

(2000) 05 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 2145 of 2000

Smt. Rajbala

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 104 BOMLR 277

Hon'ble Judges : D.Y. Chandrachud, J;A.P. Shah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Rule. Respondents waive service. Petition is taken up for final hearing.
2. The short question which falls for consideration in the present petition is whether it is open for the respondents to reject the claim of the family pension payable by the Army to the widow of ex-Army man after his death on the ground that his widow is in receipt of monthly pension under the Family Pension Scheme constituted under the Employees' Provident Funds and Miscellaneous Provisions Act 1952, for short Act of 1952, and monthly dependent's allowance payable to the widow by the last employer of her deceased husband.
3. The petitioner is the widow of one Mai Chand who worked in the Indian Army for 25 years and who died in a road accident after his discharge from the Army and while he was in employment of the Public Limited Company viz. Tata Engineering and Locomotive Company i.e. Telco. The husband of the petitioner served the Indian Army as a Sapper in Bombay Engineers Group from 15.7.1963 to 31.7.1978. He was discharged from Army after his retirement on 31.7.1978 after serving the Army for a period of 15 years. After retirement the petitioner's husband joined the employment in Telco at its factory at Pune as a Fitter on 21.4.1978 and served the Company till his accidental death on 5.5.1993. Late Mai Chand is survived by his wife, present petitioner and three children. Until his

death Mai Chand was receiving Army pension of Rs. 718 per month. Since Mai Chand was a member of the Family Pension Scheme under the Act of 1952, by virtue of his employment with Telco, the petitioner being the widow of Mai Chand was eligible to and started receiving monthly pension from Regional Provident Fund Commissioner. Similarly the petitioner being widow of Mai Chand was also eligible to and started to receive monthly dependent's allowance under the Pariwar Suraksha Scheme introduced for the workmen employed in Telco by virtue of the settlement reached between the management and the union of the workmen. It seems that from the date of her husband's accident i.e. 5.5.1993 the respondents discontinued the Army pension to the petitioner on the ground that she was entitled to and is receiving pension from the civil side i.e. from the Family Pension Scheme under the provisions of the Act of 1952 and monthly dependent's allowance from the last employer of the deceased i.e. Telco. The petitioner, since the death of her husband late Mai Chand, for the last several years, has been knocking the doors of the concerned Army Authorities but all her applications only to draw blank as the respondents kept firmly repeating that there is no provision for grant of family pension from military side where family pension from civil side has been granted, even though the petitioner explained to them that the pension under the Family Pension Scheme of the Act, 1952 is not a civil pension and the petitioner is receiving the family pension by virtue of the services having been rendered by the deceased as a fitter in Telco and that the contribution were being made to the Employees' Provident Fund Scheme, from the services of her late husband during the tenure of his services with Telco and that the petitioner has completed all the formalities for claim of pension from the Army. The Petitioner also forwarded to the respondents certificate issued by Telco that on the death of Mai Chand his widow is eligible for the family pension under the provisions of the Act of 1952 because of the monthly contribution made by the deceased Mai Chand from his monthly wages at the rate of Rs. 1.16% of his wages to the Employees' Provident Fund constituted under the Act of 1952 and also by the equal monthly contribution made by the Company to the same fund during the entire period of his employment with the Company. It was also explained by the petitioner that by virtue of the service rendered as a workman by her deceased husband the petitioner is also entitled to monthly dependent's allowance from Telco which is equal to 50% of the basic wages and dearness allowance which she was getting at the time of his death. This monthly allowance is payable by Telco to the widow of the deceased workman upto the age of 60th year of the deceased workman under the settlement reached between the employer and the union of the workmen. The petitioner also submitted to the respondents copy of the judgment of the Kerala High Court dated 26.5.1998 wherein it was held that the widow of the Army employee is entitled to grant of family pension for the services rendered by him in Indian Army notwithstanding any other benefits that may be received by her under the Family Pension Scheme constituted under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The respondent No. 2 i.e. Controller General of Defence Accounts, New Delhi by his letter dated 9.9.1999 informed the petitioner that as per the

Government Order family pension from military side is not admissible to the petitioner and the decision by the Kerala High Court in a particular case cannot be treated as rule position for all cases. The petitioner was asked to refund the amount drawn from the Family Pension Scheme under the Employees' Provident Fund Act, 1952 to be eligible for Army pension. To the same effect the respondent No. 3 has also issued letters dated 9.6.1996, 14.8.1997 and 13.8.1999. The legality and correctness of the decision of the respondents is questioned by the petitioner in this petition under Article 226 of the Constitution.

