

(2002) 03 AHC CK 0074

Allahabad High Court

Case No: C.M.W.P. No. 17044 of 2001

Smt. Saraswati Joshi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: March 16, 2002

Acts Referred:

- Constitution of India, 1950 - Article 12, 38(1), 39, 41
- Uttar Pradesh Nagar Mahapalika Act, 1959 - Section 548
- Uttar Pradesh Nagar Mahapalika Sewa Niyamawali, 1962 - Section 548
- Uttar Pradesh Palika (Centralised) Service Rules, 1966 - Rule 109, 33, 47

Citation: (2002) 2 AWC 1242 : (2002) 2 UPLBEC 1221

Hon'ble Judges: Rakesh Tiwari, J; M. Katju, J

Bench: Division Bench

Advocate: A.K. Pandey and Bhagwati Prasad, for the Appellant; C.K. Parekh and A.K. Singh, S.C., for the Respondent

Final Decision: Allowed

Judgement

Rakesh Tiwari, J.

The petitioner Js the widow of late Sri K. N. Joshi, who retired as Nagar Abhiyanta. Jalkal on 31.3.1977. The petitioner has prayed that the respondents may be directed to pay family pension and dearness allowance to her in terms of the judgment and order dated 19th February, 1996 passed by this Court in Civil Misc. Writ Petition No. 15309 of 1994, Moti Lal Agrawal and others v. State of U. P., and others, and further to quash the order dated 3.4.2001 passed by respondent No. 2 on her representation, which has been filed as Annexure-1 to the writ petition.

2. The facts of this case are that petitioner"s husband late Sri K. N. Joshi was initially appointed in 1958 as Assistant Water Works Engineer in Nagar Mahapalika. Varanasi (now Nagar Nigam, Varanasi). He was promoted as Nagar Abhiyanta. Jalkal and retired on 31.3.1977. The pay scale of late K. N, Joshi at the time of retirement was

Rs. 500-50-75-EB-1,000-EB-50-1250-150-50-1,400. The aforesaid pay scale for the post of Water Works Engineers has been revised with effect from 1.1.1996 to Rs. 14,300-400-18,300. Petitioner's husband died on 17.10.1994 prior to the revision of the pay scale in January, 1996.

3. Heard Sri A. P. Pandey, learned counsel for the petitioner and Sri C. K. Parekh, learned counsel for the respondent.

4. It is contended in the petition that she is being harassed by the State Government and is being made to run from pillar to post for payment of dearness allowance on the total amount of her family pension. Earlier also the petitioner had to challenge the arbitrary and discriminatory action of the respondents by means of Civil Misc. Writ Petition No. 2609 of 2001 in which she had prayed for a writ of mandamus directing the respondents to grant revised family pension along with the dearness allowance with effect from 1.1.1996 to her in terms of the Government order dated 13.4.2000 and the judgment dated 19.2.1996 In the case of Moti Lal Agrawal and others v. State of U. P., and others. The aforesaid writ petition was disposed of by a Division Bench of this Court vide judgment dated 22.1.2001 directing the authority concerned to decide the representations of the petitioner dated 12.9.2000, 16.10.2000 and 7.1.2001 preferably within two months from the date of production of a certified copy of the order, in accordance with law. In pursuance of the aforesaid judgment the representations of the petitioner has been decided by the impugned order dated 14.4.2001 on the solitary ground that Nagar Nigam, Varanasi, has its own pension rules and the amount of family pension has rightly been granted to her under the aforesaid rules, as rules of the State Government regarding pension are not applicable in the aforesaid circumstances.

5. It may be mentioned here that the U. P. Pay Commission (Local Bodies) 1977-78 had made recommendation that U P. Palika pensioners must get parity in pension, medical facilities and other reliefs as admissible to the employees of the State Government, and the State Government had accepted the recommendation of the U. P. Pay Commission (Local Bodies) and had issued an order on 28.2.1984 recommending that the Palika should give the same relief to its pensioners including family pension, etc. as available to the employees of the State Government drawing similar pay scale immediately from the date of retirement.

