
(2012) 04 RAJ CK 0091

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5181 of 2009

Madhu Vyas (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Contract Act, 1872 — Section 72

Citation : (2012) 134 FLR 937 : (2012) 4 RLW 2967 : (2013) 2 SCT 551 :
(2012) 3 WLN 127

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Mukesh Rajpurohit, for the Appellant; K.K. Bissa and Mr. Jagdish Vyas, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—By the present writ petition, the petitioner has claimed that Dearness Allowance (DA) paid to her on the family pension, which she was getting upon the death of her husband, could not be recovered back under the Order Annex.9 dt. 04.05.2009 issued by the respondent-Treasurer (Rural), Jodhpur. The petitioner's husband was working as Nurse Grade-II and died while in service on 03.03.1983. The present petitioner was not only given family pension but was also granted compassionate appointment under the Rules of 1975 but the family pension continued to be paid to her during the period of her service upon being appointed on compassionate grounds. Upon her own superannuation, it was found that she was paid Dearness Allowance twice over included in the family pension payable to her and another in the regular pay paid to her while she was in service having been appointed on compassionate grounds. The recovery proceedings of such excess Dearness Allowance paid to her was initiated and a sum of Rs. 1,06,968/- under Annex.9 dt. 04.05.2009 was sought to be recovered by 1/3rd deduction from the regular family pension, which was again started to be paid to her after her own superannuation by

deducting a sum of Rs. 1,021/- being 1/3rd of Rs. 3,063/-, the family pension payable to her per month.

2. Learned counsel for the petitioner, Mr. Mukesh Rajpurohit, relying upon the earlier decision of this Court in the case of petitioner in her writ petition being SBCWP No. 3748/1990, decided by a coordinate bench of this Court on 14.02.1992, [WLR 1992 (S) 312], submitted that since such recovery was (sic) from her without giving an opportunity of hearing, this Court (sic) to send the matter back to the competent authority for deciding (sic) after hearing her and till then no recovery was to be made. But, (sic) the impugned Order Annex.9 dt. 04.05.2009 was passed, she (sic) this Court again.

3. The respondents have filed reply to writ petition and, learned counsel for the respondents, Mr. K.K. Bissa and Mr. Jagdish Vyas, relied upon the another decision of this Court in almost similar circumstances in the case of Smt. Ratan Devi vs. State of Rajasthan & Anr. in SB CWP No. 6979/1993, decided by then Hon''ble Chief Justice on 02.07.1997, wherein it was held that such Dearness Allowance could not be paid twice over along-with her family pension since she had been getting Dearness Relief along with her present salary on the basis of her employment with the State Government.

4. Mr. K.K. Bissa and Mr. Jagdish Vyas, learned counsels for the respondents also drew the attention of the Court towards Rule 77 of the Pension Rules, 1996, particularly Clauses (ii) and (iii) thereof, which specifically provide that payment of Dearness Relief on family pension would remain suspended during the period of reemployment or employment of the pensioner with the Government. They, therefore, submitted that recovery being made under the impugned Order Annex.9 dt. 04.05.2009 is perfectly just and legal.

5. Having heard learned counsel for the parties, this Court is of the opinion that payment of Dearness Allowance to the present petitioner twice over was not only contrary to Rule 77 of the Pension Rules, 1996, which is quoted below for ready reference, but was also wrong in law as has been held by the then Hon''ble Chief Justice in the judgment relied upon by the respondents in the case of Ratan Devi (supra).

Rule 77- 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 Government may specify from time to time.

(ii) The payment of Dearness Relief will remain suspended when the petitioner (including family pensioner) is employed/re-employed in a Central/State Government Department or employed/reemployed/ permanently absorbed in a Central or a State Government Company, Corporation, Undertaking or autonomous body/statutory body, local body, cooperative society, institution etc. if it is wholly or substantially owned or controlled by the Central/State

Government or in which the Government has substantial financial interest or receiving Grand-in-Aid from the Government to meet its administrative expenditure or in Reserve Bank of India or in a Public Sector Bank or in GIC/LIC etc.

(iii) Dearness Relief only family pension shall remain suspended during the period of re-employment or employment of the pensioner, either before grant of pension or after grant of pension.

(iv) The State Government employees who get permanently absorbed in terms of Rule 33 and opt from lump sum payment in lieu of pro rata monthly pension in terms of Rule 34, shall not be eligible for Dearness Relief.

(v) In the case of pensioners who are in receipt of more than one pension (including family pension) the Dearness Relief will be calculated on the total of all pensions taken together.

Operative portion of judgment pronounced on 8.12.94 in Civil Appeal No. 3542-46/90 by Supreme Court of India in Union of India & Others versus G. Vasudavan Pillai & Others is reproduced below-

Denial of Dearness Relief on Pension/family pension in cases of those ex-servicemen who got re-employment or whose dependents got employment is legal and just. The decision to reduce enhanced pension from pay of those ex-servicemen who were holding civil post on 1.1.1986 following their re-employment is unconstitutional.

[See RSR Volume-I Part A Rule 24 Order No. F. 12 (4) FD (Rules)/ 2008 dt. 4.3.2011]

6. It will be useful to extract the relevant portion from the said judgment delivered in the case of Ratan Devi (supra) here under for ready reference:

This writ petition has been filed by Smt. Ratan Devi impugning an order bearing No. F.1(36)FD (Gr.2)/87 dt. 10.8.1988 passed by the Deputy Secretary to the Government, Finance (Gr.2) Department, whereby an explanatory memorandum for the guidance of Pension Disbursing Authorities was issued for payment of Dearness Relief under the revised pattern. A further prayer was made by the writ petition contending, inter alia, that the State of Rajasthan and the Director of Pension Department should be directed to pay Dearness Relief on the family pension which was being given to the petitioner.

