CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 517 / 2008

Friday, this the 3rd day of April, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

T.K.Vijayakumari,
W/o late A.P.Indukaladharan,
Residing at Unni Vihar,
Post Punnappala-679 328,
Malappuram. ....Applicant

(By Advocate Mr P Ramakrishnan)

v.

1. Union of India represented by
the Secretary,
Ministry of Statistics &
Programme Implementation,
National Sample Survey Organisation
(Field Operations Division),
New Delhi.

2. The Additional Director (Admn),
NSSO (FOD),
New Delhi.

3. The Deputy Director,
NSSO(FOD),
Kerala (South Region),
CGO Complex, B Block,
Poonkulam, Vellayani.P.O.
Thiruvananthapuram-695 522 ....Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC)

This application having been finally heard on 10.2.2009, the Tribunal on 3.4.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The question being considered in this O.A is whether the second spouse is entitled for family pension or not when a Government servant after retirement

from service contracts a second marriage on the demise of the first spouse particularly when the factum of such second marriage has not been reported to the office from where he/she had retired from service, during his/her life time.

2. The facts in this case are that Mr Indukaladharan retired from service after attaining the age of superannuation on 30.6.1992. At the time of his retirement, his wife Mrs V Padmaja was alive and she was the nominee for receiving family pension (Annexure A-3 dated 30.6.1982). Later, Mrs Padmaja passed away and according to the applicant, Mr Indukaladharan married her on 27.10.1993 in the presence of Secretary, NSS Karayogam, Punnappala and she produced the Annexure A-1 certificate issued by the Secretary, NSS Karayogam, Punnappala on 10.8.2006. Mr Indukaladharan passed away on 9.3.2006. During his life time, he has never informed the respondent-department from which he had retired that he had married the applicant. After his death, applicant submitted the claim for family pension in Form No.14 (prescribed in CCS (Pension) Rules, 1972 titled "Form of application for the grant of Family Pension, 1964, on the death of a Government servant/pensioner" along with the Annexure A-5 letter dated 18.10.2006 requesting the respondents to grant her family pension, but the respondents rejected her request vide impugned Annexure A-6 letter dated 20.12.2006 stating that her name has never been mentioned in the "the family details" submitted by late Mr Indukaladharan in the prescribed Form No.3. The contention of the applicant is that whether Mr Indukaladharan had at any time informed his office after retirement about his second marriage with her or not, the fact is that he had married her and a child was also born in the wedlock. (Annexure A-2 Birth Certificate dated 28.11.1994).

3. She has also submitted that under Rule 54(2)(b), Rule 54(7) (a) and (b) and Rule 81 of the CCS(Pension), Rules, she is entitled for family pension after

the demise of her husband. The said provision of the aforesaid rules reads as under:

Rule 54(2)(b)

"(2) Without prejudice to the provisions contained in sub rule (3), where a Government servant dies -

xxxx xxxx xxx

(b) after retirement from service and was on the date of death in receipt of a pension, or Compassionate Allowance, referred to in Chapter V, other than the pension referred to in Rule 37,

the family of the deceased shall be entitled to Family Pension, 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table below:"

Rule 54(7) a & b :

"(7)(a)(i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of the family pension shall become payable to her eligible child:
[Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.]

(b) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

[Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.]"

Rule 81:

"Sanction of family pension and residuary gratuity on the death of a pensioner

(1) Where the Head of Office has received an intimation regarding the death of a retired Government servant who was in receipt of pension, he shall ascertain whether any family pension or residuary gratuity or both is or are payable in respect of the deceased pensioner:

Provided that the Head of Office may, when he considers it necessary so to do, consult the Accounts Officer.

(2)(A)(i) If the deceased pensioner is survived by a widow or widower who is eligible for the grant of Family Pension, 1964 under rule 54, the amount of Family Pension, 1964 as indicated in the Pension Payment Order shall become payable to the widow or widower, as the case may be, from the day following the date of death of the pensioner."

4. Learned counsel for the applicant Shri P Ramkrishnan relied upon the judgment of the Apex Court in **Smt Violet Issaac and others v. Union of India and others** [(1991) 1 SCC 725] to say that in the matter of payment of family pension, the employee has no say or control over it and wife being a designated person under the rule, the Department has to sanction the same. The relevant part of the said judgment is extracted as under:

"The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to relieve the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title .to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it .does not form part of his estate enabling him to dispose of the same by testamentary disposition.

