

(1997) 09 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15175 OF 1997

Putcha Saradamba

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

Andhra Pradesh Government Servants (Family Pension) Rules, 1964 — Rule 3
Constitution of India, 1950 — Article 14, 19
Family Pension Rules — Rule 3

Citation : (1998) 5 ALD 719 : (1998) 2 AnWR 574

Hon'ble Judges : Lingaraja Rath, J; B.S.A. Swamy, J

Bench : Division Bench

Advocate : Mr. K.K. Chakravarthy, for the Appellant; Government Pleader for Home, for the Respondent

Judgement

1. The petitioner, wife of late Krishna Murthy, who retired from service as stenographer on attaining the age of superannuation in Guntur District filed this writ petition seeking writ of mandamus declaring the action of the 2nd respondent, Secretary to Government (LA & J) Department, in passing G.O. Ms. No.219, Law (LA&J Courts-D) Department, dated 30-10-1996, wherein the 2nd respondent refused to sanction family pension to the petitioner as it will create a bad precedent which will necessitate reopening of a number of cases which are similar in nature and it will also result in re-consideration of the whole issue on sanction of family pension to left over categories and as there has been a steep increase in the expenditure on pensions in the eight preceding years the Government is not in a position to take any further liability as illegal and violative of Articles 14 and 19 of the Constitution of India.

2. The brief facts that are necessary for disposal of the writ petition are that one Sri P. V. Krishna Murthy while working as stenographer in the Sub-ordinate Courts in the Guntur District exercised option under Liberalised Pension Rules, 1961 on 31-07-1964. These Rules were replaced by A.P Government Servants (Family Pension Rules 1964 (for short "Family Pension Rules") and as per these

Rules Family Pension is admissible to the family of a Government Servant who opted for the scheme of Family Pension under these Rules duly agreeing for deduction of two months emoluments from the death retirement gratuity. After these Rules came into force late Krishna Murthy opted for Family Pension scheme while he was working in District Munsif Court, Tenali on 17-10-1968. After expiry of the date stipulated for exercising option under these Rules Subsequently, he retired from service on 19-5-1970 on attaining the age of superannuation.

3. Before retirement he made a formal application, on 26-11-1968, seeking sanction of pension and gratuity admissible as per Rules by the date of his retirement i.e. 19-5-1970. Para 3.2 of the said application he stated that two copies of passport size photographs of him as well as combined photographs of himself and his wife duly attested were also enclosed to the application. After his retirement from service on 19-5-1970 before the pension was actually sanctioned to him he seemed to have filed for revised pension papers perhaps due to raise in his pay. While preparing the revised pension papers on 18-5-1970, he noticed that some necessary corrections pursuant to the option exercised by him under the Family Pension Rules on 17-10-1968 were not carried out in Form-A given on 31-7-1964 under Liberalised Pension Rules and by representation dated 22-6-1970 sent through proper channel requested the 5th respondent to condone the mistake in retaining Class-C for Class-B in Form-A and to permit him to exercise his option in favour of Family Pension as provided in Class-B thereof as per nomination in Form-E on 17-10-1968.

4. The relevant portion of the representation is extracted hereunder:

"Besides, I have furnished once again the details of my family as per sub-rule (i) of Rule (3) of Andhra Pradesh Government Servants (Family Pension) Rules, 1964 and also the nomination of Family Pension in Form E both under date 17-10-1968 in the sheet affixed at the end of Volume-11 of my service Register."

5. In fact, Form-A said to have been given on 31-7-1964 is not available in the records furnished by the 5th respondent. On the other hand the application Form-1 and in Form-B submitted by late Krishna Murthy clearly mentioned that he opted for A.P. Family Pension Rules. It is useful to reproduce the said entries for better appreciation of the case of the petitioner:

"14(a) Pension Rules : Andhra Pradesh opted Family Pension Scheme, 1964.

(b) Whether nomination : 1964 made for

(i) Family Pension : Yes.

(ii) Death-cum-Retirement-Gratuity : Yes."

6. In fact from the papers furnished by the 5th respondent details of family furnished by late Krishna Murthy as required under sub-rule (1) of Rule 3 of the Family Pension Rules were very much available. Subsequently, on 30-11-1970, late Krishna Murthy was sanctioned Rs.82/- per month and Rs.4,395/-towards

death-cum-Retirement gratuity and late Krishna Murthy died on 17-11-1984. Thereafter the petitioner applied for Family Pension on 24-6-1986 and the same was rejected by Accountant-General in his proceedings dated 5-8-1988 by stating that the petitioner has not opted for Family Pension Scheme, 1964. Thereafter the 4th respondent herein addressed a letter to the second respondent for sanction of Family Pension to the petitioner duly explaining the objective behind the family pension Rules, if necessary by relaxing the relevant rule, if any, duly considering the representation of late Krishna Murthy dated 22-6-1970 and also the orders of the Government in G.O. Ms. No. 194, dated 13-7-1979. But, the Government in its letter dated 25-10-1991, rejected the case of the petitioner for sanction of Family Pension on the ground that it will create a bad precedent.

