. In reply to the allegation of the Petitioner that she is entitled to get family pension with effect from 1-6-1983 it has been stated that detailed instructions have been laid down by the Government by

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letter dated 16-5-1991 and 15-6-1993 and as such the Petitioner is not entitled to get family pension from that date. In this behalf the latter of the Government of India dated 25-1-1991 has also been referred to and it has been stated that this letter was circulated/adopted by the Government of Himachal Pradesh vide office memo dated 16-5-1991. Regarding date of drawal of family pension reference has also been made to the letter of the Senior Deputy Accountant General dated 16-3-1992 and a copy of which has also been enclosed as Annexure R-4 to the reply. It has been stated that though family pension in such cases could be granted only on receipt of the copy of the F.I.R. but out of pity and because of the miserable condition of the Petitioner it was so granted without the copy of the F.I.R Regarding ex-gratia payment to the Petitioner it has been stated that she is not entitled to get it in view of the letter of the Government of Himachal Pradesh in the Finance Department dated 4-11-1988. The copy of the letter has been annexed as Annexure R-5 According to the Respondents the ex-gratia payment is granted in case of death only and not otherwise. Regarding advance payment of salary it has been stated that as a policy decision the State Government give the advance in the tribal areas, but the same is always subject to adjustment in successive months. Therefore, it cannot be said that the amount should not be recovered from the Petitioner as other relief was granted to the Defendants of the missing employee. According to the Respondents recovery of the advance cannot be termed as harsh/oppressive and inequitable. Regarding delayed payment of General Provident Fund it has been stated that a sum of Rs. 4018 was paid on 31-8-1992 and Rs. 6,760 was paid as interest upto 31-10-1993. Therefore, the Petitioner cannot have any claim regarding interest and it was paid in time. Respondent No. 3, that is, Accountant General, has filed an affidavit through the Deputy Accountant General. In the reply affidavit filed on behalf of Respondent No. 3 it has been specifically stated that the family pension was allowed in terms of the office memo of the Government of India dated 29-8-1986, incorporated as decision No. 10 under Rule 54 read with Government of Himachal Pradesh letters dated 16-5-1991 and 15-6-1993 and a copy has been enclosed as Annexure R-4. It has been categorically stated that the Petitioner is not entitled to family pension from 1-6-1983 because the conditions/rules for regulating the family pension in case of missing personnel came in existence with effect from 29-8-1986 and the Government of Himachal Pradesh has categorically stated in their letter dated 16-5-1991 that the family pension in such a case would be admissible from 29-8-1986. According to the Accountant General family pension was given as per the instructions given by the Government of Himachal Pradesh. The point raised by the Accountant General is that the instructions of the Government of India will not be applicable automatically to the State Government unless it is adopted by the State Government. Regarding General Provident Fund it has been stated that the application for final payment of the G.P. Fund was submitted by the Petitioner on 20-5-1992 which was forwarded to the Headmaster of the School vide Annexure R-10 and the reply was received by the Respondent No. 3 on 22-6-1992. On scrutiny of the case it was observed that the indemnity bond was

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not enclosed with the final application. Therefore, the Respondent made a reference vide letter dated 14-7-1992 vide Annexure R-11 to the Petitioner asking her to file the indemnity bond which was furnished by her on 12-8-1992. There-after the authority was issued for payment of the amount by letter dated 31-8-1992 vide Annexure R-12. It has been stated that the interest was allowed upto May 1984 and thereafter higher authority was moved and the sanction was conveyed on 19-10-1993 and thereafter the interest of Rs. 6,760 was paid with effect from June 1984 to October 1993 by letter dated 22-10-1993. Copy of the letter has been annexed as Annexure R-13. Under these circumstances it has been urged by Respondent No. 3 that interest was paid upto October 1993 and therefore, the Petitioner is not entitled to get any more interest.

4. We have heard Shri Rajiv Sharma, learned Counsel for the Petitioner, and Pt. Om Parkash, Addl. Advocate General for Respondents No. 1, 1-A and 2 and Shri P.A. Sharma, Senior Central Government Standing Counsel for Respondent No. 3.

5. Regarding the grievance of General Provident Fund, we find from the counter to the reply affidavit of Respondent No. 3 that the final application for payment of G.P. Fund was submitted by the applicant only on 20-5-1992 and it was forwarded by the Headmaster of the school on 10-6-1992 and was received in the office of the Accountant General on 22-6-1992. It has been stated that on scrutiny it was found that the indemnity bond was not enclosed with the application form and therefore, the same was sent on 14-7-1992 to the Petitioner asking her to fumish the bond The Petitioner furnished the bond by letter, dated 12-8-1992 and thereafter the authority for release of the amount was issued on 31-8-1992. From these facts we are satisfied that there was no delay in releasing the General Provident Fund amount, by Respondent No. 3. On the top of that we find that interest was also calculated and was paid upto October 1993. In view of the above facts, the present claim for interest of the Petitioner is not maintainable and is rejected.

6. Regarding the date of the family pension, the Petitioner has claimed such pension with effect from 1-6-1983. From the reply affidavit filed on behalf of the Respondents we find that the scheme for family pension as per the decision of the Government of India was adopted by the State of Himachal Pradesh only with effect from 29-8-1986. Therefore, it has been categorically stated in the letter of the Government of Himachal Pradesh dated 16-5-1991 that family pension in case of a missing person would be admissible from 29-8-1986 As the scheme of family pension was applicable for the families of such missing employees of the Government of Himachal Pradesh from 29-8-1986, the claim of the present Petitioner that she is entitled to get family pension with effect from 1-6-1983 is not maintainable. We also do not find any arbitrariness in the action of the Government of Himachal Pradesh inasmuch as it is a policy decision and as a policy decision it was decided to give such family pension only with effect from 29-8-1986. Therefore, we reject the claim of the present Petitioner regarding date of family pension.

