

Laxmi Kunwar (Smt) Vs State of Rajasthan

Court: Supreme Court of India

Date of Decision: Dec. 11, 1992

Acts Referred: Constitution of India, 1950 " Article 14
Rajasthan Service Rules, 1951 " Rule 268D

Citation: (1993) 1 SCALE 91 : (1994) 1 SCC 303 Supp

Hon'ble Judges: N. M. Kasliwal, J; Kuldip Singh Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Tej Dan late husband of the petitioner was working as patwari in the service of the State of Rajasthan. He retired from service on June 30,

1980. After his retirement he married the petitioner Laxmi Kunwar on March 8, 1987. Shortly thereafter he died. The Rajasthan Government has

denied family pension to the petitioner on the ground that Tej Dan married her after retirement from service and as such under the rules she is not

entitled to the family pension. This petition under Article 32 is by Laxmi Kunwar the widow of Tej Dan seeking a mandamus directing the

respondents to grant family pension to her.

2. The State of Rajasthan, in the counter affidavit filed before this Court, has taken the following stand:

The family of Shri Tej Dan was entitled to pension by virtue of Rule 268 A to 268D of Chapter XXVIII-A of (New Family Pension Rules)

Rajasthan Service Rules, 1951. Rules 268-A, B and D are annexed hereto and marked Annexure A is true and correct copy of the aforesaid,

Rules. It is respectfully submitted that in view of existing Rules the definition of family does not take into its sweep wife or husband getting married

after the retirement or even children legally adopted after the retirement. In view of the aforesaid the petitioner is not entitled to family pension

because she admittedly got married Tej Dan, Patwari after he retired from the service of the State of Rajasthan.

Rule 268D which defines the family is as under:

(1) "Family", for the purposes of this chapter, will include the following relations of the officer: -

(a) Wife, in the case of male officer,

(b) husband, in the case of female officer,

(c) minor sons; and

(d) unmarried minor daughters.

Note

(1)(c) and (d) will include children adopted legally before retirement.

(2) Marriage after retirement will not be recognised for the purposes of this rule.

(3)....

3. This Court in 257695 had an occasion to deal with identical situation under the Central Services Rules which are pari-materia to the Rajasthan

Rules. This Court struck-down part of the rule which excluded the marriage after retirement from the definition of "Family". We adopt the

reasoning of this Court in Bhagwanti's case and hold that Note 2 to Rule 268D reproduced above is arbitrary. and as such ultra vires Article 14 of

the Constitution of India. We, therefore, allow the petition, direct the respondents to consider the case of the petitioner for grant of family pension

ignoring Note 2 to Rule 268D which we have struck down. The family pension be finalised within three months from today. All the arrears of the

pension shall be paid to the petitioner within one month thereafter. No costs.