The contention of the writ petition, inter alia, is that her husband who was serving in the Education Department as a Teacher since 1974, died on 24.7.1988 and after his death she was granted family pension. On 12.10.1989 the writ petition was appointed in Government service as a Class IV employed on compassionate ground. She received her arrears of pension on 25.6.1993 in which Dearness Relief upto 11.10.1989 was paid to her and for the subsequent period only the amount of basic pension was paid. She made a representation to

respondent No. 2, the Director of Pension Department, Jaipur, giving out, inter alia that the Dearness Relief should be paid to her. She came to know thereafter that it was only pursuant to a memorandum dt. 10.8.1988 issued by the Deputy Secretary to the Government, that the payment of Dearness Relief stood suspended for the present when any of the holder of the pension was employed/reemployed in a Central/State Government Department or employed/reemployed/permanently absorbed in a Central or a State Government Company, Corporation, Undertaking or autonomous body/statutory body, local body, cooperative society, institution etc. if it is wholly or substantially owned or controlled by the Central/State Government or in which the Government has substantial financial interest or receiving Grant in aid from the Government to meet its administrative expenditure or in Reserve Bank of India or in a Public Sector Bank or in GIC/LIC etc.

The learned advocate for the respondents cited before me a judgment in Civil Appeal No. 3543-46 of 1990 Union of India & Ors. vs. G. Vasudevan Pillai & others, decided on 8.12.1994 (reported in UJ (SC) 1995 (1) 294) by the Hon'ble Supreme Court of India. The Hon'ble Supreme Court while deciding the said appeal observed:-

In (sic) this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of re-employed pensioners it would be permissible in law to deny D.R. on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of D.R., as they get Dearness Allowance on their pay which allowance is not available to those who do not get re-employed.

The Supreme Court found no logic and basis for classifying reemployed pensions on the basis of their being on employment on 1.1.1986. Indeed, no justification has been canvassed before the Supreme Court. The decision in T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Others, was distinguished on facts. The Supreme Court's conclusion accordingly, were that denial of Dearness Relief on pension/ family pension in cases of those ex-servicemen who got re-employment or whose dependants got employment is legal and just. The decision to reduce the enhanced pension from pay of those ex-servicemen only who were holding civil posts on 1.1.1986 following their reemployment, however, was held as unconstitutional.

Mr. Kasliwal appearing for the writ petition contended before me that the decision of the Accountant General of Rajasthan was otherwise. In view of the clear verdict of the Supreme Court, I think this Court has no other alternative but to abide by the same.

I hold accordingly that the writ petition is not entitled to any Dearness Relief along with her family pension since she has been getting Dearness Relief along

with her present salary on the basis of her employment with the State Government. Accordingly, the writ application stands dismissed. There will be no order as to costs.

7. Though it appears from the record that Annex.9 impugned order dt. 04.05.2009, which is a communication sent by the Treasury Officer (Rural), Jodhpur to the Branch Manager of SBBJ, Jodhpur, through whom the family pension of petitioner is paid and a copy whereof has been endorsed to the present petitioner also, but no specific order for recovery of the said amount appears to have been passed after hearing the petitioner in this regard. A perusal of the communication Annex.7 dt. 12.03.2009 and S.B. Civil Writ Petition No. 5181/2009 Annex.8, shows that the Treasury Officer (Rural), Jodhpur communicated to the Branch Manager of SBBJ vide Annex.7 dt 12.03.2009 that vide letter No. 4433 dt. 05.12.2008, the Directorate of the Pension had informed that Dearness Relief is not payable if the person entitled to the family pension, namely, the widow has been re-employed and copy of guidelines dt. 30.07.1994 were forwarded to the Bank. Thereafter, computation of the family pension with no Dearness Relief appears to have been made vide Annex.8 dt. 12.03.2008 at Rs. 3,063/- per month payable w.e.f. 01.08.2008; and thereafter the impugned order Annex.9 dt. 04.05.2009 was again sent by the Treasurer, (Rural), Jodhpur to the Branch Manager of SBBJ, Jodhpur for effecting recovery of Rs. 1,021/- per month from the family pension of Rs. 3,063/- payable to the petitioner every month. The copies of both orders viz. Annex.7 as well as Annex.9 have been endorsed to the present petitioner, Smt. Madhu Vyas also, to which no objection was raised by her.

8. Learned counsel for the petitioner, Mr. Mukesh Rajpurohit, was unable to substantiate the claim of Dearness Relief on the family pension during the period of employment of the petitioner herself, who was appointed on compassionate grounds after the death of her husband on 03.03.1983. Rule 77 of the Pension Rules, 1996 and judgment of this Court in the case of Ratan Devi (supra) deciding the writ petition vide the judgment dt. 02.07.1997 relying upon the Supreme Court decision in the case of Union of India & Ors. vs. G. Vasudevan Pillay & Ors. reported in UJ (SC) 1995 (1) 294, as extracted above, clearly negates the relief of such Dearness Allowance to the present petition. The money paid under the mistake of law is undoubtedly recoverable from the petitioner even as per Section 72 of the Indian Contracts Act. The recovery from the family pension of such mistaken payment of Dearness Allowance of Rs. 1,06,968/-, is therefore beyond the pale of challenge. In such circumstances, even if the impugned order has been passed without giving a formal opportunity of hearing to the petitioner, though it ought to have been granted in deference to the directions of this Court in the present writ petition, decided on 14.02.1992, it would not now enure to the benefit to the petitioner now in view of aforesaid legal position of relevant rules and judgment of this Court in the case of Ratan Devi (supra), relying upon Supreme Court decision. Consequently, the present writ petition filed by the petitioner is found to be devoid of any merit and the

same is hereby dismissed with order as to costs.