
(2010) 02 MP CK 0018

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2666 of 2009

Union of India (UOI) and Others

APPELLANT

Vs

Smt. Begum Bee

RESPONDENT

Date of Decision : 04-02-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54, 54(6), 54(8)

Citation : (2010) ILR (MP) 1340

Hon'ble Judges : Ramesh Surajmal Garg, J;K.S. Chauhan, J

Bench : Division Bench

Judgement

R.S. Garg, J.—The Petitioners/Union of India and its officers being aggrieved by the order dated 20,11,2008 passed by a Division Bench of Central Administrative Tribunal. Jabalpur in O.A. No. 319/2008 directing grant of family pension to Sheikh Ramjan Khan S/o deceased Abbas Khan on the ground that he is mentally challenged, has come to this Court submitting that the order passed by the Tribunal is patently illegal.

2. The undisputed facts are that one Abbas Khan working as Machine Operator with the Petitioners died on 20.6.2001. Family pension was sanctioned in favour of Smt. Jattun Bee, widow of the deceased Abbas Khan. Said Jattun Bee died on 31.1.2002. After her death, Ramjan Khan, a minor son of Abbas Khan and Jattun Bee, made an application for grant of family pension. The application was accordingly allowed. However, after Ramjan Khan attained the age of 25 years Ramjan Khan S/o Abbas Khan made an application for grant of family pension on the ground that he was mentally challenged and was therefore entitled to the family pension under Rule 54 of CCS Pension Rules. Alongwith the application, he had filed the medical certificate issued by Civil Surgeon-cum-Superintendent of the Government Hospital, Hoshangabad. The Petitioners, however, vide their order dated 25/31.3.2008 informed the Petitioners that as per the rule/provisions since Ramjan Khan was married he would not be entitled to family pension. The Respondent/wife as guardian of Ramjan Khan came to the Central

Administrative. Tribunal with a submission that the order passed by the present Petitioners was patently illegal and was running contrary to Rule 54. It appears that the present Petitioners appeared before the Tribunal and submitted that in light of office circular dated 5.3.1998 (Annexure-P/5) and yet another office circular dated 21.7.1999 (Annexure-P/6), the Respondent would not be entitled to family pension. The Tribunal, however, after referring to the provisions contained in Section 54 and the relevant provisions came to the conclusion that a person who is mentally deranged or is unable to look after his own interest even he is married, he would be entitled to family pension. The Petitioners being aggrieved of the said order are before us.

3 Shri Dharmadhikari, learned Counsel for the Petitioners after taking us through Rule 54(6)(iii) Clause (i) and Clause (iv) submitted that the order passed by the learned Tribunal is patently illegal. It is also submitted by him that, the present Petitioners were entitled to an opportunity of making any inquiry into the certificate and the fact that the person claiming family pension is handicapped to such an extent that he is unable to earn his or her livelihood and as in the present matter such opportunity has not been granted the order is patently illegal.

4. Shri Nagpal, learned Counsel for the Respondent on the other hand submitted that the circular contained in Annexures-P/5 and P/6 would not override Rule 54 because the said Rules have been framed under Article 309 while Annexures-P/5 and P/6 are only departmental direction. It is also submitted by him that the Petitioners have to thank themselves for not making an inquiry into the certificate and the physical condition/mental condition of the claimant in relation to his capacity to earn if they were simply harbouring upon the fact that the claimant being married was not entitled to pension.

5. We have heard the parties at length.

6. Sub-rule 6 of Rule 54 refers the period for which the pension is payable. It provides for the priority in which the family pension is to be paid. Para-1 of the proviso appended to Clause (iii) of Sub-rule 6 of Rule 54 provides that if the son or daughter of a government servant is suffering from any disorder or disability of mind including, mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years the family pension shall be payable to such son or daughter for life subject to the conditions as contained in Clause (i) of the proviso. Clause (i) further says that the pension shall be initially payable to the minor children in the order set out in Clause (iii) of Sub-rule (8) of Rule 54 and after such minor child attains the age of 25 years, family pension shall be resumed in favour of the person i.e. son or daughter who is suffering from disorder or disability of mind.

7. In the present matter, undisputedly Raffique Khan was a minor on the date of death of Smt. Jattun Bee, therefore, he was awarded pension up to the age of 25 years. Immediately thereafter the pension should have been paid to Ramjan

Khan who was mentally derailed or challenged in accordance with Clause (i) appended to the proviso appended to Clause (iii) of Sub-rule 6 of Rule 54. It appears that the present Petitioners were simply submitting that the present Respondent would not be entitled to family pension because he was already married.

8. In so far as question of marriage is concerned, that does not fall under Clause (iii) of Sub-rule 6 of Rule 54. Clause (iii) simply provides the manner of award of the pension in favour of the claimants or the applicants. Even otherwise it is to be recorded that a person who is mentally challenged is a perpetual minor, and therefore, he would never attain the aged of 25 years. Probably taking that legal position in to consideration Clause (i) appended to the proviso says that family pension shall be paid to such person for the life.

9. In the present matter, in our opinion, the question of marriage was foreign to the order made infavour of the claimant.

10. In so far as the alternative argument regarding opportunity to make enquiry is concerned, we are of the opinion that if the Petitioners never thought of making any inquiry but were opposing the claim only on the ground of the marriage of the claimant then before this Court they cannot raise such a grievance.

11. At this stage, we refuse to interfere in the order passed by the Tribunal but however, would grant liberty to the Petitioners to make an inquiry in accordance with Clause (iv) of Sub-rule 6 of Rule 54 of the Pension Rules. While making such an inquiry appropriate opportunity of leading evidence and hearing shall be given by the Petitioners/claimant through his guardian it is, however, made clear that until adverse orders are passed, the claimant shall be entitled to family pension.

12. The petition is dismissed. There shall be no orders as to costs.