

(2014) 04 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 96 of 2007

Union of India and Others

APPELLANT

Vs

Ichraj Kanwar

RESPONDENT

Date of Decision : 10-04-2014

Acts Referred:

Citation : (2014) 04 RAJ CK 0037

Hon'ble Judges : Amitava Roy, C.J.;Veerender Singh Siradhana, J.

Bench : Division Bench

Advocate : S.M. Khan, for the Appellant; Dinesh Sharma, for the Respondent

Judgement

Veerender Singh Siradhana, J.?The appellant/respondent (Union of India) has impeached the judgment and order passed by the learned Single Judge dated 28th August, 2006, allowing the claim of the respondent/writ petitioner for family pension, in view of ratio decided by the Hon"ble Supreme Court in the case of S.K. Mastan Bee Vs. The General Manager, South Central Railway and Another, .

2. Shorn off unnecessary details, the essential material facts necessary for adjudication of the issue raised are: that the respondent/writ petitioner filed the writ application claiming family pension for her husband Late Shri Abhai Singh, died in the Indo-China War in the year 1962. In response to the notice of the writ application, the appellant (UOI), resisted the claim reiterating the contents of the communication dated 10th February, 1990 wherein the claim was declined as the services in the establishment were made pensionable only w.e.f. 20th November, 1969. Since the husband of the respondent/writ petitioner died, due to an accident, on 25th December, 1962, the claim for family pension was not sustainable.

3. The learned Single Judge taking into consideration the pleaded facts, materials available on record and after hearing the learned counsel for the parties, vide impugned order dated 28th August, 2006, allowed the claim of the respondent/writ petitioner for family pension with a further direction to ensure compliance

and to accord the benefits of family pension within six months from the date of order.

4. The learned counsel for the appellant (UOI), reiterating the stand in the reply to the writ application and grounds of the memo of appeal, emphasized that husband of the respondent/writ petitioner was appointed in General Reserve Engineering Force (hereinafter referred to as "GREF", for short) on 23rd February, 1962, who died in an accident on 25th December, 1962 while serving with 661 EMP Coy. The establishment of GREF was sanctioned temporarily by the Government of India and the department functioned purely on contract basis upto 19th November, 1969. Further, the terms and conditions of the service of the civilian persons employed in the GREF, were brought into force with effect from 20th November, 1969, wherein death/injury benefits and gratuity were to be regulated in accordance with the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as the "Act of 1923", for short) or the Central Civil Services (Extraordinary Pension) Rules, 1939 (hereinafter referred to as the "Act of 1939", for short). The learned counsel for the appellant would further submit that since the husband of the respondent/writ petitioner died before 19th September, 1967, the claim for family pension is not sustainable. Further, the writ application suffered with the vice of delay and laches since the remedy was availed of after a lapse of an inordinate, unexplained and undue delay of 35 years from the death of her husband. According to the learned counsel for the appellant (UOI), in view of clause (12), of the terms and conditions, governing the services of members of GREF, stressed that directly recruited members of the GREF were entitled to terminal benefits, provided they completed satisfactory service for a minimum period of three years. In cases where the individuals who became entitled to such grant but died while in service in GREF or after release, before grant was actually disbursed to them; the grant would be paid to the next of kin on their behalf, provided the other conditions governing the field are fulfilled. Further, any temporary service rendered prior to 20th November, 1969 in the GREF, will count toward pension under normal rules applicable to the Civilians in Defence Services. Thus, having regard to the total period of employment, which was less than one year in the case at hand, the claim could not have been sustained and hence, the impugned judgment and order passed by the learned Single Judge is not sustainable in the eye of law.

5. Per contra, the learned counsel for the respondent/writ petitioner (Smt. Ichraj Kanwar), supporting the impugned judgment and order dated 28th August, 2006, passed by the learned Single Judge, argued that pension is not a bounty payable on the sweet will and pleasure of the Government, rather it is a valuable right vested in a Government servant, as has been opined by the Hon'ble Apex Court of the land in the case of Deokinandan Prasad Vs. The State of Bihar and Others, . The learned counsel would further submit that pension is also not a gratuitous payment but is a deferred wage payment of which can be legally enforced, as declared by the Hon'ble Supreme Court in case of Poonamal and Others Vs. Union of India and Others, . The contention of delay and laches has

been repelled stating that the claim for pension furnished a recurring cause of action, as the pension is payable every month and therefore, objection raised resisting the claim of the respondent/writ petitioner was rightly ignored by the learned Single Judge while granting prayer of the writ petitioner. In order to reinforce his submissions, the learned counsel placed reliance on the opinion in the case of Smt. Kamla Saxena v. Director, Pension: 2011 WLC (Raj.) UC; Smt. Shanti Devi v. State of Rajasthan: 2003 (1) RLR 303; Smt. Rakma v. State of Rajasthan: 2003 WLC (Raj.) 102; Smt. Usha Das v. The State of West Bengal & Ors.: 2008 (4) SLR 787 and Ishwari Devi v. Union of India & Ors.: 2008 (4) SLR 476.