6. It is averred in the writ petition that in 1966, the U. P. Palika (Centralised) Services Rules, 1966 (hereinafter referred to as Rules) came into force and late Sri K. N. Joshi, was absorbed in the centralised service in terms of Rule 33 (3) of the said Rules. These Rules also provide for payment of pension to the employees of the centralised services, in the Mahapalika/Nagar Nigam who have authority to frame regulations in terms of Section 548 (f) of U. P. Nagar Mahapalika Adhiniyam, 1956 with regard to pension. It appears that petitioner's husband opted for pension in terms of the Regulations applicable to Nagar Nigam, Varanasi. It is not denied that the petitioner is getting family pension. The moot point, which arises for consideration by this

Court is whether the petitioner is entitled to the family pension at the rate not less than 30 per cent of the last drawn salary as per revised pay scale applicable with effect from 1.1.1996 in terms of the Government order dated 13.4.2000 (Annexure-3 to the writ petition) and the ratio of the decision of this Court in Civil Misc. Writ Petition No. 15309 of 1984, Moti Lal Agrawal and another v. State of U. P., and others. 1996 (2) AWC 2.118 (NOC) ; 1996 (2) ESC 612 All. Copy of the judgment in Moti Lal Agrawal's case has also been filed as Annexure-7 to the writ petition.

7. Since the petitioner has made a prayer for directing the respondents to grant family pension and dearness allowance to her in terms of the aforesaid judgment in Moti Lal Agrawal's case, it is necessary to look into the controversy decided by this Court.

8. The facts as appear from perusal of the judgment in Moti Lal Agrawal and another v. State of U. P., and others are that M. L. Agrawal was an employee of the Nagar Palika, Allahabad. He retired from service and claimed pension and dearness allowance at par with the State Government employees on the ground that Nagar Palika, Lucknow and Kanpur were already paying the same to their employees at par with the State Government employees. In short, it was a case of discrimination. In that case also, the petitioners were governed by the U. P. Palika (Centralised) Services Rules, 1966 and it was alleged that they were not getting similar amount of pension including dearness allowance and gratuity as was being paid to the employees of Nagar Palika, Lucknow and Kanpur who were being paid pension, etc. at par with the employees of the State Government, corresponding to the last amount of pay drawn by them.

9. This Court in the aforesaid case of Moti Lal Agrawal held that there was no reason why there should be any discrimination between the employees of Nagar Mahapalika, Allahabad and that of Kanpur when both were governed by the same enactment, namely. U. P. Nagar Mahapalika Adhiniyam. After going through the various provisions of the U. P. Nagar Mahapalika Adhiniyam, and Rule 109 read with Rule 47 fa) of the U. P. Nagar Mahapalika Sewa Niyamawali, 1962. Section 548 (f) of the U. P. Nagar Mahapalika Adhiniyam, 1956 and the provisions of the U. P. Palika (Centralised) Services Rules, 1966, the Division Bench held that a reading of the aforesaid provisions along with Articles 14, 21, 39 and 41 of the Constitution leaves no room for doubt that the Corporations are State within the meaning of Article 12 of the Constitution and they are to make efforts to improve the lot of pensioners who are entitled to economic security and a decent life. The action of the State in such matters has to be judged in the light of Article 14 of the Constitution and directive principles of the State. The Court held :

"It looks arbitrary and irrational when every class of employees of different departments and constitution at functionaries are getting dearness allowance with rise in prices and also price index reaching at certain points but the Mahapalika employees were given dearness allowance which is illusory and smacks of mockery.

We would like to quote the substance of Annexure-6 to the writ petition wherein there is an instruction from the Government that the municipal corporations in such cases can pay dearness allowance at par with the State employees keeping in view the resources and also taking into consideration only the categories of employees corresponding to the State employees. The impugned regulations of the Nagar Mahapalika cannot be sustained in respect of the dearness allowance as it is arbitrary, unreasonable and is not in consonance with Articles 14 and 21 of the constitution of India."

