(2008) 05 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 222 Of 2004

Netar Singh & Anr. — APPELLANT

Vs

State of J&K & Ors. — RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:
Jammu and Kashmir Family Pension-cum-Gratuity Rules, 1964 — Rule 21, 22(b)

Citation : (2009) 3 JKJ 479

Hon'ble Judges : Y.P.Nargotra, J

Bench : Single Bench

Advocate : Deepika Mahajan, B.S.Salathia, Surinder Kour, Advocates appearing for the Parties

Judgement

1. This petition initially was filed by the parents of Rajinder Singh who was serving as Constable in JKAP 4th Bn. and is missing since 13.8.1990

and Amarjit Singh who was working as a Follower in the Police Department and had expired on 9.12.2000 while in harness, for seeking a

direction to the respondents to fix and release the family pension in their favour with a further direction for releasing the amount of gratuity, G.P.

Fund, Leave encashment salary, Insurance Claims and other pensionary benefits. The petitioners pleaded that they had only two sons, elder son

namely Rajinder Singh was serving as Constable and was posted in JKAP 4th Bn. and has been missing since 13.8.1990, i.e. for almost more than

seven years, so he is to be presumed to be dead. As regard the another son, namely Amarjit Singh it has been pleaded that he was appointed as

Follower on 15.5.1997 in the police department and expired on 9.12.2000 when he was under the active employment of respondents.

2. The case of the petitioners is that they being dependent on their sons are

entitled to family pension which has not been granted in their favour by

the respondents.

3. The stand taken by the respondents in the objections is that for grant of family pension in respect of the petitioner No.1, father of the late

Follower Amarjit Singh his case was submitted to Accountant General (A&E), J&K Jammu, who soughl further information which was submitted

along with documents showing that petitioner No.1 Netar Singh father of the deceased Follower Amarjit Singh was received) Rs.3218/ per month

as pension on 21.5.2002 and as per to certificate issued by the Treasury Officer, Mendhar his annual income was Rs. 37,000/ so in terms of rules,

he was not entitled for family pension. It has further been submitted that in case of an unmarried person, the pension would become payable firstly

to the father and in case the father is deceased, then to the mother. As income of the fatherpetitioner No.1, exceeded the limit of Rs. 500/ per

month he was not found entitled to family pension. Terminal Gratuity of Rs. 7868/ and GPF amount of Rs. 2175/ already stand released in his

favour.

4. According to the learned counsel for respondents neither father nor mother of the deceased is entitled to any family pension.

5. As regards Constable Rajinder Singh, ExConstable No. 816 of JKAP 4th Battalion Security Jammu, it has been submitted that the he was

deployed along with his Company for law and order duty at Udhampur. He unauthorisedly absented himself from the Company HQrs. at

Udhampur w.e.f., 9.8.1990 and was last seen at National Highway opposite DPO Office Udhampur on 13th August 1990 in a drunken state. As

such, he was placed under suspension for his indiscipline and misconduct vide Order No. 1050 of 1990 dated 21.8.1990 passed by

Commandant, JKAP 4th Bn. and thereafter, he was directed to report back at Company HQrs vide wireless message No. 1159194 dated

20.11.1990, but no response was received from his side. Accordingly, an attendance Notice No. Estt1159699 dated 6.11.1990 was flashed at

his residence by the respondents, but again no response was received. Ultimately, a final Notice was issued by the Commandant vide office

communication No. Estt/1354042 dated 18.12.1990, directing him to report back at the Battalion Hqrs within two days from the receipt of the notice, failing which he shall be removed from service. Still no response was received from the said Constable. On this Superintendent of Police,

Poonch was requested to trace the said ConstableRajinder Singh, however, Superintendent of Police. Poonch vide his letter No. 5571/GB date

26.11.1990 had informed that the said Constable was not found present at his residence and his fatherNetar Singh stated that he might have gone

to his inlaw's house at Tral. However, on being contacted and asked to report, the SHO Police Station Tral intimated that the absentee Constable

had not visited his inlaw's house for the last two years. After having made hectic efforts to tract out the errant ConstableRajinder Singh, the

Commandant was left with no other option but to terminate his services by means of a comprehensive order issued on 6.5.1991 being order No.

473 of 1991.

6. In view of the above termination from service, the petitioners are not entitled to any family pension, contend the learned counsel for the

respondents.

7. As on the request of learned counsel for the petitioners name of the petitioner No. 1Netar Singh father of the deceased Follower Amarjit Singh

and Constable Rajinder Singh has been deleted from the array of the petitioners vide order dated 13.11.2007, therefore, entitlement of petitioner

No. 2 mother of the deceased Government servants only is in issue.

8. The stand of the respondents is that in view of rule position, petitionerAmrit Kour is not entitled to any family pension, as husband of the

petitioner was drawing Rs. 3218/ per month as pension and his annual income is Rs. 37,000/.

9. The contention of Mrs. Kour learned counsel for the petitionerAmrit Kour mother of the deceased Amarjit Singh is entitled to family pension as

she does not have any individual income and was dependent on her sons for support.