6. We have heard the learned counsel for the parties and with their assistance, perused the materials available on record.

7. It is not in dispute that the husband of the respondent/writ petitioner was appointed in GREF on 23rd February, 1962 and died in an accident on 25th December, 1962, while serving with 661 EMP Coy. It is also not disputed that the competent authority enforced the terms and conditions for service for civilian persons employed in GREF with effect from 20th November, 1969, as prescribed by the President. Furthermore, the appellant (UOI) has specifically pleaded that the establishment (GREF) acquired the status of a pensionable establishment with effect from 19th September, 1967 in view of CGDA letter dated 10th February, 1974. The terms and conditions of service for civilian persons employed in GREF under clause 3 reads thus:--

"GENERAL

3. (i) Civilian officers and subordinates, including supervisory personnel, on deputation to GREF from other departments including State Governments, will be governed by normal terms and conditions of deputation as applicable to such civilian officers and personnel deputed to civil posts in the defence services. They will serve for a period mutually agreed upon between the lending and borrowing departments.

(ii) The initial period of appointment of officers, supervisory and other personnel recruited directly will be for a period of 3 years, out of which the first 2 years shall be the period of probation. If at any time during the period of probation the appointing authority does not consider any member suitable for continuance, he shall be discharged from GREF and no notice will be given. Where, however, it is found that a member is suitable only for lower appointment or lower stage in the time scale applicable to him, the appointing authority may offer him in the appropriate grade or stage in the time scale as the case may be. If the individual is not willing, he will be permitted as a special case to resign his appointment or will be discharged from service. After the probationary period of 2 years the appointment may be terminated at any time either by giving a month's notice by the appointing authority without assigning any reason or by reverting the individual to his parent department in case he is holding a lien. The appointing

authority also reserves the right of terminating his services forthwith or before the expiry of the stipulated period of the notice by payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired period thereof. The appointing authority reserves the right of termination of his services without notice or pay in lieu of notice, if he is declared medically unfit by the Medical authority for service in the Central Reserve Engineer Force. During the initial period of service of 3 years, no member of General Reserve Engineer Force shall have option to resign from the service under the GREF except with the prior permission of the appointing authority.

Similarly, officers appointed on a ad-hoc basis for a period of one year under the powers vested in this Ministry will have no option to resign during this period. The period of probation in their case will, however, be six months.

(iii) Subject to the provisions of para 3 (ii) above service rendered by all officers and supervisory and other personnel recruited directly will be governed by the provisions of Central Civil Services (Temporary Service) Rules, 1965.

(iv) If and when a member of the General Reserve Engineer Force is made permanent in any of the permanent cadres of the General Reserve Engineer Force, he shall be governed by normal terms and conditions of service as applicable to non-industrial civilians in the Defence Services."

8. Clause 10, 11 and 12 of the service conditions of the members of the GREF contemplates thus:--

"10. Death/Injury benefits:

Death/injury benefits and gratuity will be regulated in accordance with the provisions of Workmen's Compensation Act, 1923, or the Central Civil Services (Extra-ordinary Pension Rules) as the case may be.

11. Leave and Pension Contributions:

Normal rules will apply.

12. Terminal benefits:

(a) Directly recruited members of the Force, other than those who are entitled to any other terminal benefits will be eligible on release, otherwise than as a disciplinary measure or on resignation, to the following grant of Meritorious Service Grant provided they have completed satisfactory service for a minimum period of three years in cases where the individuals who became entitled to this grant but died while in service in GREF or after release before the grant is actually disbursed to them, this grant will be paid to the next of kin on their behalf provided the other conditions governing the payment are fulfilled.

The following amendment is made in para 12(c) of Ministry's letter No. F.81(1)/1964-Pers dated 20.11.69 in the above subject -

After para 12(c) Add:--

"Note - The temporary service rendered prior to 20th November, 1969 in the GREF will count towards pension under normal rules applicable to the civilians in Defence Services."