The Court further held that :

"In view of the aforesaid discussion, we direct the respondents to pay the dearness allowance to the petitioners at par with the employees of Municipal Corporation, Kanpur immediately as envisaged in G.O. No. 866A/H.Na-VI.0.7.84-10K/19 dated 28th February, 1984, contained in Annexure-6 to the writ petition. We further direct the respondents to pay the pension also to the petitioners at par with the employees of the State (Municipal Corporation. Kanpur) within 4 months failing which it shall carry interest at the rate of 13% per annum."

10. The concept of pension is now part of social Justice. It is no more a matter of bounty or grace or dependent on the pleasure of the Government. These concepts have been confirmed by the Apex Court in the judgment of Deokinandan Prasad v. State of Bihar and others (1971) SC 1409, and in the case of D. S. Nokara AIR 1983 SC 130 SC. The employees who have passed their young period of life in the organisation of the State are expected to be compensated by way of providing sufficient pensionary benefits on which they or their family can depend upon in the evening of their lives, and live with dignity. The pensionary regulations have to be uniform, reasonable and not oppressive or arbitrary. A person cannot be deprived of his right to livelihood to get the bare necessities of life.

11. The contention of the respondents in their counter-affidavit regarding deficit budget and financial strains and parity in pension with State Government employees, etc. have been decided in the case of Moti Lot Agrawal and others v. State of U. P., and others (supra). It has also been affirmed by the Apex Court holding that there can be no discrimination in payment of pension, etc. of the employees of the various Nagar Nigams".

Thus, there is no scope for this argument as to purports to discriminate between the same class of employees of the Nagar Mahapalikas/Nagar Nigams in this State.

12. The case of the petitioner is fully covered by the decision of this Court in the case of Moti Lal Agarwal and others v. State of U. P. and others (supra). The petitioner has already annexed the Notification issued by the State Government dated 18.2.1984 by which all the Nagar Nigams are directed to pay dearness allowance at par with the employees of the State Government. The petitioner has argued that in view of the Rules of Nagar Nigam, Varanast, amended in 1997 to pay the dearness

allowance at par with the Government retired employees, read with Government order dated 13.4.2000 and Notification dated 18.2.1984, the family pension of the petitioner should not be less than 30 per cent admissible to her since 1.1.1996.

13. The pay scale of the petitioner's husband was in 1996 Rs. 14300-400-18300. The family pension should have been fixed on this pay scale and she should have been paid at least 30% of the pay per month as family pension, i.e., about Rs. 4,290 but she was being paid a meagre amount of Rs. 440 before the amendment in 1997 and even after the amendment of the rules she is only being paid Rs. 1,464 inclusive of dearness allowance.

14. The family pension, as per revised pay scale in terms of the judgment in M. L. Agrawal's case (supra) is admissible to the petitioner in order to mitigate the hardship and necessity of life and to live with dignity in her old age. Article 38(1) of the Constitution provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as it may a social order in which justice, social, economic and political is guaranteed to all citizens.

15. In view of the facts and the circumstances of the case, we hold that the action of respondent in not paying the dearness allowance and the family pension on the revised pay scale in terms of the case of Moti Lal Agarwal (supra) is arbitrary and discriminatory. The petitioner cannot be denied the right to live with dignity. She is an old lady undergoing medical treatment for cancer. She has been denied of her rightful claim of family pension and has been made unnecessarily to run from pillar to post and has been harassed.

16. For the reasons stated above, the writ petition succeeds and is allowed. Respondent No. 2 is directed to pay revised family pension with revised dearness allowance to the petitioner along with the arrears with effect from 17.10.1994 along with interest @ 15% on the difference of pension amount paid less to the petitioner within a period of three months from the date of production of a certified copy of this order before the authority concerned.

17. The parties shall bear their own costs.