

(2013) 04 P&H CK 0067

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 21230 of 2012

Geeta Devi

APPELLANT

Vs

Financial Commissioner and
Principal Secretary to Govt.
Haryana and Others

RESPONDENT

Date of Decision: April 10, 2013

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (2013) 3 SCT 235

Hon'ble Judges: A.K. Sikri, C.J.; Rakesh Kumar Jain, J

Bench: Division Bench

Advocate: Sandeep Bansal, for the Appellant; Anil Rathee, Additional Advocate General, Haryana, Ms. Ramandeep Kaur and Mr. A.S. Virk, Advocates for the Respondent No. 4, for the Respondent

Final Decision: Allowed

Judgement

A.K. Sikri, C.J.

Orders dated 07.02.2013 passed in this case would reflect the controversy in hand. Therefore, we begin by reproducing the said order in its entirety as follows:-

The petitioner is the mother of Udey Kant who was in the service of respondent No. 4 - School i.e. DAV Sr. Sec. School (Boys), Karnal. This is an aided and recognized school. He died in harness on 13.06.2010. The petitioner, mother of Udey Kant, is the only legal heir. However, she is denied family pension and financial assistance under the Schemes formulated by the State of Haryana because of the reason that Rule 14 of the Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001 (hereinafter referred to as the "Rules") does not include parents of the deceased as dependent for the purpose of family pension. For this reason, the petitioner has challenged the vires of Rule 14.

Learned counsel for the petitioner has drawn our attention to the Punjab Civil Service Rules where dependent parents are included in the definition of "Family" for the purpose of family pension. He also submits that the Parliament has also now enacted Maintenance and Welfare of Parents and Senior Citizens Act, 2007 under which parents are given statutory right to claim maintenance against their children.

Having regard to these developments in law which have taken place and the right of the parents which is recognized, we are of the view that the matter needs to be given serious attention by the respondents and it is desirable that Rule 14 of the Rules is amended to include dependent parents also in the definition of "dependent family member".

Mr. Rathee prays for some time to take instructions in the matter and respond.

List on 20.02.2013.

A copy of this order be given to the learned State counsel under signatures of the Joint Registrar (Judicial)-cum-Principal Secretary of this Bench.

On instructions, statement of Mr. Rathee, learned Additional Advocate General, Haryana is that the respondents are not agreeable to amend the definition of "dependent family members" contained in Rule 14 of the Haryana Aided Schools (Special Pension & Contributory Provident Fund) Rules, 2001 (hereinafter referred to as the Rules). In these circumstances, we have heard the matter on merits.

2. Rule 14 of the Rules provides the following definition of "dependent family members":-

(i) In case of death of the employee or pensioner with at least one year service the family pension shall be granted to the family of the deceased employee of the aided school @ 30% of the pay in all cases, subject to minimum of Rs. 1275/- and maximum of 30% of last pay.

(a) In case of death of an employee while in service having more than seven years' service or after retirement before attaining the age of sixty five years, the amount of family pension would be fixed at double the amount of normal family pension subject to the condition that such enhanced family pension does not exceed fifty percent of pay drawn at the time of death or normal pension, as the case may be. This benefit will be available for a period of seven years or till the deceased could have attained the age of sixty five years, whichever is earlier.

(b) In the event of death after retirement, the family pension at the enhanced rates shall be payable upto the date on which the deceased employee would have attained the age of sixty five years, had he survived, or for a period of seven years whichever period is less, but in no case the amount of family pension shall exceed the pension sanctioned to the employee at the time of retirement.

Explanation: - For the purpose of family pension "Family" shall include the following members:-

- (1) (a) wife;
- (b) husband;
- (c) minor sons;
- (d) unmarried minor daughter and legally adopted child before the date of retirement;
- (e) widow/widows upto the date of death or remarriage whichever is earlier;
- (f) sons/unmarried daughters until he/she attains the age of 25 years or starts earning livelihood whichever is earlier;
- (g) a judicially separated wife or husband;

(2) Marriage after retirement is recognized for the purpose of family pension.

Note:- The term "child" includes posthumous child of the employee.