This issues with the concurrence of the Ministry of Defence (Def/BR) vide their u.o. No. BRS/56/4161/S of 1971.

Authy:--BRDB letter No. F.81(1)/1964-Pers/17194/D GBR/E2A-I dated 16th July, 1971 received under HQ DGBR letter No. 17194/D GBR/E2A (T&C) dated 29th Jul 71."

9. A glance to Clause 10 would reveal that in case of death/injury benefits and gratuity, the provisions applicable are that of Act of 1923 or the Rules of 1939. The Rules of 1939 have been made applicable to all persons who are paid from Civil Estimate, other than those to whom the Act of 1923 applies, whether the appointment is permanent or temporary on the scale of pay or piecework rate. Rule 3 of the Rules defines "accident" and reads thus:--

"3. Definitions - For the purpose of these rules unless there is anything repugnant in the subject or context -

(1) "accident" means -

(i) a sudden and unavoidable mishap; or

(ii) a mishap due to an act of devotion to duty in an emergency arising otherwise than by violence out of and in the course of service".

10. Further, Rule 3-A deals with the disablement/death and reads thus:--

"3-A. Disablement/Death - (1)(a) Disablement shall be accepted as due to Government service provided that it is certified that it is due to wound, injury or disease which -

(i) is attributable to Government service, or

(ii) existed before or arose during Government service and has been and remains aggravated thereby.

(b) Death shall be accepted as due to Government service provided it is certified that it was due to or hastened by -

(i) a wound, injury or disease which was attributable to Government service, or

(ii) the aggravation by Government service of a wound, injury or disease which existed before or arose during Government service.

2. There shall be a causal connection between -

(a) disablement and Government service; and

(b) death and Government service,

for attributability or aggravation to be conceded. Guidelines in this regard are given in the Appendix, which shall be treated as part and parcel of these Rules.

Clarification. - It will be seen from the new (revised) Forms "C", "D" and "E" that these forms of medical certificates have been so designed that they would indicate whether the entitlement criteria laid down in new Rule 3-A have been satisfied or not, and therefore, normally, no other separate certificates in that behalf may be necessary. It is essential for the Administrative Officer as well as the Audit Office (PAO) concerned to satisfy themselves that the death/disability is, in fact, attributable to or aggravated by the Government service which alone makes an EOP Award admissible and for that purpose, it is essential for both of these authorities to satisfy themselves in that behalf and certify the nexus and causal connection between disablement and Government service or between death and Government service (as the case may be), in any particular case, as laid down in the new Rule 3-A on the basis of the medical and other documents regarding the case. If a Government servant had died in such circumstances and that a medical report could not be secured, even then, the nexus and the casual connection between death and Government service has to be established before conceding acceptance of death due to Government service.

[G.I., M.H.A. (Dept. of Per. & A.R.), O.M. No. F. 23 (9)-E. V (A)/79, dated the 28th November, 1980.]

(3) Notwithstanding anything contained in these rules, the degree of default or contributory negligence on the part of a Government servant may be taken into consideration in making an award under these rules in favour of such Government servant, but, shall not be taken into account where such award is made in favour of the family of such Government servant."

11. Rule 4 of the Rules of 1939 further contemplates that no award shall be made under these rules except with the sanction of the President. Rule 12 admits the claim of family pension from the day following the death of the Government servant or from such other date as the President may decide. Rule 13 provides for procedure with reference to award under these rules. At this stage, it will be relevant to consider the text of Rule 12 and 13, which reads thus:--

"12. Family Pension - (1) A family pension will take effect from the day following the death of the Government servant or from such other date as the President may decide.

(2) A family pension will ordinarily be tenable -

(i) in the case of a widow or mother until death or remarriage, whichever occurs earlier;

(ii) in the case of minor son, or minor brother, until he attains the age of twenty-one*;

(iii) in the case of an unmarried daughter or minor sister, until marriage or until

she attains the age of twenty-four, whichever occurs earlier;

(iv) in the case of a father, life.

NOTE. - The family pension of a widow will cease on remarriage but when such re-marriage is annulled by divorce, desertion or death of the second husband, her pension may be restored upon proof that she is in necessitous circumstances and otherwise deserving.

