

(1998) 10 DEL CK 0078
In the Delhi High Court
Case No : C.W. No. 1349 of 1996

Rajeshwari Devi Bahukhandi

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 22-10-1998

Acts Referred:

Citation : (1998) 76 DLT 262 : (1999) 49 DRJ 51

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : N.S. Negi, for the Appellant; Vijay K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

K. Ramamoorthy, J.—The petitioner is the stepmother of the deceased, Gyan Prakash Bahukhandi who was killed at the time of Indo-Pak War in 1971. That fact is not disputed by the respondents. As a matter of fact, some financial assistance also had been given by the Government, The petitioner being a nominee, who had been nominated by the deceased in the service records as nominee, had claimed family pension.

2. The respondents have not filed any reply and no counsel appears for the respondents today. Major Vijay Kumar Sharma represented that the counsel had been engaged in this case and, Therefore, he prayed for time to instruct the counsel. The writ petition was filed in 1996 and the respondents had not taken any steps to file the counter. Therefore, I am unable to accede to the request of Major Vijay Kumar Sharma.

3. The fact that the deceased was killed in the Indo-Pak War in 1971 is not disputed. The dependant of the soldier would be entitled to family pension. The attitude of the respondents is absolutely unjustified. The petitioner ought to have been given the family pension as per the rules in force. Under the Hindu Succession Act, 1956, a stepmother would be entitled to share in the estate of the deceased. In this case, when the soldier was born his mother was alive but

two months after his birth she died and the father of the deceased was married to the petitioner. The fact that the petitioner had brought up the deceased soldier as a mother cannot be a subject matter of any discussion.

4. Under the circumstances, I am satisfied that the petitioner has made out a case for the grant of family pension. She had been unjustifiably denied by the respondents. Accordingly, the writ petition is allowed.

5. The respondents are directed to pay family pension payable to the petitioner as per the rules. Regarding the arrears, the respondents shall pay the same on or before the 31st of December, 1998 with interest @ 10% per annum w.e.f. 1.12.1971. Whatever amount that has been paid @ Rs.300/- per month shall be deducted from the amount of family pension calculated.

6. There shall be no order as to costs.