5. In **Jodh Singh v Union of India** [(1980)4SCC 306], this Court on an elaborate discussion held tht family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The court observed:

"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of he deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

The court further held that what was not payable during the lifetime of

the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition.

6. We, accordingly hold that Mrs Violet Issac the widow of the deceased Railway employee is entitled to receive the family pension, notwithstanding the will alleged to have been executed by the deceased on September 9, 1984 in favour of his brother Elic Alfred. As regards appellants 2 to 6 are concerned, it has been stated on behalf of the Railway administration that they are not minors, therefore, under the Rules they are not entitled to any family pension. We, accordingly allow the appeal, set aside the oder of the Tribunal and direct the respondent Railway administration to sanction family pension in accordance with the rules to appellant 1 and to pay the arrears within two months. The respondent's suit, so far as it relates to the family pension cannot proceed but we do not express any opinion with regard to other claims raised therein."

5. He has further relied upon the judgment of the Apex Court in **Rameshwari Devi v. State of Bihar and others** [(2000) 2 SCC 431] and submitted that disbursement of family pension cannot be deferred till a civil court pronounces upon rights of respective parties. Government can itself hold a proper and bonafide inquiry for determining entitlement of rival claimants to family pension. The Apex Court has held as under:

"**15.** Rameshwari Devi has raised two principal objections: (*1*) marriage between Yogmaya Devi and Narain Lal has not been proved, meaning thereby that there is no witness to the actual performance of the marriage in accordance with the religious ceremonies required for a valid Hindu marriage, and (2) without a civil court having pronounced upon the marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights, it cannot be held that the children of Yogmaya Devi through her marriage with Narain Lal would be legitimate under Section 16 of the Hindu Marriage Act. The first objection we have discussed above and there is nothing said by Rameshwari Devi to rebut the presumption in favour of the marriage duly performed between Yogmaya Devi and Narain Lal. On the second objection, it is correct that no civil court has pronounced if there was a marriage between Yogmaya Devi and Narain Lal in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of Yogmaya Devi. On this aspect we have already adverted to above. After the death of Narain Lal, inquiry was made by the State Government as to which of the wives of Narain Lal was his legal wife. This was on the basis of claims filed by Rameshwari Devi. The inquiry was quite a detailed one and there are in fact two witnesses, examined during the course of inquiry, being (*1*) Sant Prasad Sharma, Teacher,

DAV High School, Danapur and (2) Shri Basukinath Sharma, Shahpur Maner who testified to the marriage between Yogmaya Devi and Narain Lal having witnessed the same. That both Narain Lal and Yogmaya Devi were living as husband and wife and four sons were born to Yogmaya Devi from this wedlock has also been testified during the course of inquiry by Chandra Shekhar Singh, retired District Judge, Bhagalpur, Smt (Dr) Arun Prasad, Sheohar, Smt S.N. Sinha, w/o Shri S.N. Sinha, ADM and others. Other documentary evidence were also collected which showed that Yogmaya Devi and Narain Lal were living as husband and wife. Further, the sons of the marriage between Yogmaya Devi and Narain Lal were shown in the records as the sons of Narain Lal."

6. Again the Apex Court in **Smt Bhagwanti v. Union of India** *[(1989) 4 SCC 397]*, considering the case of the petitioners who were widows who had married the government servants after their retirement and also had minor children from such wedlock. Their claim to family pension was rejected by the departments concerned on the ground that they were not covered by the expression 'family' within the definition of Rule 54(14)(b) of the CCS (Pension) Rules, 1972, which excludes the spouse who married a government servant after the latter's retirement and children born after retirement. Allowing the Writ Petitions, the Supreme Court held:

"6. The only question for consideration in these two writ petitions, therefore, has two facets: (*i*) whether the spouse — man or woman, as the case may be — married after the retirement of the concerned government servant can be kept out of the definition so as to deprive him from the benefit of the family pension, and (*ii*) whether offspring born after retirement are entitled to benefits of such pension.

7. In *D.S. Nakara* v. *Union of India*, a Constitution Bench of this Court at p. 185 of the reports observed: (SCC p. 323, para 29)

"... pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to ageing process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus, the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or

for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age."