Rule 22 of the Family PensioncumGratuity Rules provides as follows:

22. Except as may be provided by a nomination under rule 23: (a) a pension sanctioned under these rules will be allowed subject to the provisions

of rule 21:

(i) to the eldest surviving widow, if the deceased is a male officer or to the husband, if the deceased is a female officer;

(ii) failing a widow or husband, as the case may be, to the eldest surviving son;

(iii) failing (i) and (ii) to the eldest surviving unmarried daughter;

(iv) there failing, to the eldest widowed daughter; and

Note. The expression ""eldest surviving widow"" occurring in subclause (i) above shall be construed with reference to the seniority according to the

date of marriage with the officer and not with reference to the age of the surviving widow.

(b) in the event of no pension becoming payable under clause (a) the pension may be granted:

(i) to the father;

(ii) failing the father, to the mother;

(iii) failing the father and the mother to the mother to the eldest surviving brother below the age of 18;

(iv) these failing, to the eldest surviving unmarried sister;

(v) failing (i) to (iv) to the eldest surviving widowed sister.

Since the above said rule is subject to the provisions of rule 21, rule 21 is also required to be noticed.

Rule 21 reads as follows:

21. No pension will be payable under these rules:

(a) to a person mentioned in rule 22 (b) without production of reasonable proof that such person was dependant on the deceased officer for

support;

(b) to a unmarried female member of an officer's family in the event of her marriage (or attaining the age of 21 years whichever is earlier);

(c) to a widowed female member of an officer's family in the event of her remarriage;

(d) to a son or brother of an officer on his attaining the age of 18 years;

(e) to a person who is not a member of an officer's family; and to a husband for a deceased female Government servant if the widower was

separated from her at the time of death;

Past case, if any, pending will be decided accordingly.

10. From the bare reading of the above said rules, it is manifest that in terms of clause (b) of Rule 22, pension is payable to the father and failing

the father, to the mother.

11. In the present case, father is not entitled to the grant of family pension for the reason that he was receiving Rs. 3218/ per month as pension and

his annual income was Rs. 37,000/.

12. The contention of Mrs. Kour is that if the father is held disentitled to family pension, mother would be entitled thereto provided she was

dependent upon the deceased. Her case is that mother was dependent on the deceased Amarjit Singh Follower, so she is entitled to the grant of

family pension.

13. The eligibility of mother for grant of family pension is required to be determined in terms of Government Instruction No. 6 appended to Rule 21

of J&K Family PensioncumGratuity Rules 1964, which reads as follows:

For the purposes of eligibility of Family Pension ""Father or Mother"" of the deceased Government Servant as the case may be shall be treated as

dependent on the deceased Government Servant provided own income of either parents does not exceed Rs. 2500/ P.M including superannuation

pension, if any.

In case the income of the couple (parents) on account of pay or other wise exceeds Rs. 5000/ P.M. no parent shall be entitled to family pension.

14. For being eligible in terms of Rule 21 production of reasonable proof that father or mother claiming pension was dependent upon the deceased

officer for support is necessary unless his/her case is covered by Instruction 6 appended to Rule 21. In terms of instruction 6 quoted above such

father or mother as the case may be is entitled to be treated as dependent upon the deceased Government servant if his or her own income does

not exceed Rs. 2500/ per month including pension if any, which is further subject to the condition that total monthly income of both does not

exceed Rs. 5000/. It is not that if the income of one of them is more than Rs. 2500/ per month it would by itself render the other ineligible for grant

of family pension. If the total income of parents of the Government servant does not exceed Rs. 5000/ per month both father or mother would be

eligible for claiming pension in terms of Rule 21 without production of proof of dependency, provided their individual income does not exceed Rs.

2500/ P.m.

15. Mere eligibility of father or mother of the deceased Government servant to claim pension would not by itself confer a right upon any of them to

the grant of family pension. Entitlement of family pension is governed by Rule 22. Father and mother fall is Sub Rule (b) (i) and (b) (ii) of Rule 22,

which applies in the event legal heirs mentioned is SubRule (a) have failed. In terms of the rule position mother would become entitled to pension

only if father the first beneficiary fails. The expression 'failing the father' used in SubRule (b) (i) would not and cannot mean 'deceased father' only.

It contemplates only such father who is not eligible for grant of pension in terms of Rule 21 read with Instruction 6. This is so because mother

despite the fact that her husband is living still may be depending for support on her deceased son. Once such dependency is presumable in terms of

Instruction 6 in her favour she would become entitled to pension if her husband (father) is found disentitled to pension for whatever reason.

16. In the present case, as per the stand of the respondents the income of the husband of the petitionerAmrit Kour has been found to be Rs.

37,000/ per year which is less than Rs. 5000/ per month. It is also not denied that she is having monthly income exceeding Rs. 25,000/, therefore,

in view of the this petitionerAmrit Kour is to be presumed to be dependent upon the deceasedAmarjeet Singh for being eligible to the grant of

family pension and as her husband has been found disentitled to family pension she is entitled to the grant family pension in her favour on account of

the death of her son Amarjit Singh Follower.

17. So far as other son of the petitioner namely Rajinder Singh is concerned no pension is permissible on account of his termination from service.

18. In view of the above, this petition is accordingly disposed of with the direction to the respondents to fix and grant family pension in favour of

the petitioner on account of death of her son namely Amarjit Singh Follower w.e.f from the date it fell due within a period of two months.

