

(2006) 05 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 112 of 2005

Lalrimawia

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54, 54(12), 54(6)
Constitution of India, 1950 — Article 14

Citation : (2006) 2 GLT 811

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : Joel J. Denga and Rualkhuma Hmar, for the Appellant; N. Sailo, for the Respondent

Final Decision : Allowed

Judgement

B.P. Katakey, J.—By this writ petition the guardian of a disabled person has challenged the communication dated 31st May 2005 issued by the Assistant Director (Pension) Government of Mizoram, denying the family pension to the disabled son of the Government servant under the provision of Rule 54 of the Central Civil Services (Pension) Rules 1972 (in short Pension Rules) on the ground that no declaration as required under Sub-rule 12 of Rule 54 of the said rule was made by the Government servant about the disablement of his son while he was in service.

2. The fact involved in the present writ petition in brief is that Shri Rothangvunga was a group-D employee under the Government of Mizoram who retired from service on 31.3.2004 after rendering almost 29 years of service leaving behind three children i.e. two sons and one daughter, who subsequently died on 4.2.2005. After the death of the father an application on behalf of one of his son namely Master Lalrimawia was filed by his legal guardian Miss Lalenzami, his elder sister claiming family pension under Rule 54 of the pension Rules claiming that though he crossed 25 years of age, he being a permanently disabled person

is entitled to claim family pension under the said provision of law. Two medical certificates, one issued by the Presbyterian Hospital, Durtlang dated 18.2.2005 and another by the Board of Medical Examination, Government of Mizoram, Aizawl dated 23.3.2005 were enclose in support of the claim that the Petitioner suffering from mental and physical retardation since childhood. The prayer for such family pension was rejected by the Assistant Director (Pension) vide communication dated 31.5.2005 on the ground of not making declaration by the Government servant during the period while he was in service and hence the present writ petition.

3. I have heard Mr. Joel J. Denga, learned Counsel for the Petitioner and Mr. N. Sailo, learned state counsel appearing on behalf of the Respondents.

4. Mr. Denga, learned Counsel for the Petitioner has submitted that it is not in dispute that no declaration was made by the father of the Petitioner about his disablement while he was in service and as because no such declaration was made the Petitioner cannot be deprived from his right to get family pension under the provision of the Pension Rules, he being a disabled person, more so when the disablement of the Petitioner has been duly certified by the medical board of the Government of Mizoram and the said disablement has not been disputed by the Respondents in the affidavit-in-opposition filed. The learned Counsel submits that whether any declaration is made or not by the Government servant a person legally entitled to get family pension under the Pension Rules has to be paid family pension subject to fulfillment of conditions stipulated in the Rules. It has further been submitted that when post retired spouse and the children of a Govt, servant is entitled to family pension after the death of the Government servant, there is no reason why such family pension should be deprived to a disabled person on the ground that no declaration has been made by the Government servant, regarding such disablement, while he was in service. The learned Counsel therefore, submits that the necessary direction may be issued to the authority to pay the family pension admissible to the Petitioner under the provision of the Pension Rules.

5. Mr. Sailo, learned State Counsel on the other hand has submitted that Clause (c) of Sub-rule 12 of the Rule 54 of the Pension Rule requires the Government servant to make the declaration, while in service, about the disablement of his children, to become entitle to get family pension. According to the learned State counsel as it is an admitted position of fact that no such declaration about the disablement of the Petitioner was made by the Government servant while he was in service, the claim for family pension was rightly rejected by the Government.

6. There is no dispute in the present case that no declaration was made by the Government servant, while he was in service, about the disablement of the Petitioner. Rule 54 of the Pension Rules provides that the family of the Petitioner is entitled to family pension after the death of the Government servant. Sub-rule 12 of the Pension Rules, which is relevant for the purpose of this case, requires a Government servant to give details of his family in Form-3 to the Head of the

office, which naturally includes furnishing particulars regarding the disablement of any of his children so as to claim family pension beyond the permissible age, i.e., in case of a son up to 25 years and in case of a unmarried daughter, until she attains 25 years or until she gets married, whichever is earlier. Clause (i) of the proviso to Sub-rule 6 also provides that the family pension shall be resumed to the son or daughter of a Government servant is suffering from any disorder or disability of mind including mentally retarded or who is physically crippled or disabled shall be payable to him/her for life. For better appreciation Clause (i) of the proviso to Sub-rule 6 of Rule 54 is quoted below:

(i) if such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor children in the order set out in Clause (iii) of Sub-rule (8) of this rule until the last minor child attains the age of (twenty five) and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind (including mentally retarded) or who is physically crippled or disabled and shall be payable to him/her for life.

7. Sub-rule 12 of Rule 54 requires the Government Servant to give details of his family in Form 3 to the Head of the department. Clause (c) of the said Sub-rule also provides that as and when the disability referred to in proviso to Sub-rule 6 of Rule 54 manifests itself in a child which makes him/her unable to earn his/her livelihood, the facts should be brought to the notice of the head of the office duly supported by medical certificate from a medical officer, not below the rank of a Civil Surgeon. For better appreciation Sub-rule 12 of Rule 54 is quoted below in its entirety;

12. (a)(i) As soon as a Government servant enters Government service, he shall give details of his family in Form 3 to the Head of Office.

