

(1988) 01 P&H CK 0111
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4506 of 1987

Smt Kako

APPELLANT

Vs

Union Of India and Others

RESPONDENT

Date of Decision : 14-01-1988

Acts Referred:

Citation : (1988) 01 P&H CK 0111

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Malkeet Singh, for the Appellant; H.S. Brar, Senior Standing Counsel, Govt of India, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Sehgal, J.—The Petitioner is widow of E/F Sarupa who joined the Royal Indian Air Force on 10.9.1942 as a sweeper. After rendering service till 17.8.1947 he was discharged from service on account of having contracted disability on 22.8.1947. He was granted disability pension at the rate of Rs. 11/- and annas four with effect from 20.8.1947 for life. He was a bachelor at the time of his discharge from service. He married the Petitioner on 15 6.1953 according to Hindu rites. The Petitioner had been living with him as his wife till he died on 30.12.1977. It is averred by the Petitioner that her husband had been receiving the disability pension till his death but the same was discontinued thereafter, as obviously the disability pension was for his life.

2. On the death of her husband, the Petitioner applied to the Air Force authorities for grant of family pension she was asked to submit the proof of her marriage, the death certificate of her husband and discharge certificate of the deceased from the Air Force. She submitted all these documents. She received a communication dated 28.2.1986 that her case for grant of family pension had been forwarded to the Central Defence Accounts (Pension) She was however, informed subsequently vide letter dated 7.1.1987 Annexure P 2 that she is not entitled to the grant of family pensioner benefits under the extended orders of

the Government of India dated 8-8-1985 as she had married the deceased after his discharge from service. In spite of her subsequent representations, no relief was granted to her. Therefore, she has approached this Court by way of the present writ petition for quashing the order Annexure P. 4 and directing the Respondents to grant her family pension.

3. The writ petition has been opposed by the Respondents and a written statement on their behalf has been filed. It is averred therein that the scheme of family pension was introduced for the first time vide order dated 14.4.1964 Annexure P 1 and it was made applicable to the officers and other ranks who were in service of the Air Force on 1.1.1964 or who joined service thereafter and who died while in service or after retirement with a retiring or disability pension. The term "Family" is defined in para 4 of this order as under:-

Family" for purposes of these orders will include the following relatives of the individual:-

(a) wife.

(b) Minor sons ; and

(c) Unmarried minor daughters.

Notes:- (I) (b) and (c) above will include children adopted legally before retirement.

(2) Marriage after retirement will not be recognised for purpose of these orders.

4. The widows of erstwhile Government servants who had retired from service on 31.12.1963 or prior to the said date and who were not covered by the Family Pension Scheme 1964 challenged the order Annexure R. 1 before the Supreme Court by filing writ petitions claiming that the date 1.1.1964 specified in the said order was arbitrary and discriminatory and that the benefit of family pension scheme may also be extended to them. The Union of India made a statement before the Supreme Court indicating the extent to which they would be prepared to accept the claim of such widows. Keeping in view the statement so made in the final Court, the matter was decided by it on 30.4.1985 extending with effect from 22.9.1977 the benefits of family pension scheme 1964 to the families of those Government servants who were/are borne on pensionable establishment and are presently not covered by the 1964 scheme, namely, the families of those employees who retired/ died on or before 31.12.1963. Keeping in view this decision, instructions dated 8.8.1985 Annexure R. 3 were issued. It is, thus, contended on behalf of the Respondents that the Petitioner is not covered within the definition of the term "Family" as given in Annexure R. 1 and she is, therefore, not entitled to the grant of family pension.

5. I have heard the learned Counsel for the parties. No doubt it is a very hard case and a very paltry sum of family pension would have been payable to the Petitioner had it been so granted by the Respondents. The learned standing

counsel for the Union of India in spite of my asking could not make any concession before me to provide succor to the Petitioner who is a poor widow. I have, therefore, no option but to decide the case keeping in view the legal aspects of the family pension scheme relief under which is sought by the Petitioner.

6. The learned Counsel for the Petitioner contended that the provision in Foot Note No. 2 of para 4 in the order Annexure R. 1 to the effect that marriage after retirement will not be recognised for purposes of these orders is discriminatory. He contends that no reasonable classification can be made between the widows of the Government servants out of the marriage contracted while their being in service and the marriage contracted after the date of their retirement from service for the purpose of family pension. In his support he relies on D.S. Nakara and Others Vs. Union of India (UOI), , and contends that neither it is a reasonable classification based on intelligible differentia nor is there any rationale behind it. I however, do not agree with this submission. While undertaking the liability to pay family pension, the Government in its wisdom has taken into consideration the family liability of a Government servant before he retires from service. If he incurs liability after the date of retirement, i.e. by contracting a marriage or adopting a child, the Government cannot be saddled with the liability of maintaining the widow or such dependant adopted child in case of the death of the retiree. The classification is apparently reasonable and there is decidedly a rationale behind it.

7. It would not be out of place to mention here that Rule 54 (14-A) of the Central Civil Services Pension Rules, which also provides for payment of family pension to the family of the retired Government servant in case of his death, It defines "family" as under: -

Family" in relation to a Government servant means- (i) wife in the case of a male Government servant or husband in the case of a female Government servant, provided the marriage took place before retirement of Government servant." 7. An almost analogous provision is contained in Rule 6.17 of the Punjab Civil Services Rules Vol. II, which makes provision for a family pension scheme. It defines "family" as under:-

(3) "Family" for purposes of this Scheme will include the following relatives of the Government employee: -

(a) wife in the case of a male Government employee and husband in the case of a female Government employee;

(b)... ..

(c)

Note 1.

Note 2.-Marriage after retirement will not be recognised for purposes of this

Scheme ;

8. Thus, the rule that widow from a marriage contracted by a retiree after his retirement from service shall not come within the definition of "family" for the purposes of grant of family pension appears to be universal and is based on reasonable classification. I thus, find no force in the contention of the learned Counsel for the Petitioner that the provision to this effect is either discriminatory or unconstitutional.

9. Consequently, I am constrained to disallow this writ petition which is, therefore, dismissed. The parties are, however, left to bear their own costs.