12-A Family pension in case of remarriage of widow - Notwithstanding anything contained in clause (i) of sub-rule (2) of Rule 12, a widow of an employee who remarries her deceased husband's brother and continues to live a communal life with, or contributes to the support of the other dependants of the deceased shall not be disqualified for the grant of extraordinary pension, otherwise admissible to her under these rules.

13. Procedures - In respect of matters of procedure, all awards under these rules are subject to any procedure rules relating to ordinary pensions for the time being in force, to the extent that such procedure rules are applicable and are not inconsistent with these rules.

(2) Not printed

(3) Not printed

(4) When a claim for any disability pension or family pension arises, the Head of the Office or the Department in which the injured or the deceased Government servant was employed will forward the claim through the usual channel to the Government of India with the following documents:--

(i) A full statement of circumstances in which the injury was received, the disease was contracted or the death occurred.

(ii) The application for disability pension in Form "A" or as the case may be, the application for family pension in Form "B" of the Forms set forth in SCHEDULE IV.

(iii) In the case of an injury of Government servant or one who has contracted a disease a medical report in Form "C" of the Forms set forth in SCHEDULE IV. In the case of a deceased Government servant a medical report as to the death or reliable evidence as to the actual occurrence of death if the Government servant lost his life in such circumstances that a medical report cannot be secured.

(iv) A report of the Accounts Officer concerned as to whether an award is admissible under the rules and, if so, of what amount.

(5) Where the Government are satisfied on the evidence placed before them by a Government servant in respect of whom a medical report for the purpose of grant of disability or other extraordinary pension has been received by them, of the possibility of an error of judgment in the decision of the Medical Board which examined him, the Government may direct a second Medical Board consisting of members other than those who constituted the first Medical Board to examine

the officer and submit a report to the Government in the matter; pension shall be granted to the officer in accordance with the decision of the second Medical Board."

12. Having regard to the Scheme of the Rules of 1939, made applicable with effect from 20th November, 1969, the case of the respondent-writ petitioner could neither be dealt with by the appellant (UOI) under the Rules of 1939 nor under the Defence Service Regulations. The Ministry of Defence, Government of India, has classified the Pension Regulations in two parts i.e. Part I - containing Regulations regulating the pensionary awards of personnel of the Regular Army, the Defence Security Corps, Emergency/Short Service Commissioned Officer and the Territorial Army. Part II - containing Regulations relating to pension procedure affecting the personnel whose pensions are regulated by the Regulations in Part I. The Regulations referred to herein above are in supersession of Regulations for the Army Part I and Part II (1961 Edition). In these Regulations, Regulation 17 makes a provision for qualifying service for pension and gratuity. Regulation 34 provides for minimum period of actual qualifying service (without weightage), required for earning a retiring pension shall be 20 years (15 years in the case of late entrants). Regulation 39 further contemplates a period of minimum 10 years for earning retiring gratuity. To earn service pension, the minimum qualifying service period is 15 years under Regulation 47 unless otherwise provided.

13. The learned counsel for the respondent/writ petitioner was not able to point out as to how the claim of the respondent/writ petitioner, as allowed by the learned Single Judge, could be sustained either under the Defence Regulations or Rules of 1939 (*supra*) or in view of the ratio decided by the Hon'ble Supreme Court in the case of *S.K. Mastan Bee* (*supra*).

14. In the case of *S.K. Mastan Bee* (*supra*), the matter was with reference to the claim for family pension by the appellant (*S.K. Mastan Bee*) as her husband who was a Gangman in Railway died in 1969 while in service. In the case of *S.K. Mastan Bee* (*supra*), the right to family pension was upheld in the backdrop of the Railway Pension Rules whereas in the instant case at hand, the establishment of GREF was not a pensionable establishment and the establishment functioned purely on contract basis upto 19th November, 1969.

15. Having regard to the factual matrix and specific stand of the appellant (UOI), the claim of the respondent/writ petitioner for family pension cannot be sustained as the establishment acquired the status of pensionable establishment only with effect from 19th September, 1967 in view of the communication dated 10th February, 1974 by CGDA. The terms and conditions of the service for civil persons employed in the GREF, were brought into force by the President with effect from 20th November, 1969.

16. For the reasons and discussions herein above, the impugned judgment and order dated 28th August, 2006, passed by the learned Single Judge cannot be

sustained and has to be quashed and set aside. Ordered accordingly.

17. In view of the final adjudication on the special appeal, the stay application stands closed.

18. However, in the facts and circumstances of the case, there shall be no order as to costs.