

(2016) 10 MEG CK 0004
In the Meghalaya High Court
Case No : WP(C) No. 411 of 2014

Smti Tipmon Lyngdoh

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Meghalaya Civil Services (Pension) Rules, 1983 — Rule 48

Citation : (2016) 5 GauLT 370 : (2017) LIC 559

Hon'ble Judges : Mr. Ved Prakash Vaish, J.

Bench : Single Bench

Advocate : Mr. H.L. Shangreiso, Advocate, for the Petitioner; Mr. R. Gurung, Advocate, for the Respondent Nos. 1 to 6; Mr. R. Debnath, Advocate, for the Respondent No. 7

Final Decision : Allowed

Judgement

Mr. V.P. Vaish, J. (Oral) - The petitioner, Smti Tipmon Lyngdoh has filed the present petition seeking directions to the respondents to grant family pension to her.

2. The facts of the case, as set out in the petition, are that Shri Pisley Moris Ksing husband of the petitioner was working as teacher in Laitlyngkot Government L.P. School, Meghalaya. He retired from service on 1st September, 1984. After retirement he married with the first wife, namely Theminien Shabong who expired on 6th November, 2005. Thereafter, he got married with the petitioner on 10th December, 2006. Copy of marriage certificate is enclosed as Annexure-A to the petition. He expired on 1st January, 2012. After his death, the petitioner applied for grant of family pension which was declined by the respondents vide order dated 24th April, 2013.

3. The respondents denied family pension to the petitioner on the ground that Shri Pisley Moris Ksing (now deceased) married her after retirement from service as such under Note-2 of Rule-48 (i) of the Meghalaya Civil Services (Pension)

Rules, 1983 she is not entitled to family pension.

4. Mr. H.L. Shangreiso, learned counsel appearing on behalf of the petitioner urges that being widow of Shri Pisley Moris Ksing, the petitioner is entitled to family pension. Reliance is placed on the judgements reported as "Smt. Bhagwanti v. Union of India, AIR 1989 SC 2088", "Binalish M. Sangma v. State of Meghalaya & Ors., 2009 (3) GLT 569", "Laxmi Kunwar (Smt) v. State of Rajasthan, 1994 Supp (1) SCC 303".

5. The respondents have opposed the petition and stated that the Administrative Department to whom the case of the petitioner's husband was forwarded, stated that the marriage of the petitioner to Shri Pisley Moris Ksing, after his retirement, cannot be recognised as marriage for the purpose of pension under Note-2 of Rule-48(i) of the Meghalaya Civil Services (Pension) Rules, 1983. The said Rule reads as under:

"Marriage after retirement will not be recognised for purposes of rules in this Section."

6. It is further stated by the respondents that the Meghalaya Civil Services (Pension) (Fifth Amendment) Rules, 2010 came into force w.e.f. 1st January, 2007 wherein Note 2 of Rule-48(i) was amended which read as follows:

"Post-retiral spouses/children born after retirement:- The family pension is admissible to post-retiral spouses and children born/adopted legally after retirement."

Note-2 to Rule-39 of the Meghalaya Civil Services (Pension) Rules was also amended as under:

"Note :- Government servants who have retired on or after 1st January, 2007 but before 23rd February, 2010, shall be governed by rules/orders in force immediately before the said date of 23rd February, 2010."

7. Learned counsel for respondents submitted that the petitioner's husband retired on 1st September, 1984 and as such the Meghalaya Civil Services (Pension) (Fifth Amendment) Rules, 2010 is not applicable in the petitioner's case. It is also stated that the petitioner's case had been examined by the Finance (Pension Cell) Department and it was decided that the petitioner's case could not be considered as family pension is not admissible to post-retiral spouses/children of retirees who retired prior to 01st January, 2007.

8. I have given my anxious thought to the submissions advanced by learned counsel for both the parties. I have also perused the material available on record.

9. During the course of arguments Mr. H.L. Shangreiso, learned counsel for petitioner submits that he does not press relief of interest.

10. It is not disputed that the deceased Government employee, namely Shri Pisley Moris Ksing married to the petitioner, though after retirement from service.

The petitioner is claiming family pension being widow of the deceased Government employee.

11. It is not necessary to examine the concept of pension in the present case as it has already been observed by Hon''ble Supreme Court in a catena judgements that pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone is entitled to pension under the rule can claim it as a matter of right. In this regard reliance can be placed on the judgements "Deokinandan Prasad v. The State of Bihar, AIR 1971 SC 1409" and "State of Punjab and another v. Iqbal Singh, AIR 1976 SC 667".

12. The Hon''ble Supreme Court in the case of "Smt. Bhagawanti" (supra) dealt with the issue of family pension and struck down the part of the rule which excluded the marriage after retirement from the definition of "family". The Court considered the question whether the spouse-man or woman, as the case may be, married after the retirement of the concerned Government servant can be kept out of the definition so as to deprive him from the benefit of the family pension. It was held by the Supreme Court as under:-

"8. Admittedly, the definition of "family" as it stands after amendment excludes that the scope of the Government servant after his/her retirement and the children born after retirement also stands excluded.

