

(2009) 07 GAU CK 0042

In the Gauhati High Court

Case No : Writ Petition (C) No. 1750 of 2008, (in Principal Seat) and Writ Petition (C) No. 885 of 2007 (in Imphal Bench)

Miss Okram Indubala Devi

APPELLANT

Vs

The Gauhati High Court and Others

RESPONDENT

Date of Decision : 31-07-2009

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54(6), 54(8)

Citation : (2009) 1 GLD 200 Supp : (2009) 4 GLT 276

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Sarma, J.—Feeling aggrieved by non-consideration of the prayer of the petitioner by the respondent authorities to grant family pension to the petitioner after the death of her parents, she has approached this Court by filing this writ petition for issuance of Mandamus or appropriate direction in her favour.

2. Necessary facts as narrated in the pleadings and as may be gathered from the materials placed before us are summarized as follows:

The father of the petitioner, Late Okram Babu Singh who was serving as a "Jamadar" in the Imphal Bench of Gauhati High Court having been retired from service was in receipt of pension under PPO No. SM/1561, till his expiry on 28.5.2003. After his death, his widow, namely, Smt. O. Nupimacha Devi, the mother of the petitioner was in receipt of the family pension. She also expired on 21.9.2006. The petitioner is a mentally retarded unmarried daughter of Late Okram Babudhon Singh and after expiry of her mother she being entitled to get the family pension in terms of Rule 54(6) of the Central Civil Services (Pension) Rules, 1972, filed an application before the Respondent No. 2. The Registrar, Gauhati High Court, Imphal Bench on 2.7.2007 for doing the needful to grant family pension to her, which was duly received by the authority concerned. Further case of the petitioner is that she is mentally handicapped person since

her childhood and unable to look after herself. Presently, the petitioner is 40 years old and due to her mental retarded condition, there is no possibility of entering into a marital knot. The grievance of the petitioner has not been attended to by the authority for redressal, finding no other alternative, ultimately, the petitioner has approached this Court by filing this writ petition.

3. No counter has been filed by the respondents and the basic facts as pleaded in this case are not in dispute.

4. The pensionary benefit payable on account of services rendered by an incumbent in an office is not a bounty but it is a right. Such pensionary benefit is provided in consideration of the flawless service rendered by the incumbent while he was in service transmitting such right to appropriate legal heirs after his, her death, in the case of a family pension. This provision is made keeping in mind the responsibility of a Welfare State and in tune with Social Justice to be rendered to an individual under the scheme of the Constitution of India.

5. In order to provide, streamline and regulate the provision relating to payment of pension to a superannuated employee, the Central Government framed a set of Rules known as "Central Civil Services (Pension) Rules, 1972" which came into force from 1st June, 1972. The relevant provision to answer the dispute raised in this petition can be traced from the Rule 54 Sub-rule (6), which is quoted herein-in-below:

(6) The period for which family pension is payable shall be as follows :

(i) in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier;

(ii) in the case of a son, until he attains the age of (twenty-one) years; and

(iii) in the case of an unmarried daughter, until she attains the age of (thirty) years or until she gets married, whichever is earlier;

Provided that if the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-one years in the case of the son and (thirty) years in the case of the daughter the family pension shall be payable to such son or daughter for life subject to the following condition, namely:

(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-one or thirty) as the case may be, and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him/her for life;

(ii) if there are more than one such son or daughter suffering from disorder or

disability of mind or who are physically crippled or disabled, the family pension shall be paid in the following order, namely:

(a) firstly to the son, and if there are more than one son, the younger of them will get the family pension only after the lifetime of the elder;

(b) secondly, to the daughter, and if there are more than one daughter, the younger of them will get the family pension only after the lifetime of the elder;

(iii) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor;

(iv) before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child;

(v) the person receiving the family pension as guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

6. From the scanty facts which are made available to us, we find from the affidavit appended to the petition that the next friend of the petitioner through whom she has presented this writ petition is the elder brother of the petitioner and admittedly he has attained majority. The assertion regarding the mental ailment of the petitioner, it is found to be substantiated from the certificate issued by the Professor and Head, Department of Psychiatry, Regional Institute of Medical Science, Imphal on 2.8.2006 whereby it is certified that the petitioner is under treatment in the said department since her early childhood and she has been diagnosed as a mentally retarded person and she is unfit to resume normal duties. In the said certificate she has also been advised for rest further disclosing that she would remain unfit and need lifelong supervision and nursing care as she cannot look after herself mentally.

7. In terms of the provision made in Rule 54(6)(iii) and proviso thereto the petitioner being the unmarried daughter of the Government Servant and suffering from disability of mind and being disabled in such a manner so as to earn livelihood after attaining the age of 30 years, she is entitled to be paid family pension. But the materials available on record do not disclose whether there is any such minor child/children left by the deceased, apart from the petitioner and her brother, the next friend, who has attained majority in the meantime.

8. The petitioner submitted an application before the respondent No. 2, which was received way back on 2.7.2007 but nothing has been done so far by the authority concerned upon the said representation.

From what has been stated hereinabove and in terms of Rule 54(6) of Central Civil Services (Pension) Rules, 1972, subject to Clause (iv) and (v) of the provision to such Sub-rule (6), the petitioner would be entitled to be paid the family pension under the aforesaid PPO. SM/1561 after the death of her parents, her father being a retired employee under the respondents and since expired and her mother also having left for heavenly abode. After the death of the pensioner Sri Okram Babudhon Singh, the family pension in question was paid to his widow, the mother of the petitioner and as such, there is no doubt or dispute as regards the entitlement of the family pension by an appropriate defendant after expiry of wife of Late Okram Babudhon Singh.

9. Answering the entitlement of the petitioner in a positive manner as indicated above, this petition is disposed of with a direction that the respondents, more particularly, the respondent No. 2, The Registrar, Gauhati High Court, Imphal Bench, Manipur, shall proceed to act forthwith to redress the grievance of the petitioner for payment of the family pension subject to scrutiny under Rule 54(6) of the Central Civil Services (Pension) Rules, 1972. The entire process shall be completed within a period not later than 1 (one) month from the date of receipt of the certified copy of this order. Further, the petitioner would be entitled to the arrear amount of pension due after expiry of her mother. The petitioner being certified to be a mentally retarded, unmarried daughter of an ex-serviceman of this Court, the respondent shall do the needful with due promptness as indicated above.

10. The writ petition is allowed to the extent as indicated above.

11. No Cost.