
(2008) 03 AHC CK 0024
In the Allahabad High Court

Smt. Vimla Devi Govil

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Uttar Pradesh Intermediate Education Act, 1921 — Section 16H(2)

Citation : (2008) 117 FLR 693

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—Heard learned Counsel for the parties.

This petition has been filed for a mandate to the respondents to pay her. family pension from 1.1.1989.

The husband of the petitioner was working as a Clerk in Sri Lakshmi Raj Inter College, Gobhana District Aligarh which is a duly recognised and aided institution and salary was being paid under the U.P. Payment of Salaries Act, 1971. The husband of the petitioner died in harness on 8.6.1974. Earlier there was no provision either under the Salaries Act or under any Government notification making provision for family pension, but the State Government vide order dated 1.1.1989 for the first time introduced the benefit of family pension. In pursuance thereof, the petitioner raised claim before the respondents but to no avail and therefore, the present petition.

2. The learned Standing Counsel has firstly resisted the claim on the ground that since the husband of the petitioner died prior to 1.1.1989, she is not entitled to family pension. This issue has already been decided by this Court in the case of Muhmooda Begum v. District Inspector of Schools, Allahabad Writ Petition No. 34835 of 1995 decided on 24.2.1997 holding that employees who died prior to 1.1.1989, their dependants would be entitled to family pension with effect from 1.1.1989.

3. Learned Standing Counsel has then contended that the family pension cannot be paid by the State Government and the same has to be paid by the Zila Panchayat since the Institution was being maintained by it and in view of Section 16-H(2) of the U.P. Intermediate Education Act, the payment of pension for teaching staff cannot be claimed from the Education Department.

4. Considering the aforesaid, a detailed order was passed on 25th May, 2007 to the following effect:

Heard learned Counsel for the petitioner and learned Standing Counsel.

Sri Lakshmi Raj. Inter College, Gabhana in District Aligarh is a duly recognized and aided institution where the salary is paid under the U.P. Payment of Salaries Act, 1971 to the teachers and its employees, Husband of the petitioner was working as a clerk therein and he died in harness on 8.6.1974. Earlier there was no provision either under the Act or under any Government notification making provision of payment of family pension, but the State Government vide Government Order dated 1.1.1989 for the first time introduced the benefit of family pension. The petitioner made several applications both to the management and State Government but to no avail, thus the present petition.

Admittedly, the said institution is managed by Zila Panchayat, Aligarh. The claim was first resisted on the ground that the Government Order dated 1.1.1989 would not apply in the case of petitioner since her husband died prior to the cut off date. However, this issue is no longer res integra and it has now been held that the heirs of the deceased employee would be entitled to family pension irrespective of the date of death but only from 1.1.1989. The State Government resisted the family pension on the ground of Section 16-H(2) of U.P. Intermediate Education Act and have contended that since the institution is maintained by a local body, it would not be covered by the provisions of Section 16-G for payment of family pension especially when there are rules of Zila Panchayat with regard to its employees.

The crux of the issue is whether any declaration or notification has been issued by the State Government u/s 16-H(2) of the Act unless a declaration or notification is issued, the provisions of Section 16-H and other provisions would apply to employees in aided institution though it is managed by a local authority.

The Director of Education is hereby directed to file specific affidavit as to whether any declaration with regard to the institution in question in particular-or generally has been made so far as the applicability of Section 16-G of the Act is concerned. Let a copy of this order be given to the learned Standing Counsel within 48 hours.

List on 26th July, 2007 for further orders.

5. In pursuance thereof, the Director of Education had filed an affidavit annexing copies of the notifications dated 13th June, 1979 and 12th July, 1982 which show that the institution is not covered by the provision of Section 16-G of the Act. In

the affidavit, a copy of the clarificatory order has been issued by the State Government whereby the rigour of Rule 15 of the U.P. Palika Non-Centralised (Post Retiral Benefits) Rules, 1984 has been lifted vide notification dated 3rd November, 2001 and as such the Local Bodies concerned are obliged to pay family pension to the petitioner.

6. This legal position could not be disputed by the Counsel for the respondent Nos. 2, 7 and 8.

7. Accordingly, this writ petition succeeds and is allowed and the respondent Nos. 2, 7 and 8 are hereby directed to forthwith release the family pension of the petitioner payable with effect from 1st January, 1989. The arrears be paid within three months, while the current pension be released within a month. No order as to costs.