4. We have heard Mr. Nirmal learned Counsel for the petitioner and Ms. Dhara appearing for the respondents. After going through the various impugned letters issued by the respondent Nos. 2 and 3 it is seen that the respondents have declined to grant family pension to the petitioner solely on the ground that she is receiving pension under the provisions of the Act of 1952 and monthly dependent's allowance from Telco in accordance with the settlement reached between the management of Telco and the employees union. It is clearly seen from the certificate issued by Telco which is annexed at Exhibit IX that the petitioner is receiving family pension under the provisions of the Act of 1952 because of the monthly contributions made by the deceased husband of the petitioner from his monthly wages to the Employees' Provident Fund and also by the equal monthly contribution made by the Company to the same fund during the period of his employment with the Company. As far as the dependent's allowance is concerned, which is equal to 50% of the basic wages and the dearness allowance, which the deceased husband was drawing at the time of his death is paid to the petitioner under the settlement reached between the Company and the employees union. It is not the case of the respondents that the deceased husband of the petitioner was a civil servant or employee in civil service before the age of superannuation after leaving Army. It is therefore difficult to appreciate as to how the pension received by the petitioner under the provisions of the Act of 1952 can be regarded as pension on the civil side. The late husband of the petitioner was working in a Public Limited Company after his retirement from the Army and after his death the petitioner is receiving the family pension under the provisions of the Act of 1952 because of the monthly contribution made by the petitioner's husband to the Employees' Provident Fund and also by equal monthly contribution made by the Company to the same fund during the employment of the petitioner's husband with Telco. The monthly pension under the Family Pension Scheme under the Act of 1952 or dependent's allowance paid, is payable to the petitioner by virtue of the services rendered by the husband of the petitioner in Telco where the Army pension is payable to the petitioner by virtue of the services of 15 years rendered by the husband of the petitioner in Army. Thus in our opinion the decision of the respondents in not granting family pension to the petitioner is wholly illegal.

5. In *Union of India v. Visalakshy* 1998 (2) C.L.R. 1166, the Division Bench of Kerala High Court has held that the widow of an ex-Army employee is entitled to family pension from the Army side notwithstanding the benefit of the family

pension received by her under the Family Pension Scheme under the provisions of the Act of 1952. In that case the husband of the original petitioner served in Indian Army for 28 years. In 1975 he was discharged from the Army and was granted Army pension which he drew till his death. In 1976 he joined Food Corporation of India as a watchman and worked there till his death in 1987. The petitioner was granted family pension under the Family Pension Scheme constituted under the provisions of the Act of 1952 but her claim for Army pension was declined on the ground that only one family pension was admissible to her. The learned Single Judge allowed the petition filed by the petitioner. The relevant portion of the judgment of the learned Single Judge reads as under:

In the instant case respondent Nos. 1 to 4 have no case that the petitioner is not entitled to pension as per the Army Family Pension Regulations. The only objection is the grant of family pension by the 4th respondent under the Family Pension Scheme. There is, no case for the respondents that the deceased husband of the petitioner was a civil servant or employed in any civil service before the age of superannuation after leaving the Army and in the absence of any other objection regarding the claim put forward by the petitioner for family pension under the Army regulations, she cannot be denied the benefit of family pension under the Army regulations.

It is made clear that the entitlement of the petitioner to receive family pension under the Army regulations shall not stand in the way of the petitioner receiving any other benefit under the Family Pension Scheme introduced under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, particularly in view of the stand taken by the 4th respondent and the additional 5 respondent that the payment of benefit under the said scheme is in addition any other benefit for which the employees or claimants under them are entitled to from previous employment including military service. It is to be remembered that it is based on such a definite understanding that deductions were made from the wages of employees including the deceased husband of the petitioner. As such the 4th respondent is estopped in law from denying the petitioner the benefit under the Family Pension Scheme under the Employees' Provident Funds and Miscellaneous Provisions Act.

6. The Union of India carried the matter in appeal before the Division Bench of the Kerala High Court which confirmed the decision of the learned Single Judge. The decision of the Division Bench was brought to the notice of the respondents by the petitioner vide her representation to the Secretary to the Government of India, Ministry of Defence, New Delhi. However, strangely the respondent No. 2 i.e. Controller General of Defence Accounts took a stand that the decision taken by the Kerala High Court in the above case cannot be treated as rule position for all cases. We are constrained to observe that the respondent No. 2 brushed aside the ruling of the Kerala High Court in a totally cavalier fashion. The Kerala High Court has clearly laid down that the fact that the widow of ex-Army man is receiving benefits under the Family Pension Scheme under the provisions of the

Act of 1952 is no ground for denying the family pension under the Army Rules to the widow of ex-Army man. The President of India has conveyed his sanction to the implementation of the Kerala High Court order dated 26.5.1998 regarding the grant of family pension to the widow of army employees for the services rendered by him in the Indian Army notwithstanding any other benefits that may be received by her under the Family Pension Scheme constituted under the provisions of the Act of 1952. Surprisingly the respondent No. 2 has tried to overreach the authority of the High Court by holding that the decision of the Kerala High Court cannot be made applicable to the other similar cases. In our opinion the actions of the respondent Nos. 2 and 3 denying Army pension to the petitioner is wholly illegal and liable to be struck down.

7. In view of the foregoing discussion the writ petition is allowed. Rule is made absolute in terms of prayer Clauses (a) and (b). Respondents are directed to release the family pension with interest at the rate of 18% p.a. within two months. We also direct the respondents to review all similar cases where the family pension was declined solely on the ground that the widow or dependent is receiving pension under the Family Pension Scheme constituted under the Act of 1952 and extend the benefit under the Family Pension Scheme in all such cases within six months from the date of passing of this order and a compliance report be filed by the respondent to the Registrar of this Court.

Certified copy expedited.

Parties and the authorities to act on the ordinary copy of this order duly authenticated by the personal secretary of this Court.