

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.311 of 1987

Date of decision 9th March, 1989

Prafulla Kumar Das,
At/P.O. Balia,
Dist.Balasore. Applicant

-Versus-

1. Union of India,
represented by
Postmaster General,
Orissa Circle, Bhubaneswar.
2. Superintendent of Post Offices,
Balasore Division, Balasore
3. Deputy Director,
Accounts (Postal), Cuttack.

..... Respondents

For the Applicant M/s.P.V.Ramdas
& B.K.Panda, Advocates

For the Respondents ... Mr.A.B.Misra,Senior Standing
Counsel(Central) and
Mr.T.Dalei,Additional Standing
Counsel(Central)

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN
A N D
THE HON'BLE MR. K. P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgement ? Yes
2. To be referred to the Reporters or not ? *by*
3. Whether Their Lordships wish to see the fair copy of the Judgement ? Yes.

JUDGMENT

K.P. ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the order passed by the competent authority contained in Annexure-2 refusing to accept the nomination filed by the applicant nominating his second wife to be entitled to family pension.

2. Shortly stated, the case of the applicant is that he was serving as a Clerk in the Postal Department and retired on superannuation on 19.1.1972. Unfortunately, the first wife of the applicant died on 2.2.1978 and the applicant married for the second time on 2.5.1980 and on 8.5.1986 the applicant made an application to the competent authority to strike out the name of his first wife and to include the name of his second wife as the nominee for receiving family pension in case the applicant dies earlier. This application was rejected by the competent authority on 20.11.1986 in view of the provisions contained in Rule 54(14)(b) of the Central Civil Services Pension Rules, 1972. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that there is a clear bar created in the provisions contained in Rule 54(14)(b) of the Central Civil Services Pension Rules and therefore, the competent authority had no other option but to reject the application. The order of the competent authority being perfectly legal, it should not be unsettled -
 On the contrary it should be sustained. The case being

devoid of merit is liable to be dismissed.

4. We have heard Mr.P.V.Ramdas, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional Standing Counsel (Central) at some length. Mr.Ramdas strenuously and with utmost vehemence urged before us that in a socialist pattern of society where the Government has the intention of giving sustenance for livelihood to every human being, such a rule provided in C.C.S.Pension Rules is not only ultravires but it is against all canons of justice, equity and fair play including the fact that the provisions contained in sub-rule (14) completely violates the provisions contained under Articles 14 & 16 of the Constitution because differential treatment cannot be meted out to the first wife and the subsequent wife or wives of a Government servant. The intention of the Government in giving family pension to the first wife is solely due to the fact that after the death of the husband, it would be utterly difficult on the part of a widow to sustain herself and therefore the Government on compassionate grounds has provided for grant of family pension and it was further submitted with vehemence by Mr.Ramdas that in no circumstance, the subsequent wife or wives should be deprived of this advantage. On the other hand, it was contended by Mr.Tahali Dalai, learned Additional Standing Counsel (Central) with equal vehemence that once the law provides that family pension should be given to the first wife and a clear bar having been created under the aforesaid Rules and there being no discrimination made between the first wife and the second wife.

wife because in the peculiar facts and circumstances of this case the applicant having married for the second time after retirement, he is not legitimately entitled to nominate the second wife for entitling her ~~the~~ family pension and equally the second wife is not entitled to receive pension. Further contention of Mr.Tahali Dalai was ^{that} the classification, if any, made is reasonable and therefore, such reasonable classification is not hit by the provisions contained under Article 14 of the Constitution.

5. We have given our anxious consideration to the arguments advanced at the Bar. Rule 54(14-b) defines the word 'family' which runs thus :

" 'family' in relation to a Govt. servant means -

(i) wife in the case of a male Govt. Servant, or husband in the case of a female Govt. Servant, Provided the marriage took place before the Retirement of the Govt. servant. "

Such being the definition of family and admittedly the applicant having married for the second time on 2.5.1980 (much after his retirement on superannuation), it is now required to be determined by this Bench as to whether the second wife would be entitled to family pension, if the contention of Mr.Ramdas that it is ultravires is accepted.

6. A similar case came up for consideration before the Hyderabad Bench of the Central Administrative Tribunal (B.Narayan Rao & others v. Union of India and others) reported in 1988(2) ATJ 87. In the said case, before the Hyderabad Bench, the petitioner retired as Office Superintendent in the South Eastern Railway, Kharagpur on 25.4.1974. He had

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nominated his wife as the pensioner under the family pension scheme prior to his retirement. On 10.5.1981 his wife died. On 7.4.1982 the petitioner again married for the second time. The petitioner made an application to register the name of his second wife to be entitled to family pension on his death and this was rejected in view of the clear bar contained under the Railway Establishment Manual. The contention before the Hyderabad Bench was that such a provision is violative of Article 14 of the Constitution. The Hon'ble Judges observed as follows :

" There is no classification of wives of Government employees into any groups as such. What the rule lays down is that a Government employee marrying after his retirement is not entitled to nominate his wife for the family pension. It cannot be said that all wives form a class and there is a discrimination sought to be made by classifying them into groups viz., wives before retirement and the wives after retirement. The wife of a Government employee cannot be equated to the wife of a pensioner. A Government servant is under his service rules entitled to a pension i.e. pension is a condition of service. Grant of compassionate pension to the widow of a Government employee is a compassionate benefit given on sound social principles. The employer/Government recognizes that the wife of a Government servant who has stood by him through the thick and thin of life and shared his difficulties and grief in times of distress should not be left high and dry in the event of her widowhood. The entire concept underlying the family pension scheme is to afford relief to the dependant wife and children of a Government employee after his death. The procedural requirement is that the nomination has to be done before retirement. Further, a Government servant acquiring a wife after retirement does so with the full knowledge that such a wife is not entitled to family pension scheme. It is for this reason that a family pension is granted to the widow of a Government servant. The widow of a pensioner, however is different from the widow of a Government servant.

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The two namely widow of a Government servant and widow of a pensioner are distinct and amenable to reasonable classification. Further, after retirement of an employee, the relationship of master and servant ceases between the Government and the employee, while he is in service, an employee is entitled to certain benefits such as Family pension etc., as laid down in the relevant rules. Under such a rule the wife of a Government servant is entitled to these benefits. Once an employee is retired, relationship of master and servant would cease and it is not open to an employee, after retirement, to create further liabilities on the Government. Otherwise any Government servant can create a fresh liability by contracting a second marriage after his retirement when his wife dies, and this can be done solely with a view to passing on the benefit of Family pension scheme to that wife. The rule, therefore, limits the benefit only to the wife living at the time of the retirement of a Government servant and not for any wife acquired thereafter. It cannot be said that such a rule is arbitrary or violative of Article 14 of the Constitution. "

The facts of the case before the Hyderabad Bench are exactly similar to the facts of the present case. We have carefully gone through the judgment and we are in complete agreement with the views expressed by the Hon'ble Judges of the Hyderabad Bench quoted above and there is absolutely no ground to differ with them and hence we find there is no merit in the aforesaid contention of Mr. Ramdas.

7. Thus, this application stands dismissed leaving the parties to bear their own costs.

legally 9.3.89
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Member (Judicial)

Burhan 9.3.89
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Vice-Chairman

I agree.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
March 9, 1989/Sarangi.

B.R.PATEL, VICE-CHAIRMAN,