

(2017) 04 AHC CK 0221
In the Allahabad High Court
Case No : 18377 of 2016

MOHD RAEES

APPELLANT

Vs

STATE OF U P AND 4 OTHERS

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Citation : (2017) 04 AHC CK 0221

Hon'ble Judges : Manoj Kumar Gupta

Bench : Single Bench

Advocate : Ramakant Tiwari, Amar Nath Bhargava, Baleshwar Chaturvedi

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the petitioner, learned standing counsel for respondent no.1 and Sri Baleshwar Chaturvedi for respondents 2 to 5.

2. The father of the petitioner was a regular employee of the Respondent-Corporation. He retired after attaining the age of superannuation on 30 May 1991. He was being paid pension after retirement. He died on 2 August 2011. The mother of the petitioner died on 10 March 2007, i.e., before his father died. The petitioner claims that he is suffering from polio since childhood. As a result, he is incapacitated to the extent of 40%. The petitioner, therefore, submitted a claim for being granted family pension by making representation dated 5 October 2011. He was asked to submit a certificate from Chief Medical Officer, Kanpur evidencing the nature of disability and whether he was in a position to earn his livelihood or not. The petitioner got himself medically examined by the Chief Medical Officer, Kanpur Nagar and thereafter submitted a medical certificate issued by him on 21 December 2011 showing extent of disability as 40%. The fifth respondent sent a communication to Anu Sachiv (Pension), U.P. Power Corporation Ltd dated 4.5.2012, seeking his guidance in the matter. When no action was taken in the matter, the petitioner sent repeated reminders. On 9.12.2015, the fourth respondent addressed a communication to the Chief

Medical Officer, Kanpur Nagar requiring him to certify as to whether the petitioner is in a position to earn his livelihood or not. In response thereto, the Chief Medical Officer on 2.1.2016 intimated the fourth respondent that apart from certifying the extent of disability, he is not having any guidelines in his department on the basis of which such a certificate could be issued. Thereafter, it seems that no further action was taken by the Respondent- Corporation in the matter, compelling the petitioner to file the instant writ petition seeking a mandamus commanding the respondents to grant family pension to him w.e.f. 3.8.2011 in terms of the Government Orders dated 25.10.1990, 6.8.1981, 12.11.1997 and 20.5.1999.

3. Counsel for the petitioner submitted that the petitioner is entitled to family pension in terms of Office Order dated 25.10.1990 whereby the Respondent-Corporation has adopted Government Order dated 6.8.1981 which contemplates award of family pension to a disabled family member of a deceased government servant. It is urged that the petitioner had duly submitted two medical certificates issued by the Chief Medical Officer, Kanpur Nagar, one of the year 1995 and another of the year 2011 certifying his disability being of permanent nature to the extent of 40%. It is urged that the Respondent-Corporation is wrongly not following the Office Order and the provision contained in the Government Orders issued in this regard from time to time.

4. Sri Baleshwar Chaturvedi, learned counsel appearing on behalf of the Respondent-Corporation submitted that one of the medical certificate, which purports to be of the year 1995 is a manipulated one, as there is over-writing on the said certificate. He further submitted that in order to entitle a person to family pension, apart from him being a physically handicapped person, the disability should have been such which had been acquired during the service tenure of the employee and prior to his death. It is submitted that there is no evidence on record that the disability was acquired by the petitioner during the service tenure of his father.

5. Rebutting the contention advanced by learned counsel for the Respondent-Corporation, Sri A. N. Bhargava, learned counsel for the petitioner submitted that the Government Order dated 6.8.1981 has further been amended by Government Order dated 12.11.1997. Now, even ailments or disabilities acquired subsequent to the retirement of a Government employee have been covered.

6. I have considered the submissions made by learned counsel for the parties and perused the material on record.

7. It is not disputed that by virtue of the Office Order dated 25.10.1990, the Respondent-Corporation has adopted the Government Order dated 6.8.1981. The Government Order dated 6.8.1981 contemplates grant of family pension to the family member of a deceased employee, even after he has attained majority, in case he is suffering from some physical or mental disability. The grant of family pension is subject to certain conditions one being that the disability whether

physical or mental should have been acquired during the service tenure of the government employee and prior to his death. It is not disputed that the Government, having regard to the difficulties being faced by such dependents of the deceased government servants, had made amendment in the Government Order dated 6.8.1981 by issuing Government Order dated 12.11.1997. The condition that the disability should have been acquired during the service tenure of the Government Servant or prior to his death has now been done away with and even if the disability has been acquired after retirement of a government servant it would stand covered. The Government Order dated 6.8.1981 specifically states that the object of issuing the same is to provide social security to such dependents of a deceased government servant who are incapacitated on account of physical or mental illness and are unable to earn their livelihood. It is a social welfare scheme and its provisions are to be construed liberally. In case, the Respondent-Corporation was of the opinion that the certificate filed by the petitioner of the year 1995 is an interpolated one or not worthy of reliance, it could have directed the petitioner to get himself re-examined by the Chief Medical Officer, Kanpur Nagar. Apart from it, there is also on record another certificate of the year 2011. However, instead of adopting such a course, the Respondent-Corporation entered into a wholly frivolous communication with the Chief Medical Officer, totally oblivious of its social responsibility, being a State Instrumentality.

8. Sri Baleshwar Chaturvedi, learned counsel appearing on behalf of the Respondent-Corporation submitted that the Corporation is ready and willing to get the petitioner medically examined by the Chief Medical Officer, Kanpur Nagar provided the petitioner is ready for the same, to which Sri A. N. Bhargava, learned counsel for the petitioner has no objection.

9. Accordingly, the writ petition is disposed of by directing the Respondent-Corporation to forthwith proceed to consider the claim of the petitioner for grant of family pension to him on the basis of application submitted in the year 2011. For such purpose, it shall be open to the Respondent-Corporation to direct the petitioner to present himself for medical examination by the Chief Medical Officer, Kanpur Nagar. In that event, the petitioner shall appear before the Chief Medical Officer, Kanpur Nagar, who shall examine the petitioner personally or having regard to the nature of disability, constitute a Team of experts of that field for purpose of carrying out medical examination of the petitioner. The report of medical examination clearly specifying the nature and extent of disability shall be forwarded by the Chief Medical Officer, Kanpur Nagar to the fourth respondent (Superintending Engineer, Vidyut Vitran Khand,¹ Govind Nagar, Kanpur) within next three weeks. After receiving the report of the medical examination, the fourth respondent shall proceed to consider the claim of the petitioner for grant of family pension in terms of the Government Orders referred to above. The entire exercise shall be conducted within a period of six month from the date of receipt of certified copy of this order by the fourth respondent.