
(1995) 12 SHI CK 0011
In the High Court Of Himachal Pradesh
Case No : CWP No. 1888 of 1995

Kedar Nath Sood

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-1995

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 22, 22B(14)
Central Civil Services (Pension) Rules, 1972 — Rule 54(14)
Constitution of India, 1950 — Article 14, 21

Citation : (1995) 4 ILR HP 2874

Hon'ble Judges : Bhawani Singh, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; P.A. Sharma, Sr. Central Government Standing Counsel for Respondents 1 and 3 and M.L. Chauhan, Assistant A.G., for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—Through the present petition, the petitioner is seeking family pension from the Respondents from October 15, 1990 after the death of his son Shri R. G. Sood alongwith interest at the rate of 18% per annum. In order to understand the controversy, material facts of the case may be noticed.

2. The petitioner (77) is the father of Shri R. G. Sood who died on October 15, 1990. Shri R. G. Sood was member of All India Administrative Service serving the State of Himachal Pradesh and was on study leave to America (Los Angeles) when he died. The petitioner was paid Death-cum-Retirement Gratuity (DCRG) to the extent of Rs. 48,900/-through letter of May 13, 1991 but his case for family pension was rejected on the ground that under Rule 54 (14) (b) of the CCS (Pension) Rules, 1972, father did not fall within the definition of "family". The petitioner laments and contends that Shri R. G. Sood was his only son. He has no other source of income to support himself in this old age. He was completely dependent upon his son who was unmarried leaving no other member of his

family, namely, wife or any children.

3. Respondent-2 called upon the petitioner to fill in necessary forms of pension and furnish requisite certificates in support of the claim. The petitioner did the needful and the matter was moved by the State Government to Respondent-3 but it was rejected. Repeated recommendations of Respondent-2 also met the same fate. Left in such a state, the petitioner has preferred the present petition and it has been submitted that Rule 54(14) (b) of the CCS (Pension) Rules, 1972, adopted by the Central Government in application to the members of All India Service, is wholly arbitrary, violative of Articles 14 and 21 of the Constitution giving right of equality and right to life. There is no justifiable reason for excluding father and mother from the definition of "family" under the Rules, more particularly, in a case where the deceased happens to be unmarried leaving only father and mother solely dependent on him. It is also submitted that this Rule is unreasonable from another angle; when father and mother are entitled to the benefit of Transfer T. A. and D. A. and also LTC etc. being dependent on such Government servant, there is no justifiable reason to exclude them when the question of payment of pension to them arises.

4. Case of Respondent-2 is based on the application of Rule 22-B (14) of All India Services (D. C. R. B.) Rules, 1958 read with Rule 54(14) of the CCS (Pension) Rules, 1972. It is stated that in view of these Rules, the petitioner does not fall within the definition of "family", therefore, family pension cannot be sanctioned to him. As regards other benefits, it has been pointed that Rules governing these entitlements specifically provide giving of these benefits to the dependent parents, therefore, no parity can be drawn between these two Rules which apply in different spheres. This apart, the case of the petitioner was recommended to Respondent-3 but it has been rejected.

5. Respondent-3 has also opposed the petitioner's claim on the ground that he does not fall within the definition of "family" under Rule 54(14) (b) of the CCS (Pension) Rules, 1972 which governs the present case. It has been admitted that Respondent-2 had recommended the pension case of the petitioner alongwith other relevant documents but sanction was declined since the case did not, fall within Rule 54(14) (b) *ibid*. It is also pointed out that respondent-2 was asked to amend the Rule to cover the parents of unmarried Government servant so that family pension could be accorded to them, but no amendment was made to the Rules.

6. It is pointed out by the petitioner that under CCS (Conduct) Rules, 1965, a Government servant is bound to look-after and maintain his aged parents and neglect constitutes mis-conduct rendering the Govt. servant liable to disciplinary action and deduction of part of the salary for payment to the old and dependent parents - father and mother.

7. The sole question for determination is whether the claim of the petitioner is sustainable as contended by him in the aforesaid manner? It may be true that

under Rule 54(14) (b) of the CCS (Pension) Rules, "family" means "wife" in the case of a male Government servant, or "husband" in the case of female Government servant, but the question is whether exclusion of father and mother, more particularly, in case of an unmarried Government servant, is arbitrary, unreasonable, violative of Articles 14 and 21 of the Constitution of India? Before we answer this question, we may refer to the view of the Apex Court in certain cases.

8. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , it has been held that (p. 185 para 29):

...pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you. give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old age.

9. In *Deokinandan Prasad Vs. The State of Bihar and Others*, the . Apex Court said that (p. 342 para 26):

The payment of pension does not depend upon the discretion of the State; but, on the other hand, payment of pension is governed by the Rules and a Government servant coming within the Rules is entitled to claim pension.

10. Similarly, in *Poonamal and Others Vs. Union of India and Others*, it has been held by the Apex Court that (p. 348 para 7):

Where the government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in *D. S. Nakara* judgment.