7. Questioning the said order the petitioner filed Writ Petition No.17208 of 95 and a Division Bench of this Hon'ble Court by order dated 9-8-1996 set aside the order and allowed the writ petition duly directing the Government, to consider the petitioner's request for sanction of Family Pension after foregoing 1-1/2 Month's salary and if necessary by relaxing the rules in existence within two months from that date, by holding that the stand of the Government inspite of the recommendation of the High Court is quite in-correct.

8. Pursuant to the directions given by this Court, the 2nd respondent issued the impugned proceedings that is G.O. Ms. No.219 dated 30-10-1996, rejecting the request of the Petitioner once again for the reasons enumerated supra. Questioning the said order the present writ petition is filed.

9. While admitting the writ petition by order dated 15-7-1997, this Court specifically directed the respondents to explain as to how the order of this Court dated 9-8-1996 was complied with and whether the question of relaxation of the rules was considered. The respondents were further directed to explain as to how the modified option of the petitioner's husband given by him before his retirement to opt for Family Pension was dealt with. The respondents filed the counter without touching the above two issues on which this Court directed them to file a counter. During the course of the arguments, the Counsel for the petitioner categorically asserted that late Krishna Murthy submitted the option in Form-E on 17-10-1968 and the same is very much available in the Volume II of his Service Register on that we summoned the original Service Register and to our surprise, the Form E was very much available in the Service Register with the signature of the Prl.District Munsif of even date. In fact, the family particulars furnished by the late Krishna Murthy under the Family Pension Rules along with Form E were sent along with the pension papers after his retirement. Through out the case of the respondent is that the late Krishna Murthy did not exercise option in Form E hence, he is not eligible for sanction of Family Pension. It is true that Form E was not enclosed with the proposal that was sent to the 5th respondent, but had the respondents applied their mind they would have seen from Form 1 and Form B which are sent along with the proposal, that late

Krishna Murthy opted for Family Pension Scheme 1964. In fact though Form-E was not sent to the 5th respondent, the family particulars as required under sub-rule (1) of Rule 3 of the Pension Rules issued in G.O. Ms. No.288, Finance (Pension-1) dated 31-8-1964 and two copies of passport size combined photographs of Krishna Murthy and the petitioner were already sent to the 5th respondent. Nothing prevented the 5th respondent from asking the appointing authority whether late Krishna Murthy applied for family pension more so in the light of his representation dated 22-6-1970. Instead, the respondents made the petitioner to run from pillar to post for more than a decade.

10. Now, as Form-E is very much available in the Service Record, the contention of the respondents that the petitioner husband has not opted for Family Pension cannot be countenanced. Even according to the respondents, under the Family Pension Rules, one has to agree for deduction of two months emoluments from death-cum-Retirement gratuity. Except this no other conditions are stipulated for availing Family Pension. As the very basis on which the respondents proceeded in this case has fallen to ground, the impugned proceedings i.e. G.O. Ms. No.219 dated 30-10-1996 cannot be sustained in law, and the same is liable to be set aside.

11. In the light of the above, we need not advert to the other untenable grounds raised by the Government in refusing to sanction the Family Pension to the petitioner, more so, in the light of the 4th respondent's recommendation for sanction of the same and also the directions given by this Court in Writ Petition No.17208 of 95 dated 9-8-1996. Accordingly, the writ petition is allowed and a writ of mandamus shall issue setting aside the impugned order with a consequential direction to the respondents to sanction and release the family pension to the petitioner as expeditiously as possible at any rate not later than eight weeks from the date of receipt of a copy of the order, by deducting two months' salary from the arrears as per family pension scheme.

12. The petitioner is entitled for costs in this writ petition. Advocates fee fixed at Rs.2,000/-.

13. Before parting with the case, after going through the record we are reminded of the oft quoted proverb that Penny Wise Pound Foolish. While the executive was indulging in wasteful expenditure of the public monies day in and day out, it has become so pevish in refusing to pay family pension to the petitioner which may be of few hundred rupees by taking a frivolous plea that there is a steep increase in the expenditure of pensions and the Government is not in a position to take any further liability, forgetting the objective underlying the Family Pension Scheme and made the poor lady to run after the Courts for more than a decade to get the family pension.