Petitioners have challenged the stand of the Union of India and the definition in the Pension Rules as arbitrary and discriminatory. It has been contented that if family pension is payable to the widow or the husband as the case may be, of the Government servant, the category which the definition keeps out, namely, those who have married after retirement and off-springs of regular marriage born after retirement, is discriminatory.

9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self-same consideration. Since pension is linked with past service and avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary. There are instances where a Government servant contracts his first marriage after retirement. In these two cases before us, retirement had been at an early age. In the Subedar's case, he has retired after putting in 18 years of service and the Railway employee had retired prematurely at the age of 44. Premature or early retirement has indeed no relevance for deciding the point at issue. It is not the case of the Union of India and, perhaps there would have been no force in such contention if raised, that family pension is admissible on the account of the facts that the spouse contributed to the efficiency of the Government servant during his service career. In most cases, marriage after retirement is done to provide protection, secure companionship and to secure support in old age. The consideration upon which

pension proper is admissible or the benefit of the family pension has been extended do not justify the distinction envisaged in the definition "family" by keeping the postretiral spouse out of it.

10. Government Servants' Conduct Rules prohibit marriage during the life-time of a spouse. Section 494 of the Indian Penal Code makes second marriage void and makes it a criminal offence. Thereafter, both before retirement and even after retirement there is no scope for a person to have a second wife or a husband, as the case may be, during the lifetime of an existing spouse.

11. Reliance has been placed on the recommendations of the Third Pay Commission on the basis of which the amendment in the Pension Rules is said to have been made. Apart from referring to the recommendations, no attempt has been made at the hearing by counsel for the Union of India to drive support from the recommendations. We really see no justification as to why post-retirement marriage should have been kept out of the purview of the definition.

12. In clause (ii) of the definition son or daughter born after retirement even out of wedlock prior to retirement have been excluded from the definition. No plausible explanation has been placed for our consideration for this exclusion. The purpose for which family pension is provided, as indicated in Smt. Poonamal's case (AIR 1985 SC 1196), is frustrated if children born after retirement are excluded from the benefits of the family pension. Prospect of children being born at such advanced age (keeping the age of normal superannuation in view) is minimal but for the few that may be born after the retirement, family pension would be most necessary as in the absence thereof, in the event of death of the Government servant such minor children would go without support. The social purpose which was noticed in some pension cases by this court would not justify the stand taken by the Union of India in the counter-affidavit.

It is not the case of the Union Government that as the matter of public policy to contain the growth of population, the definition has been so modified. Even if such a contention had been advanced it would not have stood logical scrutiny on account of the position that the Government servant may not have any child prior to retirement and in view of the accepted public policy that a couple could have children up to two, the only child born after superannuation should not be denied family pension.

13. Considered from any angle, we are of the view that the two limitations incorporated in the definition of "family" suffer from the vice of arbitrariness and discrimination and cannot be supported by nexus or reasonable classification. The words "provided the marriage took place before retirement of the Government servant" in clause (i) and "but shall not include son or daughter born after retirement in clause (ii) are thus ultra vires of Article 14 of the Constitution and cannot be sustained.

13. The Supreme Court in the case of "Laxmi Kunwar (Smt)" (supra) also took

the similar view and held as under:

"3. This Court in "Smt. Bhagawanti v. Union of India" had an occasion to deal with identical situation under the Central Services Rules which are pari-materia to the Rajasthan Rules. This Court struck down part of the rule which excluded the marriage after retirement from the definition of "Family". We adopt the reasoning of this Court in Bhagawanti case and hold that Note 2 to Rule 268-D reproduced above is arbitrary and as such ultra vires Article 14 of the Constitution of India. We, therefore, allow the petition, direct the respondents to consider the case of the petitioner for grant of family pension ignoring Note 2 to Rule 268-D which we have struck down. The family pension be finalised within three months from today. All the arrears of the pension shall be paid to the petitioner within one month thereafter. No costs."

14. Thus, in view of the settled position of law as laid down by the Hon''ble Supreme Court in the cases referred herein above, I am of the considered opinion that the petitioner is entitled to family pension.

15. Keeping in view the overall facts and circumstances of the cases and issues involved in the matter, this Court is not inclined to award interest in favour of the petitioner on the amount becoming due on the arrears of family pension till today. Even otherwise, the counsel for petitioner has stated that he is not pressing the prayer to the extent of interest.

16. In the light of the aforesaid discussion, the present writ petition is allowed and the respondents are directed to grant family pension to the petitioner. The family pension be finalised within a period of 3 (three) months from today and arrears of pension be paid to the petitioner within 1 (one) month thereafter. In case family pension is not paid within the said period, the petitioner will be entitled to interest @ 6% per annum from the date of this order till the actual date of payment.

17. No order as to cost.