

(1998) 04 AHC CK 0032

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15559 of 1991

Sumitra Dhulia

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54

High Court Judges (Salaries and Conditions of Service) Act, 1954 — Section 14, 17A

Citation : (1998) 3 UPLBEC 1966

Hon'ble Judges : O.P. Garg, J;M. Katju, J

Bench : Division Bench

Advocate : Sudhanshu Dhulia, for the Appellant; S.C., U.N. Sharma, V.K. Singh and A.K. Trivedi, for the Respondent

Judgement

O.P. Garg, J.—The moot point for consideration in the present writ petition is whether a widow of a High Court Judge who died prior to the commencement of the High Court and Supreme Court Judges (Conditions of Service) Act, 1986 is entitled to family pension according to the provisions made in the High Court Judges (Conditions of Service) Act, 1954 as amended in the year 1986 or according to the Central Services (Pension) Rules, applicable to the officers of Central Services Group "A". This controversy has come up in the wake of the following facts.

2. Late Sri Keshav Chandra Dhulia, whose date of birth was 13.11.1929, was elevated to the Bench of this Court on 24th May, 1984. Unfortunately, he died on 16.1.1985 on which date, he had hardly completed eight months as a Judge of this Court. In the normal course, he would have continued as a High Court Judge till 13.11.1991 on which date he was to attain the age of 62 years. A family pension of Rs. 250/- per month, w.e.f. 17.1.1985 was granted to Smt. Sumitra Dhulia, widow of late Justice Dhulia vide letter No. 2/1/86 dated 30.1.1986 issued by Ministry of Law and Justice, Department of Justice, Government of India (a copy of which is contained in Annexure CA-2 to the counter affidavit).

3. By means of this writ petition, Smt. Dhulia has prayed that a direction be issued to the respondents to fix her family pension at the rate of Rs. 7850/- per annum till 16.1.1992 and thereafter at the rate of Rs. 3937.50 per annum with interest at the rate of 12% on the amount of arrears. The stand taken in the writ petition is that the Act of 1954 has been drastically amended by the Amendment Act of 1986 and consequently in view of the amended provisions, the amount of pension has been increased in respect of the Judges, who retired or died on or after 1.11.1986 and since this cut off date prescribed in the Amendment Act of 1986 has been held to be arbitrary by a Division Bench of this Court in the case of Deoki Nandan Agarwala Vs. Union of India (UOI), , the benefits under the Act are equally applicable to those Judges also who retired or died prior to 1.11.1986.

4. Counter and rejoinder affidavits have been exchanged. Heard Sri Mulidhar, learned Counsel for the petitioner and Sri U.N. Sharma, assisted by Sri A.K. Trivedi on behalf of the respondents.

5. The case of the respondent-Union of India is that the Amendment Act of 1986 is not applicable to those Judges who have expired or retired prior to 1.11.1986 and that the decision of this Court in Deoki Nandan Agarwal's case (supra), has been set aside by the Hon'ble Supreme Court in Union of India and another Vs. Deoki Nandan Aggarwal, . It is also asserted on behalf of the respondents that the grant of family pension to the petitioner is governed not by the Amendment Act of 1986 but by the Central Civil Service (pension) Rules.

6. The Conditions of Service of the High Court Judges are governed by High Court Judges (Conditions of Service) Act, 1954 (hereinafter referred to as "the Act of 1954"), as amended from time to time. The question of payment of family pension is directly related to the amount which a retired Judge is entitled to receive as pension. In view of Section 14 of the Act of 1954, a Judge who has retired without completing seven years of service was not entitled to any amount of pension. However, in para 9 of the first Schedule of the Act, it has been provided that where a Judge has retired at any time after 26.1.1950 without being eligible for pension, then notwithstanding anything contained in the foregoing provisions, a pension of Rs. 6000/-per annum shall be payable to such a Judge. As regards the family pension, a provision was made by incorporating Section 17A in the Act by amendment Act of 1986. This provision applied to the Judges, who retired or died after 1.11.1986. Learned Counsel for the petitioner urged that though the decision of this Court in Deoki Nandan Agarwal's case has been set aside by the Supreme Court, in para 8 of the judgment of the Supreme Court, which runs as follows :-

"8. These amended provisions were held applicable in respect of all the Judges of the High Court who have retired irrespective of their dates of retirement in the decisions of this Court in Union of India Vs. Bidhubhushan Malik and Others, and N.L. Abhyankar and Others Vs. Union of India and Others, . However, the increased pension was payable only with effect from October, 1, 1974."

The Supreme Court makes it clear that the provisions of the Amendment Act of 1986 would also apply to those Judges who have retired or died prior to 1.11.1986. We have thoroughly scrutinised this aspect of the matter. A Division Bench of this Court which placed reliance on the Supreme Court decision in D.S. Nakara and Others Vs. Union of India (UOI), , held that the different treatment meted out to the Judges who retired before 1.11.1986 or thereafter was discriminatory and that there should be no discrimination with regard to the payment of family pension to the Judges, who had died prior to the commencement of the Amendment Act, as the facility of retrial benefits cannot be classified into two categories on the basis of fortuitous circumstances. Dissatisfied with the judgment of this Court, the Union of India carried the matter to the Supreme Court. Hon"ble Supreme Court while setting aside the decision of this Court in Deoki Nandan Agarwal's case has held that the fixation of the cut off date was not arbitrary or discriminatory. A disjuncted reference to para 8 of the judgment of the Supreme Court is otiose. It would be worthwhile to mention that a decision of Supreme Court or for that matter of any High Court is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved or assumed to be proved since generality of the expression which may be found there is not intended to be exposition of the law but governed and qualified by particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract sentences here and there from the judgment and to build upon it, because the essence of decision is its ratio and not every observation found therein. The enunciation of the reason or the principle on which a question before a Court has been decided is alone binding as a precedent. In this connection, a reference may be made to the decision of Supreme Court in the case of Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, , in which it was observed that in order to understand and appreciate the binding force of a decision, it is always necessary to see what were the facts of the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or clause or sentence in the judgment cannot be regarded as a full exposition of law.

