

(2007) 06 GAU CK 0061
In the Gauhati High Court

Lalhuami

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 01-06-2007

Acts Referred:

Citation : (2007) 3 GLT 894

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Judgement

Hrishikesh Roy, J.—Heard Mr. Joel J. Denga, learned Counsel appearing for the petitioner. Also heard Ms. Helen Dawngliani, learned Asstt. Govt. advocate for the State respondent.

2. The present case relates to the claim for family pension by the writ petitioner who is aged about 78 years and who claims benefit of family pension as dependent mother of the deceased Govt. servant, Lalhliappuii who died on 26.3.1994 while serving as Weaving Demonstrator in the Govt. of Mizoram. On death of the Government servant her daughter Ruth Lalruatmawii (for short Ruth) was granted family pension up to 11.6.2006, till Ruth attain the age of 25 years. After the daughter of the deceased Govt. servant became 25 years old, the family pension drawn by her on her mother's account was stopped. The petitioner who was fully dependent for her living on her daughter who died on 26.3.1994, was thereafter looked after by her grand daughter Ruth, who sustained writ petitioner on the family pension received by her as the daughter of the deceased Govt. servant.

3. By representation dated 17.7.2006, the petitioner requested the authorities for grant of family pension to her in terms of the Office Memorandum dated 21.7.1999 issued by the Government of India on the basis of recommendation made by the 5th Central Pay Commission granting family pension to parents, sons and daughters of a deceased Govt. servant.

4. Ms. Helen Dawngliani, learned Asstt. Govt. advocate appearing for the State

respondents submits that under the CCS (Pension) Rules, 1972 the petitioner is not entitled to grant of family pension on account of the deceased Govt. servant who was the daughter of the writ petitioner.

She submits that at the time of death of the deceased Govt. servant on 26.3.1994, she left behind a daughter (Ruth) who will have a prior claim to family pension in terms of the Office Memorandum dated 21.7.1999 and since it is a case where the deceased Govt. servant had left behind a claimant who has a prior claim on family pension, the claim made by the writ petitioner as dependent parent, is not liable to be entertained in terms of the Rules in force.

5. On the entitlement of the writ petitioner as a dependant parent of the deceased Govt. servant, it would be necessary to be examine the purport of the Office Memorandum dated 21.7.1999, which clarifies the entitlement to family pension by the dependent parents of a deceased Govt. servant, who were held eligible for such family pension, earlier by the Office Memorandum dated 27.10.1997 issued by the Government of India.

The Office Memorandum dated 21.7.1999 indicates as follows:

No.45/51/97-P&PW (E) Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Pension & Pensioners' Welfare) Third Floor, Lok Nayak Bhavan, New Delhi

Dated :21st July, 1999

OFFICE MEMORANDUM

Recommendations of 5th Central Pay Commission--Grant of Family Pension to Parents, sons and Daughters--Clarifications regarding.

Orders were issued in this Department's Office Memorandum of even number dated 5th March, 1998 prescribing the income criterion and certain other eligibility conditions for the grant of Family Pension to the dependent parents and widowed or divorced daughters of deceased Central Government employees in pursuance of the recommendations of the 5th Central Pay Commission. This Department has been receiving a number of references seeking clarifications on issues of relevance for implementation of these orders. After consideration of these references, the following clarifications are furnished for the guidance of all concerned.

1. In terms of the OM dated 5th March, 1998, parents who were wholly dependent on the deceased Government Servant when he/she was alive will also be entitled to Family Pension with effect from 1st January, 1998 subject to the fulfillment of the other conciliations prescribed in this regard. Doubts have been raised whether parents of-Government Servants who died prior to 1st January, 1998 will also be entitled to Family Pension. It is clarified that Family pension will be admissible in these cases subject to the following:

(a) The parents were wholly dependent on the Government Servant when he/she

was alive;

(b) The Government servant has not left behind a widow/widower, eligible son or daughter or a widowed/divorced daughter, who will have a prior claim to Family Pension in the order indicated;

(c) All other prescribed conditions are fulfilled.

The Family Pension will, however, be payable only with effect from 1st January, 1998, It will be the responsibility of the pension sanctioning authorities concerned to satisfy themselves, based on a scrutiny of the service records and other relevant documents, that the parents were, in fact, wholly dependent on the deceased Government Servant when he/she was alive and that he/she has not left behind any of the other specified beneficiaries who have a prior claim to the family pension,

(d) The family pension wherever admissible to parents, the mother will receive the pension first and after her death the father will receive the family pension.

2. The production of Income Certificate as stipulated in this Department's OM of 5th March, 1998 is also required to be insisted upon before authorizing the Family Pension to the eligible sons and daughters (including widowed/divorced daughters) and dependent parents. In case they are self-employed or are in receipt of income from source other than employment, Income Certificate furnished by the concerned beneficiaries themselves may be accepted for the purpose.

3. Eligible sons of deceased Government employees will also be required to furnish six-monthly certificates in regard to their marital status as is required of eligible daughters.

4. Payment of Family Pension is to be discontinued in the event of the eligible sons/daughters (including widowed/divorced daughters) getting married/remarried or on their earning a monthly income exceeding Rs. 2550/- or on attaining 25 years of age whichever is earlier. The crucial date for determining their continued eligibility to Family Pension shall be 1st January, 1998 and not 5th March, 1998 (the date of issue of this department's earlier Office Memorandum) as has been presumed by some of the ministries and departments.