11. These above cases came for consideration in a later decision of Apex Court in *Smt. Bhagwanti Vs. Union of India (UOI)*, and another connected matter. In this case the question for determination was whether Rule 54(14) (b) of the CCS (Pension) Rules, 1972 excluding post retiral spouse and off-springs from " the

definition of "family" was unconstitutional. After discussing the matter, this Rule was declared unconstitutional and this part of the Rule has now been deleted from November 12, 1990. In order to understand the reason for declaring the provision excluding post retiral spouse and off-springs from the benefit of family pension, we may quote in extenso some of the important paragraphs of this judgment now.

8. Admittedly, the definition of "family" as it stands after amendment excludes that spouse of the government servant who has got married to such government servant after his/her retirement and the children born after retirement also stand excluded. Petitioners have challenged the stand of the Union of India and the definition in the Pension Rules as arbitrary and discriminatory. It has been contended that if family pension is payable to the widow or the husband as the case may be, of the government servant, the category which the definition keeps out, namely, those who have married after retirement and offsprings of regular marriage born after retirement, is discriminatory.

9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the government servant. Payability of the family pension is basically on the selfsame consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary. There are instances where a government servant contracts his first marriage after retirement. In these two cases before us, retirement had been at an early age. In the Subedar's case, he had retired after putting in 18 years of service and the railway employee had retired prematurely at the age of 44. Premature or early retirement has indeed no relevance for deciding the point at issue. It is not the case of the Union of India and, perhaps there would have been no force in such contention if raised, that family pension is admissible on account of the fact that the spouse contributed to the efficiency of the government servant during his service career. In most cases, marriage after retirement is done to provide protection, secure companionship and to secure support to old age. The considerations upon which pension proper is admissible or the benefit of the family pension has been extended do not justify the distinction envisaged in the definition of "family" by keeping the post-retiral spouse out of it.

12. In Clause (ii) of the definition son or daughter born after retirement even out of wedlock (sic entered) prior to retirement have been excluded from, the definition. No plausible explanation has been placed for our consideration for this exclusion. The purpose for which family pension is provided, as indicated in Smt. Poonamal case, is frustrated if children born after retirement are excluded from the benefit of the family pension. Prospect of children being born at such advanced age (keeping the age of normal superannuation in view) is minimal but for the few that may be born after the retirement, family pension would be most necessary as. in the absence thereof, in the event of death of the government

servant such minor children would go without support. The social purpose which was noticed in some pension cases by this Court would not justify the stand taken by the Union of India in the counter-affidavit. It is not the case of the Union Government that as a matter of public policy to contain the growth of population, the definition has been so modified. Even if such a contention had been advanced it would not have stood logical scrutiny on account of the position that the government servant may not have any child prior to retirement and in view of the accepted public policy that a couple could have children up to two, the only child born after superannuation should not be denied family pension.

12. Shri K. D. Sood, learned Counsel for the petitioner brought to our notice a decision of State Administrative Tribunal in *Smt. Devki Devi v. State of H.P. and Ors.* O.A. No. 307/92, decided on July 2, 1992) and pointed out that in a similar situation, benefit of family pension has been extended to the mother of an unmarried Government servant. It was pointed out that this decision was taken to the Apex Court by the State Government but it has not been disturbed. We may quote the material part of the order passed by the Supreme Court of India below:

In the facts and circumstances of this case we are not inclined to interfere with the impugned order of the Tribunal. We, however, make it clear that leaving the question of law involved in this petition open to be decided in the appropriate case, SLP is dismissed.

13. Learned Counsel for the petitioner also placed reliance on decision of Punjab & Haryana High Court in *Kharak Singh Kang and Anr. v. State of Punjab and Anr.* (1990 (2) S.L.J. 608). In para 4 of this judgment it has been noticed that:

4. Having heard the learned Counsel for the parties, I find that the stand of the Respondents is hyper-technical and the case of the petitioners deserves to be examined from a, different angle. Undoubtedly, when the New Pension Rules came into force in 1951, parents of unmarried government servant were included in the definition of "family" for the purpose of grant of Family Pension. Apart from this, similar provisions were also made in the Punjab Civil Service Rules, Volume II, for including parents, that is, father and mother, who were dependent on the deceased for support, in the definition of Family Pension, while considering the question of grant of such like pension in various other contingencies like Gratuity, Wound and Injury Pension, Pensions to Dependants of Private Individuals, etc. The relevant provisions are reproduced from the Punjab Civil Services Rules, Volume II (Rules relating to Pensions and Provident Funds) First Edition, 1953:

8. 14 A Civil Government servant in receipt of pay of less than Rs. 200 a month, who may be serving in a civil capacity with a military force, may be granted by the competent authority a wound or injury pension or gratuity, and the family of such a Government servant, if he is killed on such service or dies of an illness or injury due to such service, may be granted a family pension, as given below:

....

ii) Family Pension

(For the purpose of awarding a family pension under this rule of the term "family" includes only wife, legitimate child, father or mother, dependent upon the deceased for support).