7. The fact remains that law, as it stands is that the provisions of the Amendment Act of 1986 do not apply to the Judges who retired or died before 1.11.86. Therefore, the petitioner cannot take the benefit of the Amendment Act of 1986 on the basis of the decision of this Court in Deoki Nandan Agarwal's case (supra), which has been set aside by the Supreme Court.

8. A very clean and explicit counter affidavit has been filed by Sri P.N. Singh, who was the then Under Secretary in the Ministry of Law and Justice (Department of Justice), Government of India. In para 8 of the counter affidavit, it has been mentioned that the High Court Judges (Conditions of Service) Act, 1954 as on the date of appointment of late Justice Dhulia provided for grant of family

pension as per the Central Civil Services (Pension) Rules, dealing with the grant of family pension to the families of the Central Civil Services Class I Officers. The Government of India has been issuing orders for payment of family pension to the families of the deceased Judges applying the provisions of the Central Civil Services (Pension) Rules, from time to time, as and when the rates of family pension were revised. The Ministry of Law and Justice, vide its letter No. 24/57/87- Justice dated 3rd may, 1988 (Annexure CA 1 to the counter affidavit) issued instructions to the concerned authorities for the grant of revised family pension to the families of the Judges of High Court and Supreme Court. Para 2 of the said letter reads as follows :-

"2. The family pension to the families of Part I and Part II Judges of High Courts and Supreme Court prior to 1.11.1986 was allowed as per the rules, notifications and orders for the time being in force with respect to the grant of family pension in relation to an Officer of the Central Civil Service (Group A). Consequent upon the revision of family pension of families of Central Government Pensioners with effect from 1.1.1986, you are also requested to please revise the family pension of the families of Part I and Part II Judges of High Courts and Supreme Court, as per the procedure laid down therein."

In the counter affidavit, it has been set out that the petitioner is entitled to revised family pension in the following manner:-

(i) at the rate of Rs. 250/- per month or say Rs. 3000/- per annum w.e.f. 17.1.1985 to 31.12.1985;

(ii) at the rate of Rs. 655 per month or Rs. 7875 per annum w.e.f. 1.1.1986 till the death of the petitioner or till her remarriage.

It is also averred in the counter affidavit that Smt. Dhulia would be entitled to the enhanced family pension as and when it is further revised and in that event, the Accountant General-respondent No. 3 would be competent to issue a revised authority, without any reference to the Ministry of Law.

9. The case of the petitioner for family pension is undoubtedly governed by the Central Civil Services (Pension) Rules dealing with the grant of family pension to the families of Central Civil Services Class I Officers. Amendment of Provision of Section 17A of the Act of 1954 came into force w.e.f. 1.11.1986 and since the death of justice Dhulia had occurred prior to the said date, the petitioner cannot take advantage of the amendment incorporated in the Act of 1954. According to the Central Civil Services (Pension) Rules, the petitioner is entitled to family pension at the rate of Rs. 250/- per month for the period 17.1.1985 to 31.12.1985 and w.e.f. 1.1.1986 onwards, she is entitled to family pension at the rate of Rs. 655 per month with all the allowances as admissible under the Rules. She is also entitled to the revised and enhanced family pension as and when the rates are revised.

10. In the instant case, the respondent No. 3 has not filed any counter affidavit

although six weeks time was granted by this Court on 21.5.91. It was the duty of the respondent No. 3 to have made the payment of the amount of family pension to Smt. Dhulia-petitioner at the rates mentioned above, but he failed to do so. The family pension has been paid to Smt Dhulia at the rate of Rs. 250/- per month by depositing the same in the petitioner's Savings Bank Account No. 11594 at Allahabad Bank, Civil Lines, Allahabad.

11. In D.S .Nakara's case (supra), Hon''ble Supreme Court has held that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right ; pension is not an ex gratia payment but it is a payment for the past service rendered ; and it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. The act of the respondent No. 3 in withholding the amount of family pension, to which the petitioner is legally entitled to, is reprehensible. The petitioner is, therefore, entitled to 12% interest per annum on the difference of amount already paid to her and which is actually payable, from the date of withholding of such amount, till the date of the payment. Since the petitioner has not specifically mentioned the exact amount which has already been paid over to the petitioner and the amount which is now payable, we are unable to specify the amount and therefore, we leave this calculation matter to the respondent No. 3, who is expected to ensure payment of upto date amount of pension as per rates specified in the body of this judgment along with interest at the rate of 12% on the amount which remained withheld and has not been paid to the petitioner till now.

12. In the result, the writ petition is finally disposed of with the direction that the respondent No. 3 will deposit the entire amount of family pension at the rates, specified in the foregoing paragraphs of this judgment (subject to further revision) in the Savings Bank Account No. 11594 of the petitioner at Allahabad Bank, Civil Lines Branch, Allahabad within 45 days from the date of production of a certified copy of this Judgment and order, together with interest at the rate of 12% per annum on the difference of amount, already paid and which is actually payable to the petitioner. No orders as to costs