
(2009) 08 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (C) No. 31 of 2009

Lalmuanpuii

APPELLANT

Vs

The State of Mizoram and Others

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54, 54(12), 54(14), 54(7), 54(8)
Constitution of India, 1950 — Article 226

Citation : (2009) 1 GLD 114 Supp : (2009) 5 GLT 275

Hon'ble Judges : H. Baruah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H. Baruah, J.—Heard Mr. Michael Zothankhuma, learned Counsel for the writ petitioner as well as Mr. Aldrin Lallawmzuala, learned Addl. A.G. for the State respondents.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner has sought for a direction from this Court to the respondents to allow family pension to her on account of death of her father on 2.7.2002 who was a cook at K.V.K. Kolasib.

3. Petitioner's late father was married to Pi Vanlalruati in the year 1991 but subsequently, their marriage was dissolved before the petitioner was born. The petitioner was conceived during the subsistence of their marriage. On 25.5.1992 the petitioner was born. On 28.10.1998 during the life time of the petitioner's late father, he made a declaration in Form 3 under C.C.S. (Pension) Rules, 54 (12) and CCS. Medical (Attendants) Rules, 1944 Chapter 5:1 of his family members. After the death of the petitioner's father per declaration under Form 3 (Annexure-14), mother of the petitioner's late father applied for family pension and other benefits. The appropriate authority axcept the family pension allowed other benefits to the applicant mother on account of death of the father of the petitioner.

4. Subsequent thereto, the petitioner with requisite documents approached the respondent authorities to grant her family pension on account of death of her father on 2.7.2005 but her application was rejected on account of omission to mention her name by her late father as one of the family members in Form 3 (Annexure-14) countersigned by the Director of Agriculture, Minor Irrigation, Mizoram, Aizawl. Being aggrieved thereby the petitioner has approached this Court with a prayer for direction to the respondent authorities for granting family pension in view of the facts and the law involved therein.

5. There is no denial that the petitioner is not the daughter of Sh. Ramrochunga who married Pi Vanlalruati in the year 1991. During the subsistence of their marriage, for some reasons or the other the marriage between them did not last long and, accordingly, the marriage was dissolved before the petitioner was born. There is also no denial on the part of the respondents that the petitioner was not conceived during the subsistence of the marriage between Ramrochunga and Pi Vanlalruati. The petitioner obtained Heirship Certificate as well as Guardianship Certificate from the sub-District Council Court, Kolasib on 7.11.2006. At the time of application, the petitioner was a minor and is still a minor and as such her grandfather Sh. R. Biakmawia of North Hlimen, Kolasib District was appointed as legal guardian. She also obtained Certificate in regard to her marital status and income (Annexure-2 and 3). On filing of an application (Annexure- 4) for grant of family pension on account of death of her father through her guardian in Form 14 supported by requisite documents but, prayer was rejected on the ground that her name does not appear in Form 3 as one of the family members in spite of clarification made by respondent No. 4 to the Assistant Director (P), Directorate of Accounts and Treasuries vide Annexures-5, 6, 7, 8, 9, 10, 11 and 12. However, the Deputy Director (P), Directorate of Accounts and Treasuries vide letter dated 19.6.2007 regretted the claim of the petitioner on account of non inclusion of her name as one of the family members of her late father in Form 3 under Rule 54 of C.C.S. (Pension) Rules. The matter was, thereafter, taken up by the respondent No. 3. However, the Under Secretary, Accounts, Department of Finance informed respondent No. 3 that the petitioner alongwith two other claimants namely Pi Zahmingthangi and Pu Biakmawia, parents of the deceased employee (mother and father of her late father) were not eligible for family pension on account of the reasons stated in the letter dated 13.10.2007. As per provisions contained in Rule 54 of C.C.S. (Pension) Rules, 1972, family of the deceased Government servant is entitled to family pension. The petitioner, therefore, in view of the facts and the substantive law and the law laid down by the Supreme Court prays for a direction to the respondent authorities to grant family pension to her on account of death of her late father who was a cook in K.V.K. Kolasib. He died in harness on 2.7.2002.

6. This writ petition is resisted by the respondents mainly on one ground, that is, that the name of the petitioner does not appear in Form 3 as one of the family members of the late Ramrochunga who died on 2.7.2002 in harness.