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7. Regarding the ex-gratia payment of Rs. 16,000 as claimed by the present Petitioner, we find that the matter was duly considered by the Government in the Finance Department and it was clarified by letter dated 4-11-1988 vide Annexure R-4 to the reply affidavit filed on behalf of Respondents No. 1 and 2. In the letter it was stated the such a payment is given to the family members only to provide immediate assistance to the family members of the deceased Government servant who is left in such a situation after the death of the bread earner. Therefore, it was decided that for a person who is missing for the last more than seven years there is no logic to provide similar assistance to the family of such Government servant and accordingly it was directed that no ex-gratia payment shall be made in case of missing Government servants.

8. From the above letter and the reasoning given by the State Government for not granting ex-gratia payment to the members of the missing employee, it cannot be said that the action was arbitrary or without any proper and valid ground. Therefore, in view of the above letter the Petitioner is not entitled to get any ex-gratia payment on account of her missing husband.

9. The Petitioner was given the appointment on compassionate grounds and she is getting her pay and clearness allowance for the post. Help grievance is that she has been denied dearness allowance on the family pension being given to her. For the purpose of appreciating this point, we may quote below Rule 55-A of the Central Civil Services (Pension) Rules, as adopted by the Government:

55-A. Dearness Relief on Pension/Family Pension.-

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment.

(iii) The Central Government employees who get permanently absorbed in terms of Rule 37 and opt for lump sum payment in lieu of pro rata monthly pension in terms of Rule 37, shall not be eligible for dearness relief.

10. Mr. Rajiv Sharma, learned Counsel for the Petitioner has urged that the dearness relief is a part of the pension and as such is not separable and, therefore, the denial of dearness relief on the family pension is arbitrary. The next point urged by the learned Counsel is that under Clause (ii) of Rule 55A if a pensioner is re-employed only then dearness relief cannot be granted. According to the learned Counsel the present Petitioner was not re-employed but she was appointed as a fresh candidate and therefore, she was entitled to dearness relief under Rule 55A on the family pension also.

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11. In support of the contention, learned Counsel Mr. Rajiv Sharma adopted the argument of the Central Administrative Tribunal in B. Bhuvaneshwari and Ors. v. The Chief General Manager (Posts), Bangalore and Ors. 1994 (1) SLJ 21. This is a decision of the Bangalore Bench of the Central Administrative Tribunal. The other decision is in Mrs. Uma Sharma v. Union of India and Ors. 1994 (2) SLJ 100. This is a decision of the Jodhpur Bench of the Central Administrative Tribunal.

12. The word used in Clause (ii) of Rule 55A of the Central Civil Services (Pension) Rules is "re-employed" and not "employed". Therefore, definitely when a Government servant is re-employed his pay is fixed under different set of rules and in so fixing the pension and pension equivalent to gratuity and other things are taken into consideration Therefore, rule makers have used this word so that a pensioner does not get more than what is admissible under the normal rules. If the intention of the rule makers would have been that the family pensioner should not be given dearness relief on the family pension if directly recruited or employed then definitely the rule makers would have used the word ''employed'' and not ''re-employed''. Therefore, we are of the opinion that Clause (ii) of Rule 55A of the Central Civil Services (Pension) Rules is applicable only in case a person is re-employed and this rule cannot be invoked in case of a person employed for the first time. On this ground we are of the opinion that the writ Petitioner shall also be entitled to get dearness relief on the family pension in addition to her pay and dearness relief she is getting in the post she is employed.

13. Let us look at it from another angle. A Government employee may have behind more than one widow. If both the widows are getting family pension and only one of them is employed on compassionate ground by not allowing the dearness relief on the family pension it will deprive the other widow who is without any job. This will be an arbitrary action on the part of the Government. Keeping in view this principle, the rule makers have definitely used the word ''re-employed'' in case of the pensioner in Clause (ii) of Rule, 55A.

14. In view of what has been stated above in respect of dearness relief we are of the opinion that any executive instruction given by the State Government by which the present Petitioner has been deprived of her dearness relief on the family pension is contrary to the rules and liable to be set aside which we hereby do. We direct that the Petitioner shall be given dearness relief on the family pension in addition to the dearness allowance and other relief she is entitled to the post in which she is working.

15. Next prayer of the Petitioner is that the salary amounting to Rs. 7,500 which was drawn by her husband may not be recovered from her pay/family pension on the ground that this advance salary was drawn and it was consumed by her late husband It has also been urged that this action of recovery is arbitrary and oppressive and harsh. We are unable to accept the condition of the Petitioner inasmuch as the salary was drawn in advance and it has to be recovered and such a recovery cannot be said to be arbitrary. Therefore, this prayer is rejected.

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16. Regarding jurisdiction of Administrative Tribunal, Mr. Rajiv Sharma has urged that even the earlier petition filed by the Petitioner was treated as a representation That apart, according to the learned Counsel, the present dispute is not regarding conditions of service but in respect of the claim and counter claim of the wife of the missing person and as such the Administrative Tribunal has no jurisdiction and this Court by exercising writ jurisdiction can give relief. We find considerable force in the sub-mission of the learned Counsel.

17. In the result, the petition is partly allowed by directing the Respondents to give dearness relief on the family pension with effect from 13-8-1988. However, we are rejecting the claim of interest. We also reject the other claims of the Petitioner. We, however, direct that balance of Rs. 7,500 which was drawn as advance salary by the husband of the Petitioner shall be adjusted against the arrears of dearness relief.

Parties to bear their own costs.

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