2. These clarifications issue with the concurrence of the Department of Expenditure, vide their U.O. No. 1064/EV/98 dated 29.6.1999.

3. Ministry of Agriculture, etc. are requested to bring the contents of this Office Memorandum to the notice of their Controllers of Accounts, Pay & Accounts Officers and Attached and Subordinate Offices for their guidance and necessary action.

(Rattan Lai) Deputy Secretary to the Government of India.

6. From examination of Clause 1 of the aforesaid Memorandum dated 21.7.1999,

it appears that a decision has been taken by the Government of India, which decision is also applicable to the State of Mizoram that parents who were wholly dependent on the deceased Govt. servant would be entitled to family pension with effect from 1.1.1998 on the basis of the Office Memorandum dated 5.3.1998.

It is clarified by the Government of India by issuing the Memorandum dated 21.7.1999 that parents of Govt. servant who died prior to 1.1.1998 would also be entitled to family pension subject to the condition:

(a) The parents were wholly dependent on the Government Servant when he/she was alive;

(b) The Government servant has not left behind a widow/widower eligible son or daughter or a widowed/divorced daughter, who will have a prior claim to Family Pension in the order indicated.

7. In the instant case, as has already been noted, at the time of death of the Government servant she had left behind a daughter who would, in terms of the Office Memorandum dated 21.7.1999, will have a prior claim to family pension then the writ petitioner who was a dependent parent of the deceased Govt. servant.

The question is whether, when the daughter became disentitled to receive the family pension after attaining 25 years of age, it can be taken to be a case where in terms of Clause 1(b) of the Office Memorandum dated 21.7.1999 in the absence of any claimant belonging to the priority claimant category at least with effect from 11.6.2006, from which date the daughter become disentitled to receive family pension, the petitioner is entitled to family pension.

8. The object of issuing the Memorandum dated 5.3.1998 and the clarificatory Memorandum dated 21.7.1999 is to enable dependent parents of a deceased Govt. servant to receive family pension. Only when there are claimants whose claim will have apriority as indicated in Clause 1(b) of the Office Memorandum dated 21.7.1999, the dependent parents would not have a claim to family pension. But where there are no claimants of the priority category, the entitlement of the dependent parents to family pension would be logical, if one is to reach the benefit sought to be conferred by the Memorandum dated 5.3.1998 and 21.7.1999 to deserving dependent parents of a deceased Govt. servant.

9. Ms. Helen Dawngliani, however, submits that under Sub-clause 1(d) of Clause 1 in the Memorandum dated 21.7.1999, it would appear that the Government was conscious of a situation where family pension may not be admissible to some parents and accordingly she submitted that as the deceased had left behind a priority claimant to receive family pension in the shape of her daughter, at the time of her death on 26.3.1994, the writ petitioner although a dependent parent shall not be entitled to receive family pension.

10. I have carefully considered the submissions made by the learned Counsels appearing for the parties. I find from the narration of facts appearing in the

present case that from 11.6.2006, the priority claimant (Ruth), because of completion of 25 years of age becomes disentitled to receive the family pension, which she was receiving after the death of her mother on 26.3.1994. Thus, on or after 11.6.2006 there are no claimant belonging to the priority category who would be entitled to receive family pension for the death of the deceased Govt. servant Lalhliappuii.

Therefore, on or after 11.6.2006 as regards the family pension on account of Lalhliappui, there are none who is entitled to receive family pension belonging to the priority category as envisaged in Clause 1(b) of the Office Memorandum dated 21.7.1999. As long as Ruth was entitled to receive the family pension, the writ petitioner despite being a dependant parent of the Government servant, would not be entitled to receive any family pension. But after Ruth, the daughter of the deceased Govt. servant, does not remain eligible for family pension, it would be too unjust to interpret the provision of the Memorandum dated 21.7.1999 to mean that the dependant's mother aged about 78 years, who has all along relied upon the family pension received by her grand daughter to sustain herself on account of her daughter Lalhliappuii, would not be entitled to receive the benefit of the Office Memorandum dated 5.3.1998 read with the Office Memorandum dated 21.7.1999.

11. Considering the matter in its entirety, I am of the view that more humane and logical interpretation of the Memorandum dated 21.7.1999 would advance the cause of justice and, accordingly, the provisions of the Memorandum are interpreted to mean that when no claimant of the priority category are available to receive family pension, because of whatever reason such as age or re-marriage etc., the claim of the dependant parents to receive family pension would revive. In my view the right of a dependant parents of a Govt. servant is not taken away by the fact that earlier there were priority claimant to the family pension of a deceased Govt. servant. The said right remains suspended as long as there are claimant of the priority category who are entitled to receive family pension. However, when there are no priority claimant available to receive the family pension, the right of the dependant parent to receive the family pension cannot be said to be unenforceable.

12. In view of the above discussions the writ petition is allowed and it is held that the writ petitioner is entitled to receive family pension with effect from 11.06.2006 on account of her daughter Lalhliappuii, who was serving as Weaving Demonstrator with the Government at the time of her death on 26.3.1994.

13. Accordingly, the respondent authorities are directed to make available the family pension to the writ petitioner as per her entitlement with effect from 11.6.2006.

With the above direction the writ petition is allowed to the extent indicated above. No cost.