In *Deokinandan Prasad* v. *State of Bihar* it was held by this Court: (SCC p. 342, para 26)

"[T]he payment of pension does not depend upon the discretion of the State; but, on the other hand, payment of pension is governed by the Rules and a Government servant coming within the Rules is entitled to claim pension."

In *Poonamal* v. *Union of India* it was pointed out: (SCC p. 348, para 7)

"Where the government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependant minors would equally be entitled to family pension as a matter of right. In fact, we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in *D.S. Nakara* judgment"

8. Admittedly, the definition of 'family' as it stands after amendment excludes that spouse of the government servant who has got married to such government servant after his/her retirement and the children born after retirement also stand excluded. Petitioners have challenged the stand of the Union of India and the definition in the Pension Rules as arbitrary and discriminatory. It has been contended that if family pension is payable to the widow or the husband, as the case may be, of the government servant, the category which the definition keeps out, namely, those who have married after retirement and offspring of regular marriage born after retirement, is discriminatory.

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 selfsame 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 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 considerations 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-retiral spouse out of it.

10. Government Servants Conduct Rules prohibit marriage during the lifetime of a spouse. Section 494 of the Indian Penal Code makes second marriage void and makes it a criminal offence. Thereafter, both before retirement and even after retirement there is no scope for a person to have a second wife or a husband, as the case may be, during the lifetime of an existing spouse.

11. Reliance has been placed on the recommendations of the Third Pay Commission on the basis of which the amendment in the Pension Rules is said to have been made. Apart from referring to the recommendations, no attempt has been made at the hearing by counsel for the Union of India to derive support from the recommendations. We really see no justification as to why post-retirement marriages should have been kept out of the purview of the definition.

12. In clause (*ii*) of the definition son or daughter born after retirement even out of wedlock (*sic* entered) 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 *Poonamal 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."

7. The respondents in their reply statement have stated that the applicant's husband had never informed them about the marriage with her during his life time. They have also submitted that he did not give any application to the change of the nominee already given by him. The learned counsel for the respondents has also submitted that by the O.M.No.1(23)-P & PW/91-E dated

4.11.1992 issued by the DoPT, the procedure has been prescribed for endorsement the family pension entitlement of post retiral spouse in the Pension Payment Order of the Central Government Civil Pensioners, but in the case of the applicant, it is not applicable as the pensioner Shri Indu Kaladharan has never intimated his re-marriage with hr. The second O.M reads as under:

> "(16) **Endorsement of family pension entitlement of post-retiral spouses in the PPO** – procedure for – The question of laying down the procedure for endorsement of family pension entitlement of post-retiral spouse in the Pension Payment Order of the pensioner has been under consideration of this Department. It has now been decided that the following procedure may be followed for endorsement of family pension entitlement of post-retiral spouse in the Pension Payment Order of Central Government Civil Pensioners:-
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> (i) As and when a pensioner marries or re-marries after retirement, he shall intimate the event to the Head of Office who processed his pension papers at the time of his retirement. He shall also furnish along with his application an attested copy of the marriage certificate from Registrar/Gram Panchayat/District Magistrate in respect of his post retirement marriage.
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> (ii)The Head of Office on receipt of the application mentioned above and after due verification where necessary, forward the papers to the concerned Pay & Accounts Officer for issue of corrigendum PPO. While forwarding the papers to the Pay & Accounts Officer, the provisions of Clause (b) of sub rule (7) of Rule 54 of the CCS (Pension) Rules, 1972, shall be kept in mind. When the pensioner does not have any child or children from his previous marriage, if any, the post-retiral spouse shall be eligible for full family pension. Where the pensioner has any eligible child or children from another wife who is not alive, the family pension to the post-retiral spouse and the child/children from the previous marriage will be authorized in terms of Clause (b) of sub rule (7) of Rule 54 ibid.
>
> (iii)The corrigendum PPO shall be forwarded by the Pay & Accounts Officer to the concerned pension disbursing authority through the Central Pension Accounting Office. A copy of the corrigendum PPO shall also be endorsed to the pensioner.
>
> (iv)As far as children, including those born after retirement, are concerned, a fresh PPO will be issued s and when the turn of each child for receipt of family pension is reached as at present."