(ii) If the Government servant has no family, he shall furnish the details in Form 3 as soon as he acquires a family.

(b) The Government servant shall communicate to the Head of Office any subsequent change in the size of the family, including the fact of marriage of his female child.

(c) As and when the disability referred to in proviso to Sub-rule (6) of Rule 54 manifests itself in a child which makes him/her unable to earn his/her living the fact should be brought to the notice of the Head of Office duly supported by a Medical Certificate from a Medical Officer, not below the rank of a Civil Surgeon. This may be indicated in Form 3 by the Head of Office. As and when the claim for family pension arises, the legal guardian of the child should make an application supported by a fresh medical certificate from a Medical Officer, not below the rank of Civil Surgeon, that the child still suffers from the disability.

(d)(i) The Head of Office shall, on receipt of the said Form 3, get it pasted in the service Book of the Government servant concerned and acknowledged receipt of

the said Form 3 and all further communications received from the Government servant in this behalf.

(ii) The Head of Office on receipt of communication from the Government servant regarding any change in the size of family shall have such a change incorporated in Form 3.

8. From the reading of the aforesaid provision of the Pension Rules, it is therefore, evident that the children of a Government servant is entitle to family pension even after crossing the age of 25 years if such children is disabled within the meaning of the said rule. The question, which requires consideration by this Court, is whether a disabled child can be deprived from a family pension on the ground that no declaration was made by the Government servant while he was in service.

9. As discussed above, Sub-rule 6 of Rule 54 provides for payment of family pension to the disabled child for life. Clause (c) of Sub-rule 12 requires that as and when such disability occurred to a child which makes him or her unable to earn livelihood it should be brought to the notice of the Head of the office duly supported by the medical certificate from a medical officer not below the rank of the Civil Surgeon. The said provision does not require that the fact of disability must be brought to the notice of the Head of the office by the Government servant during the period of his service i.e. prior to his date of retirement. One may became disabled even after the retirement of a Government servant or even after his death. Can it be said that in case such disablement occurred to a child after the retirement or death of the Government servant, such disabled child would be deprived from family pension? The answer is obviously "No". Under the Pension Rules a right has been created in favour of a disabled child to claim family pension for the whole life, subject of course to the proof of his disablement.

10. In the instant case, the disablement of the Petitioner has not been denied by the State Respondents in their affidavit-in-opposition. It is evident from the medical certificate issued by the Medical Board of the Government of Mizoram dated 23.3.2005, which was issued after examination of the Petitioner, that he is suffering from mental and physical retardation since childhood and requires constant support from his family throughout his life. The existence .of the said certificate issued by the Medical Board has also not been denied or disputed by Respondents in their affidavit-in-opposition.

11. The Apex Court Smt. Smt. Bhagwanti Vs. Union of India (UOI), while considering the question whether the post retrial spouse and the children also entitled to family pension and whether the provision contained in the Pension Rules denying such family pension is constitutionally valid, has held that such provision denying the family pension is ultra vires Article 14 of the Constitution of India and cannot be sustained. The Apex Court has further held that the purpose for which the family pension is provided is frustrated if children born after

retirement are excluded from the benefit of the family pension and in the event of death of the Government servant such minor children would go without support.

12. The Apex Court in *Bhagwanti Mamtani v. Union of India* the Apex Court while negating the submission of the Union of India that as the claim for family pension of a disabled person cannot be entertained on the ground of delay, has held that the benefit of the provision of the rule to a mentally disabled person cannot be denied on the ground of making such claim belatedly. The Apex Court in (1999) 5 SCC 237, *G.L.Bhatia v. Union of India* has held that any nomination made contrary to the statute denying the claim of the rightful person to get family pension will not disentitle such person from family pension under the Pension Rules.

13. Following the principles laid down by the Apex Court in the aforesaid cases, it is therefore, evident that when the children born out of the marriage of the Government servant after retirement is entitle to family pension, the children who became disabled after retirement is also equally entitled to family pension as the purpose of providing the family pension to the disabled child of a Government servant is to provide some support to such children during his/her lifetime, as in the event of death of the Government servant such children would go without any support and because of their disablement they cannot earn their own livelihood. The pension being payable on consideration of the past services rendered by the Government servant and the avowed purpose of the Pension Rules being to provide sustenance in old age and some solace that in the event of his/her death, children will get some support in the form of family pension, such pension cannot be deprived to a disabled children solely on the ground that no declaration was made by the Government servant, while in service, as in that event the very purpose of granting family pension would be defeated.

14. In the instant case the claim of the Petitioner for family pension has been rejected on the ground of not making any declaration by the Government servant, while he was in service. As held above, even if no declaration is made that will not disentitle any disabled children of a Government servant from claiming family pension under the Rules.

15. In view of the aforesaid discussion, I am of the view that the Petitioner is entitled to family pension on the ground of his disablement under the provision of Pension Rules, as, such disablement has not been denied by the Respondents. I therefore, direct the Respondents to pay family pension payable to the Petitioner subject of course to the fulfillment of the conditions stipulated in the Rules. In case there is any doubt about the disablement of the Petitioner, the Respondent is free to have another medical examination by medical board to ascertain his disablement.

16. The writ petition is accordingly allowed. The family pension including arrear, to which the Petitioner is entitled to, is directed to be released within a period of

three months from the date of receipt of this order. No cost.