

(2010) 04 SHI CK 0139
In the High Court Of Himachal Pradesh

Union of India (UOI)

APPELLANT

Vs

Kamlesh Devi

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Citation : (2010) 04 SHI CK 0139

Hon'ble Judges : Kurian Joseph, C.J;R.B. Misra, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—Respondents in the writ petition, Union of India, The Controller General, Controller of Defence Accounts and the Office in charge, Jammu-Kashmir Rifles are the appellants. The writ petition was filed by the widow of Sh. Parshotam Singh with the following reliefs:

(i) That the respondents may kindly be directed to pay the family pension to the petitioner, as the husband of the petitioner late Parshotam Singh had served the Army for 13 years and 11 months and was suffering from medical disability.

(ii) That the respondents may kindly be directed to pay family pension to the petitioner at least from the date of death of her husband i.e. 27.9.1997 with interest throughout.

2. To refer to the brief facts, late Parshotam Singh got enrolled in the Army on 28.5.1980 and was discharged on 30.4.1994. At the time of discharge, he had 13 years, 11 months and 2 days of service. Thereafter, he died on 27.9.1997. This writ petition was filed in the year 2005, with the prayers extracted above. Learned Single Judge allowed the writ petition, declaring that Parshotam Singh shall be deemed to have completed 15 years of qualifying service entitling him to pension and on that count, a direction was issued to disburse the pension due to Parshotam Singh till his death on 27.9.1997 and the family pension to the petitioner after his death.

3. Learned Assistant Solicitor General of India submits that Parshotam Singh having not challenged his discharge from service, having not been granted any

pension, let alone disability pension from the Army, Parshotam Singh having admittedly not completed 15 years of qualifying service entitling him to pension, at any rate Parshotam Singh having not staked any claim for pension during his life time, learned Single Judge erred in granting the reliefs by way of pension to late Parshotam Singh and his wife thereafter.

4. According to the counsel for the writ petitioner, files would show that late Parshotam Singh was illegally discharged from service. If that be so, the course open to writ petitioner was to challenge the discharge in appropriate proceedings. Pension is granted only against a pensionable length of service. Admittedly, Parshotam Singh did not have to his credit the minimum required period of 15 years as qualifying service for the purpose of pension. If that be so, Parshotam Singh and on that count his wife, the writ petitioner, are not entitled to any sort of pension. Therefore, we set aside the judgment of the learned Single Judge, allow the Letters Patent Appeal and dismiss the writ petition. However, we make it clear that the judgment shall not stand in the way of the writ petitioner pursuing her relief in appropriate proceedings in case she has any grievance pertaining to the alleged illegal discharge of Parshotam Singh from service. If such a course of action is adopted, competent authority shall look into the same and pass appropriate orders, in accordance with law, in the matter, within another three months. Copy Dasti.