(1996) 03 GAU CK 0010

In the Gauhati High Court

Case No : Writ Appeal No. 67 of 1996

Union of India (UOI) and Others APPELLANT

Vs

Jeevan Prabha Chetri RESPONDENT

Date of Decision : 13-03-1996

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 2, 50, 52, 53, 54

Citation : (1997) 1 GLR 218

Hon'ble Judges : V.K. Khanna, C.J;A.K. Patnaik, J

Bench : Division Bench

Advocate : K.P. Sharma, Addl. Central Govt. Standing, for the Appellant; S.C. Biswas, K. Bhattacharjee and N.D. Sarma, for the Respondent

Judgement

V.K. Khanna, C.J.—This appeal has been filed against the judgment given by the learned Single Judge in Civil Rule No. 695/95 dated 10.1.96 allowing the prayer made by the Petitioner/Respondent in respect of her claim to the family pension with costs, which has been assessed at Rs. 2500/-.

2. We have hoard Mr. K.P. Sharma learned Counsel appearing for the Appellants/ Respondents. Mr. K. Bhattacharjee, learned Counsel has appeared on behalf of the contesting sole Respondent at the admission stage and we have heard him also.

3. The brief facts for the purposes of adjudicating the questions raised in the present appeal are that Late No. 55059 Rfn. Lal Bahadur Chhetri (5 AR) admittedly was employed with the Appellants, that is the Assam Rifles, Shillong. He was discharged from service on 1.1.1978 on the ground of having become invalid and subsequently died on 15.4.1990. Smt. Jeevan Prabha Chetri, Petitioner/Respondent, applied for family pension under Rule 54 of the Central Civil Services Pension Rules, 1972 (hereinafter to be called the Rules, for getting the family pension after the death of her husband on 28.12.1990. The competent authority denied the family pension to her on the ground that late Lal Bahadur Chhetri did not fill the statutory forms Nos. 1 and 2 nominating the persons who

were entitled to get family pension and as per the records he came to the conclusion that late Lal Bahadur Chhetri was not married and had retired as a bachelor.

4. The learned Single Judge however recorded a finding on the basis of the succession certificate which the Petitioner/Respondent Smt. Jeevan Prabha Chetri had obtained from the court of Additional District Judge, Sonitpur, Tezpur in Misc. (S/C) Case No. 167/93 and other facts and circumstances appearing in the case that she was entitled to family pension.

5. Mr. K.P. Sharma, learned Counsel appearing for the Respondents/Appellants, has strongly relied on the provisions of Rules 52 and 53 of the Rules for the purposes that as the deceased Lal Bahadur Chhetri had not filled the nomination forms, that is, Form Nos. 1 and 2 as prescribed under Rule 53, family pension could not be granted to Smt. Jeevan Prabha Chhetri.

6. A bare perusal of Rules 52 and 53 of the Rules would show that Rule 52 of the aforesaid Rules deal only with "Lapse of death-cum-retirement gratuity" while Rule 53 prescribes the procedure for nominations in respect of the persons who would become entitled to death-cum-retirement gratuity payable under Rule 50. As far as family pension is concerned, that is specifically dealt with in Rule 54 and entitlement to the family pension has been prescribed in Sub-rule (2) of Rule 54, which clearly states that the family of the deceased shall be entitled to family pension, the amount of which shall be determined in accordance with the table prescribed therein. It is pertinent to note that in respect of Rule 54 providing for family pension, there is no corresponding provision like that in Rule 52, which may provide for lapse of family pension. There is a marked difference between death-cum-retirement gratuity and family pension. As far as family pension is concerned, the entitlement in accordance with Rule 54 becomes immediately available to the family by operation of the provisions of the Rule. The gratuity is earned by an employee on the basis of normally the years for which he had rendered the qualifying service. It is therefore clear that the gratuity is earned by an employee and is given by the employer in view of the services rendered by the employee. As far as family pension is concerned, in the ordinary parlance that is an amount which becomes payable to the family for its maintenance after the death of the person who was serving in the establishment concerned. The parity drawn by Mr. K.P. Sharma that the provisions of Rule 2 relating to lapse of death-cum-retirement gratuity will also be applicable in the case of family pension prescribed under Rule 54, is, in our opinion, unfounded.

7. As far as the evidence which had been filed by the Petitioner/Respondent along with the Civil Rule is concerned, that was all one-sided and had not been rebutted, which consists of a succession certificate issued by a competent court, a certificate issued by the Secretary of the concerned Gaon Panchayat and also a certificate issued by one of the authorities of the Appellants certifying that Smt. Jeevan Prabha was the wife of late Rfn. Lal Bahadur Chhetri and that she had given birth to a female baby on 24.8.1968 at 5 P.M. (Annexure-VII to the Civil

Rule).

8. We are thus of the opinion that the view taken by the learned Single Judge is absolutely correct and the withholding of the family pension to the Petitioner/ Respondent was absolve uncalled for and illegal. In our opinion, the wife has been deprived of the family pension for more than five years.

9. Looking to the entire facts and circumstances of the case, we issue a Mandamus that the family Pension which has become due till 30th April, 1996 will be payable by 15th May, 1996 after calculating the interest at the rate of 18 per cent per annum thereon. The family pension from the month of May, 1996 will be payable on the due dates to the Petitioner/Respondent.

10. Subject to the aforesaid observations, the present appeal is finally disposed of and the judgment and order of the learned Single Judge stand modified to the extent indicated above.

11. The Petitioner/Respondent is represented in this Court by counsel and the Petitioner/Respondent will also be entitled to Lie costs in this appeal, which we assess at Rs. 1000/- (Rupees one thousand only). The costs awarded by the learned Single Judge and the costs awarded under this judgment will be payable by an account payee cheque in the name of Smt. Jeevan Prabha Chhetri, the Petitioner/Respondent, on or before 15th May, 1996.