....

b) Conditions of grant

1. The pension is allotted for the support of the family -

(i) to the eldest surviving son;

(ii) failing a son, to the eldest widow;

(iii) failing both sons and widows, to the eldest surviving unmarried daughter;

(iv) these failing, to the father;

(v) failing (i) to (iv), to the mother.

....

A. In awarding a family pension under this rule, a competent authority may at its discretion make such modification in the mode of allotment or conditions of tenure set forth in clauses 1 to 8" as it may consider desirable with a view to adapting these to the legal or customary conditions applicable in the case of the family to be benefitted, or to providing against the improper application of the pension or its premature cessation. It may also award the pension to a dependent who does not strictly fall within the definition of "family".

....

8. 35 (1) A family pension will take effect from the day following the death of the Government servant or from such other date as the competent authority may decide.

(2) A family pension will ordinarily be tenable-

i) in the case of widow or mother until death or remarriage whichever occurs earlier;

ii) in the case of a minor son, or minor brother, until he attains the age of 18;

iii) in the case of an unmarried daughter or minor sister, until marriage or until she attains the age of 21, whichever occurs earlier;

iv) in the case of a father, for life

....

8. 38 The following conditions shall regulate the grant of pensions to the dependants of private individuals who are killed while assisting the State

authorities in their task of maintaining law and order:

5(1) If the deceased has left neither a widow nor a child, an award may be made to his father and his mother, individually or jointly, and in the absence of the father and the mother, to the minor brothers and sisters individually or collectively, if they were largely dependent on the deceased for support and are in pecuniary need:

....

6(1) A family pension will take effect from the date following the death of the person concerned or from such date as the Finance Department may decide.

(2) A family pension will ordinarily be tenable-

i) in the case of a widow or mother, until death or remarriage whichever occurs earlier;

ii) in the case of a minor son or minor brother, until he attains the age of 18;

iii) in the case of an unmarried daughter or minor sister, until marriage or until she attains the age of 21, whichever occurs earlier;

iv) in the case of a father, for life.

Further, in para 6 it has been concluded that:

6. ...taking light from, the law laid down by their Lordships of the Supreme Court and on the parity of reasoning, there is no justification for excluding "father" and "mother" of an unmarried deceased Government servant from the definition of "family" for the purposes of grant of Family Pension while introducing the Family Pension Scheme of 1964, especially when both "father" and "mother" stood included in the definition of "family" under the Family Pension Scheme of 1951.

14. We may point out here that "father" and "mother" were included in the Family Pension Scheme, 1951 but they were excluded in the Family Pension Scheme, 1964. Similar is the position in CCS (Pension) Rules, 1972 and Rule 22 of All India Service (D. C. R. B.) Rules, 1958.

15. Having referred to the aforesaid decisions, we turn to examine the question involved in this case. The question that the petitioner is the aged father of the deceased Shri R. G. Sood and was dependent on him till his death, has not been disputed by any of the Respondents, therefore, it is not difficult to conclude that the petitioner is the dependent father of the deceased. He had been depending on the deceased for his support and maintenance. He has been paid Death-cum-Retirement Gratuity of Rs. 48,900/-. The deceased was unmarried, therefore, he did not leave any family member within the meaning of Rule 54(14) "b) of the CCS (Pension Rules, 1972. The question that survives for determination is why father and mother of unmarried deceased son should be left high and do after the death of such a son especially when they are completely dependent on him? We see no reason for such exclusion. . The deceased having left no family

member within the meaning of Rule 54(14) (b) of the CCS (Pension) Rules, 1972, right to pension, as defined by the Apex Court in the aforesaid decisions, must become available to surviving recipient of the family which in the present case is the petitioner being the father. In view we are taking, is supported by the Apex Court decision in Smt. Bhagwanti's case (supra) to the greatest extent. The exclusion is, therefore, not only arbitrary and whimsical but also unreasonable. It appears, this kind of situation was not visualised when these Rules were framed, otherwise, the parents of the unmarried deceased Government servant ought to have been made the recipients of the family pension. Therefore, "it is high time that the Rule is amended suitably and parents of deceased unmarried Government servant are also included in the definition of "family" so that they are in a position to avail all the benefits under the Rules.

16. We do not strike down the Rule, however, we hold that in the facts and circumstances of this case, this Rule be not applied to the case of the petitioner and direct that the petitioner be granted Family Pension being the dependent of unmarried deceased son, namely, Shri R. G. Sood.

17. No other point was urged before us by the learned Counsel for the parties.

18. We direct the Respondents to calculate the Family Pension of the petitioner within two months. Arrears be paid within one month thereafter and in future the petitioner be paid Family Pension regularly. We make it clear that in case the arrears of the pension are not paid within the period aforesaid, Respondent-2 will pay the same with interest at the rate of 12% per annum till payment.

19. With the aforesaid observations and directions, the writ petition is allowed leaving the parties to bear their respective costs.