8. They have further submitted that the application for nominating a person to receive the family pension should be made by the Government servant

himself before or after retirement and since no such application was received from Mr Indukaladharan nominating the applicant for the purpose of receiving family pension, no order granting her family pension can be issued. They have also submitted that the marriage certificate produced by the applicant is not from any authorised authorities, viz, Registrar/Gram Panchayat/District Magistrate as required under the aforesaid Government of India as stated in the aforesaid OM dated 4.11.1972 and the Annexure A-1 certificate is only from the Secretary of NSS Karayogam, Punnappala which is not an authorised authority to issue any marriage certificate.

9. They have also relied upon Rule 54(12) of the Pension Rules which is as under:

> "(12)(a) (i) As soon as a Government servant enters Government service, he shall give details of his family in Form 3 to the Head of Office.
>
> (ii) If the Government servant has no family, he shall furnish the details in Form 3 as soon as he acquires a family.
>
> (b) The Government servant shall communicate to the Head of Office any subsequent change in the size of the family, including the fact of marriage of his female child.
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> (c) As and when the disability referred to in proviso to sub rule (6) of Rule 54 manifests itself in a child which makes him/her unable to earn his/her living, the fact should be brought to the notice of the Head of Office duly supported by a Medical Certificate from a Medical Officer, not below the rank of a Civil Surgeon. This may be indicated in Form 3 by the Head of Office. As and when the claim for family pension arises, the legal guardian of the child should make an application supported by a fresh medical certificate from a Medical Officer, not below the rank of Civil Surgeon, that the child still suffers from the disability.
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> (d) (i) The Head of Office shall, on receipt of the said Form 3, get it pasted on the Service Book of the Government servant concerned and acknowledge receipt of the aid Form 3 and all further communications received from the Government servant in this behalf.
>
> (ii) The Head of Office on receipt of communication from the Government servant regarding any change in the size of family shall have such a change incorporated in Form 3."

10. I have heard the learned counsel on both sides. There is no dispute that

the post-retiral spouses are also entitled for family pension after the death of the pensioner. The basic rule in this regard is the provision contained in Rule 54(2) (b) of the CCS(Pension) Rules. It says that family pension is admissible in the case of a Government servant dies after retirement from service if he was in receipt of pension as on the date of death of pensioner. There is no dispute that applicant's husband was in receipt of pension on the date of his death. In normal circumstances, on receipt of information regarding the death of the pensioner, the Head of Office of the deceased Government servant has to ascertain whether any family pension or residuary pension or both are payable in respect of the deceased pension. If it is so payable, the Head of the Department arranges the payment as per the family details already submitted by the deceased Government servant in the prescribed Form No.3 appended to the CCS (Pension) Rules. In this case, the name of the first spouse of the deceased Government servant was in the Form No.3 as submitted by him at the time of his retirement or prior to that date. The Government servant concerned in this case retired from service on 9.3.2006. After the death of his first wife, according to the applicant, the deceased Government servant married her on 27.10.1993. The deceased Government servant never reported about his marriage with the applicant or got the name in the Form No.3 changed during his life time. If it was done so, the Head of Office, the pension would have considered the due verification in the matter and if the information regarding the second marriage was found to be correct, the name of the 2nd spouse would have been admitted as a member of the family of the retired Government servant and got it substituted in Form No.3 already submitted by Government servant/pensioner. When the applicant has made the request for family pension and submitted the prescribed From No.14, the respondents obviously rejected it on the ground that her name did not figure in the Form No.3 submitted by the pensioner.

11. Now the question is, what is the fault of the applicant? Just because the Government servant did not inform the fact of his marriage with the applicant during his life time to the Head of Office, is it necessary that she should suffer for the rest of her life? It is well settled that the pension is not a bounty but it is a fundamental right of an employee. If pension is a right, family pension is also a right. Therefore, the same cannot be denied to a person who is entitled for the same. I, therefore, in the interest of justice, direct the respondents to conduct the necessary verification, if necessary, as envisaged in the aforementioned OM dated 4.11.1992 and take a decision in the matter and convey to the applicant. In the absence of the marriage certificate from Registrar/Gram Panchayat/District Magistrate as required under the aforementioned OM dated 4.11.1992, the Head of Office may direct the applicant to produce any other valid documents to its satisfaction. If the Head of Office is satisfied with claim of the applicant, it shall grant the family pension to the applicant and her dependent children as admissible under the rules. With the aforesaid direction, the O.A is disposed of. There shall be no order as to costs.

GEORGE PARACKEN
JUDICIAL MEMBER

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