7. Mr. Michael Zothankhuma while supporting the case of the petitioner submits that even in spite of failure on the part of the Government servant to make a declaration in respect of one of his family members, such family member(s) cannot be denied of family pension on the death of such Government servant. Referring to Rule 54 of C.C.S. (Pension) Rules, 1972, Rule 54 (14) (ii) and Rule 54 (7) (c) it is submitted that "family" in relation to a Government servant means wife in case of a male Government servant, or husband in case of a female Government servant, a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery, and son who has not attained the age of (twenty five) years and unmarried daughter who has not attained the age of (twenty five) years, including such son and daughter adopted legally before retirement. Therefore, an unmarried daughter who has not attained the age of (25 yrs.) is also entitled to family pension under the provisions of Rule 54 of the CCS, (Pension) Rules, 1972. Mr. Michael Zothankhuma in the context of omission of the name of the writ petitioner in Form 3 of Rule 54 also takes assistance of Rule 54 (7) (c) of the CCS. (Pension) Rules 1972. Clause (c) speaks as under:

(c) Where the deceased Government servant or pensioner is survived by widow but has left behind eligible child or children from a divorced wife or wives the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of. the death of the Government servant of pension had she not been so divorced.

Provided that on the share or shares of family pension payable to such a child or children or to a widow or widow ceasing to be payable, such share or shares, shall not lapse, but shall be payable to the either widow or widows and/or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

Therefore, if somehow the name of one of the children is missing from the declaration made by a Government servant, he/she cannot be denied to have the benefit of family pension. Admittedly in Form 3 (Annexure-14) name of the petitioner does not find place. This being the position in the face of the record, it cannot be said that the petitioner who is a minor till date and represented by her guardian is not entitled to have the family pension. Rule 54 (7) (c) of the CCS. (Pension) Rules, 1972 has taken care of the situation if the name of any of the children is left out in Form 3 of Rule 54 of CCS. (Pension) Rules, when the family includes the son and daughter who has not attained the age of 25 years including wife or the husband as the case may be. The petitioner being the daughter of the deceased Government servant in view of the provisions of Rule 54 (7) (c) of the CCS. (Pension) Rules 1972 is entitled to family pension.

8. The respondent authorities perhaps while attending the application for family pension made through the guardian of the writ petitioner failed to take care of the provisions of Rule 54 (7) (c) of the CCS. (Pension) Rules 1972 and thus illegally and erroneously rejected the prayer of the petitioner on account of

omission of her name as one of the family members of the deceased Government servant namely Ramrochunga in Form 3 (Annexure-14).

9. Mr. Aldrin Lallawmzuala, learned Addl. AG representing the State respondents having gone through the provisions of Rules 54, 54 (14) (ii) and 54 (7) (c) has not however resisted the writ petition and agreed to the submission advanced by Mr. Michael Zothankhuma, learned Counsel for the petitioner, although he raises a preliminary objection in view of non inclusion of the name of the petitioner in Form 3 of Rule 54 (12) and CCS. Medical (Attendants) Rule, 1944. Over and above, to strengthen the case of the petitioner, Mr. Michael Zothankhuma relies in the ratio laid down in the case between (1999) 5 SCC 237, G.L.Bhatia v. Union of India wherein their Lordships of the Hon"ble Apex Court in Para 2-5 held as under:

2. The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to family pension under the provisions of the Central Civil Services (Pension) Rules (for short "the rules") notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of the provisions contained in Rule 54 of the rules. It is too well settled that where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate.

3. Under Rule 54 Sub-rule (14)(b)(i) the expression "family" has been defined thus:

54. (14)(b)(i) Wife in the case of a male government servant, or husband in the case of a female government servant....

4. Sub-rule (8)(ii) of Rule 54 states that:

54. (8)(ii) If a deceased government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.

5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant. The impugned order is, accordingly, set aside and this appeal stands allowed.

The facts involved in this present case are also similar to the facts of the case of G.L. Bhatia (supra) dealt with by the Hon"ble Apex Court.

10. This Court, therefore, taking the ratio of the case of G.L. Bhatia (supra) the provisions of Rule 54 (14) (ii) and 54 (7) (c) of the C.C.S. (Pension) Rules 1972 is of the considered view that the denial of the family pension to the petitioner on account of death of her father cannot be sustained.

11. This writ petition is accordingly allowed with the following directions.

That the respondent authorities shall grant the family pension to the writ petitioner in accordance with the Rule(s) applicable thereto from the date of death of the petitioner's father made through her guardian which shall be received by her through her guardian until she attains her majority. The exercise shall be made by the respondents within a period of one month from the date of receipt of this order.

No cost.