3. As clear from the reading of this Rule, explanation gives the particulars of "family", namely, the members who would be included and treated as family members. This definition does not include parents of the deceased employee even when these parents were dependent upon the deceased son/daughter. It is for this reason the present petition challenges the vires of Rule 14.

4. We find that issue is no more res-integra and has come up for consideration before this Court as well as the Apex Court on earlier occasions as well. We may start our discussion by taking note of the judgment of the Supreme Court in Smt. Bhagwanti Vs. Union of India (UOI), which was also a case concerning the grant of family pension and the Supreme Court had given the directions to give family pension to the dependent parents as well in the following manner:-

9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self-same consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary. There are instances where a Government servant contracts his first marriage after retirement. In these two cases before us, retirement had been at an early age. In the Subedar's case, he had retired after putting in 18 years of service and the Railway employee had retired prematurely at the age of 44. Premature or early retirement has indeed no relevance for deciding the point at issue. It is not the case of the Union of India and, perhaps there would have been no force in such contention if raised, that family pension is admissible on account of the fact that the spouse contributed to the

efficiency of the Government servant during his service career. In most cases, marriage after retirement is done to provide protection, secure companionship and to secure support in old age. The consideration upon which pension proper is admissible or the benefit of the family pension has been extended do not justify the distinction envisaged in the definition of "family" by keeping the post-retirement spouse out of it.

12. In Clause (ii) of the definition son or daughter born after retirement even out of wedlock prior to retirement have been excluded from the definition. No plausible explanation has been placed for our consideration for this exclusion. The purpose for which family pension is provided, as indicated in Smt. Poonamal's case, is frustrated if children born after retirement are excluded from the benefit of the family pension. Prospect of children being born at such advanced age (keeping the age of normal superannuation in view) is minimal but for the few that may be born after the retirement, family pension would be most necessary as in the absence thereof, in the event of death of the Government servant such minor children would go without support. The social purpose which was noticed in some pension cases by this Court would not justify the stand taken by the Union of India in the counter-affidavit. It is not the case of the Union Government that as a matter of public policy to contain the growth of population, the definition has been so modified. Even if such a contention had been advanced it would not have stood logical scrutiny on account of the position that the Government servant may not have any child prior to retirement and in view of the accepted public policy that a couple could have children up to two, the only child born after superannuation should not be denied family pension.

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 Article 14 of the Constitution and cannot be sustained.

5. Referring and relying upon the said judgment, a Division Bench of this Court in State of Punjab and Another Vs. Kharak Singh Kang and Another, held similar provision, which had not included the dependent parents in the definition of family, as violative of Article 14 of the Constitution of India. Tracing the history of family pension in the State of Punjab, the Division Bench observed that in 1951 Scheme of family pension, the father and mother were included in the definition of "Family" for the grant of family pension. It was specifically provided that the family "includes only wife, legitimate child, father or mother, dependent upon the deceased for support". Even today, under Rule 6.16-B of the Punjab Civil Services Rules, as applicable to Haryana, the father and mother (including adopted parents....) are included in the

definition of family for the purpose of determining entitlement to the payment of death-cum-retirement gratuity. Similarly, they are also eligible for the grant of "wound and other Extraordinary Pensions" as contemplated in Chapter VIII of the said Rules. Under Rule 8.34, it has been specifically provided that "if the deceased government employee has left neither a widow nor a child, an award may be made to his father and his mother individually or jointly and in the absence of the father and the mother, to minor brothers and sisters....". It is, thus, clear that the parents have been included in the definition of "Family" for the purpose of grant of death-cum-retirement gratuity as well as for pension as contemplated under Chapter VIII. Yet, they have not been included in the "Family" under Rule 6.17 for the grant of family pension. Highlighting the importance of parents and the persons who could not be excluded from the definition of family as its members, the Court made further significant observations in the following manner:-

8. "Next to God, thy parents" says the poet. Not even next to a judicially separated wife or husband is the mandate of Rule 6.17. Those who gave him birth and trained him up have no right to be included in his family? It does not appeal to logic. We cannot say-Yes.

