

(2010) 12 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6111 of 2005

Vikash Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Hindu Adoptions and Maintenance Act, 1956 — Section 16

Citation : (2011) 2 RLW 1395

Hon'ble Judges : Veenit Kothari, J

Bench : Single Bench

Advocate : Sanjay Rara on behalf of Ajeet Bhandari, for the Appellant; G.K. Garg and Nalin G. Narayan, Dy. Govt. Counsel, for the Respondent

Judgement

Veenit Kothari, J.—By this writ petition, the petitioner an adopted son of deceased Tiku Ram, who served in the Nagar Palika, Nawalgarh, Distt. Jhunjhunu, the respondent No. 4, claims the family pension which has been denied to him by the respondents by a communication (Annex. 3) dated 26.5.2005 on the ground that the adoption of the present petitioner Vikas Singh by the Government servant Tiku Ram took place after the date of his retirement on 31.7.2001 and since the adoption took place vide a registered adoption deed (Annex. 1) dated 23.7.2003 as per Rule 66(1)(c) of the Pension Rules, 1996, the petitioner is not entitled to the grant of family pension. Learned counsel for the petitioner has urged that the adoption of the petitioner by the Govt. servant Tiku Ram, who later-on expired on 17.4.2005 took-place by a registered adoption deed on 27.3.2003, cannot be disputed and denied by the respondents and being member of the "family" as defined in Rule 66 of the Rules of 1996, he is entitled to the grant of family pension.

2. Learned counsel for the petitioner relied upon the following decisions-

(i) Laxmi Kunwar (Smt) Vs. State of Rajasthan, ,

- (ii) Smt. Shanti Devi vs. Union of India and Anr. RLR 1990 (1) 85,
- (iii) Ibrahim Khan and Another Vs. State of Rajasthan and Others, ; and
- (iv) Smt. Bhagwanti vs. Union of India and Smt. Bhagwanti Vs. Union of India (UOI), .

3. On the side opposite, the learned counsel for the respondent, Nagar Palika, Nawalgarh, Mr. G.K. Garg and the learned counsel appearing on behalf of the State, urged that since the adoption of the petitioner admittedly, took place after the date of retirement of the Government servant Tiku Ram, the petitioner could not fall within the definition of "family" on the date of retirement itself, and, therefore, the petitioner is not entitled to the grant of said family pension.

4. Learned counsel for the respondent Mr. Garg, submits that the child born or adopted after the date of retirement of the concerned Government servant, does not become a member of the family unless the child is born to the government servant posthumous who is included in the definition of "family" under Rule 66 of the Rules of 1996. He, therefore, prays for rejection of the writ petition.

5. I have heard the learned counsel for the parties at length and perused the relevant Rule 66 of the Pension Rules, 1996 and the Judgments cited at the bar.

7. Rule 66 of the Pension Rules, 1996 which defines term "Family" is reproduced here for ready reference:-

Rule 66. Definitions-

(1) "Family" for the purpose of these rules will include the following relations of the Governments Servant.

(a) Wife, in the case of male Government servant and husband, in the case of a female Government servant;

(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery;

(c) son/daughter including widows/divorced daughter till he/she attained the age of 25 years or on earning monthly income exceeding rupees 2,500/- or upto the date of his/her marriage/remarriage, whichever is earlier. The term son/daughter shall also include son/daughter adopted legally and posthumous child of a government servant.

(d) parent who were wholly dependant upon the Government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child and the income of parent is not more than rupees 2,500/- per month.

7. In the case of Smt. Bhagwanti vs. Union of India (supra), the Hon"ble Supreme Court in para 13 held as under-

13. Considered from any angle, we are of the view that the two limitations

incorporated in the definition of "family" suffer from the vice of arbitrariness and discrimination and cannot be supported by nexus or reasonable classification. The words "provided the marriage took place before retirement of the Government servant" in clause (i) and "but shall not include son or daughter born after retirement" in clause (ii) are thus ultra vires Art. 14 of the Constitution and cannot be sustained.

8. In *Laxmi Kunwar (Smt.) vs. State of Rajasthan (supra)*, the Hon"ble Supreme Court held that the distinction sought to be made in the definition of "Family" by excluding the spouse of post retirement marriage from the definition of "Family" for the purpose of family pension, was ultra vires of Article 14 of the Constitution of India.

9. Following the Case of *Smt. Bhagwanti vs. Union of India (supra)*, the Division Bench of this Court in the case of *Ibrahim Khan and Anr. vs. The State of Rajasthan and Ors. (supra)* also similarly held that the distinction made in the definition between marriage during service and marriage after retirement is unjustified, arbitrary and violative of Art. 14 of the Constitution of India, and accordingly Note 2 of Rule 268 D of Rajasthan Service Rules, 1951 was struck down by the Division Bench of this Court. The said ratio was also followed by the Single Bench of this Court in the case of *Smt. Shanti Devi vs. Union of India & Anr. (supra)*.

10. In view of the aforesaid legal position, this Court is of the considered opinion, that the contention raised by the learned counsel for the respondents that the relation ship of the person claiming family pension and retired Government servant must exist, as such, on the date of retirement itself has no legal substance and deserves to be rejected. The family pension accrues as per the relevant Rules upon retirement to the person who falls within the four corners of definition of "family" as defined under Rule 66 of the Rules quoted above. Clause (c) of Rule 66 of the Rules, does not specify that such relationship must exist on the date of retirement itself. The term son/daughter adopted legally and posthumous child of a Government servant are admittedly included within the definition of "Family". Therefore, a future point of time of coming into existence of relationship of the person claiming such family pension is also envisaged in the said Rule. The only condition in case of son/daughter being adopted is concerned, is that he/she should be legally adopted son/daughter of the retired Government servant.

11. The Courts in the judgments cited above, have struck down such distinction which was sought to be made by the State depending upon the marriage or birth taking place after retirement as violative of Article 14 of the Constitution of India. Therefore, the contention raised by the learned counsel for the respondents that such relation-ship must exist on the date of retirement itself, cannot be said to be of much substance in view of the adoption deed duly registered by a Competent Authority vide (Annexure 1) on 23.7.2003 in the present case. The presumption of legality of adoption is bound to be raised in favour of the present

petitioner by virtue of Section 16 of the Hindu Adoptions and Maintenance Act, 1956 which is also reproduced here for ready reference-

16. Presumption as to registered documents relating to adoption;-Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

12. Once such adoption is held to be a legal adoption, the petitioner would squarely fall within the definition of "Family" as defined under Rule 66(1) of the Pension Rules, 1996. It may be true, that since the said adoption deed stipulated that the adoption in question took place on 8.2.2003 and the said adoption deed was registered on 27.3.2003 the petitioner would be entitled to the said family pension only thereafter. Since, the family pension would accrue only on the death of the adoptive father Tikuram on 17.4.2005, before which date of petitioner already stood legally adoption by deceased Tikuram; therefore, this Court is of the opinion that the impugned order (Annexure-3) dated 26.5.2005 passed by the respondent, the Assistant Director, Pension Department, cannot be sustained and the same is accordingly quashed and set-aside. Accordingly, this writ petition is allowed and the petitioner Vikas Singh is held entitled to get family pension. The amount of arrears, if any, must be paid to the petitioner within a period of three months from today, after which period, the amount of arrears shall bear simple interest @ 9% per-annum. No order as to costs.