9. The purpose of the rules relating to family pension is to provide means of sustenance to the members of the family of the deceased employee. It is not unknown that not only the widow and children but very often even the aged parents are dependent on their son for their livelihood. The provision for family pension has been made to help such dependents. There appears to be no valid basis for excluding the parents from the list of persons who should be entitled to the grant of family pension on the death of the employee.

10. It is well settled that every executive action and in particular a legislative measure like a statutory rule governing the grant of pensionary benefits should meet the test of reasonableness as contemplated under Article 14 of the Constitution. Admittedly, the parents of a deceased employee are eligible for the grant of gratuity. They are also eligible for the grant of certain kinds of pension. In the case of an employee who is not even married, they are not entitled to the grant of family pension. The rule has no rationale. It is totally arbitrary. It is not reasonable. Rule 6.17 of the Punjab Civil Services Rules, Volume II cannot, thus, be sustained to the extent it excludes the parents of the deceased government employee from the concept of "Family".

6. By means of various legislations, reflecting the sentiments of the society, the Legislature has advanced in this direction recognizing the obligation of the children to maintain their parents who do not have any other source of income. Recent legislation enacted by the Parliament is Maintenance and Welfare of Parents and Senior Citizens Act, 2007 under which parents are given statutory right to claim maintenance against their children. The very concept of family pension proceeds on the rationale that when the employee dies in harness and even after retirement and

is enjoying pension from the employer/government, the family members who were dependent upon him should be accorded family pension. It is for this reason that definition of "Family" includes dependent sons as well as unmarried/widow daughters. In many rules, even brothers below the age of 18 years and unmarried/widow sisters including step brothers and sisters are included in the extended definition of "Family". In Punjab Civil Services Rules (Vol. II), which are made applicable to Haryana as well, a very wide definition of "Family" is provided in Rule 6.16-B including following members in the definition of "Family":-

- (a) "family" shall include the following relatives of the Government employee:-
 - (i) [wife or wives including judicially separated wife or wives in the case of male Government employee;]
 - (ii) [husband including judicially separated husband in the case of female Government employee;]
 - (iii) sons; (including step-children and adopted children);
 - (iv) unmarried and widowed daughters;
 - (v) brothers below the age of 18 years and unmarried widow sisters, including stepbrothers and sisters;
 - (vi) father;
 - (vii) mother; including adopted parents in case of individuals whose personal law permits adoption;
 - (viii) married daughters; and
 - (ix) children of a predeceased son.

7. It is clear from the above that both father and mother are added in the definition of "Family". So much so, adopted parents in case of individuals whose personal law permits adoption are brought within the umbrella of the aforesaid definition. When the law, keeping pace with the development in the society, is advancing in this particular direction recognizing obligation of the children to maintain their parents, we fail to understand the abrogated steps of the respondents herein in showing their obstinacy in not bringing dependent parents in the definition of "Family". Going by the dicta laid down in the aforesaid judgment of the Supreme Court in Smt. Bhagwanti v. Union of India, which is followed by judgment of the Single Bench of this Court in Kharak Singh Kang and another's (supra), we hold that non-inclusion of the dependent parents in the definition of "Family" in Rule 14 of the Rules is arbitrary, discriminatory and offends the Constitutional Amendment of Rule 14.

8. We, thus, issue directions to the respondents to amend the definition and include parents i.e. father and mother of the employee as well in the definition of "Family" for the purpose of family pension. We may record, at this stage, that one of the

contentions of the learned counsel for the respondents was that in so far as the petitioner herein i.e. mother of deceased Udey Kant is concerned, she is not dependent, inasmuch as her husband i.e. father of Udey Kant is earning pension. We may clarify that we have not gone into the issue as to whether in the present case, the petitioner would be treated as dependent or not. What we have laid down is that dependent parents could not be excluded from the definition of "Family" as they are integral part of family. Writ petition, thus, is allowed in the aforesaid manner. Two months" time is granted to the respondents to incorporate suitable amendments in Rule 14 to move it out of the vice of arbitrariness. In the light of the aforesaid, case of the petitioner shall also be considered and appropriate orders passed treating her as family member and the decision will be taken as to whether she is dependent or not.