

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~KAXXVIX~~

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DATE OF DECISION 25-11-1991

Smt.E.Manikkam Applicant (s)

Mr.M.Rajagopalan Advocate for the Applicant (s)

Versus

The Post Master, Tirur. Respondent (s)
Dt. Malappuram, Kerala & 3 others

1. Mr.P.Sankarankutty Nair Advocate for the Respondent (s) (R-1)
ACGSC

CORAM:

2. Mr.MC Cherian (R 2 & A)

The Hon'ble Mr. S.P.Mukerji

-

Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan

-

Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Mr.A.V.Haridasan, Judicial Member)

The short question for determination in this application under Section 19 of the Administrative Tribunals Act is whether the suspension of payment of relief on pension to a recipient of family pension if employed in a Department/Office of the Central Govt. or State Govt. or in a Central Govt. Company/Corporation/ Undertaking or Autonomous body or in a Nationalised Bank or in a Local Fund during the period of such employment as directed in Govt. of India, Ministry of Finance, OM No.22(8)-E V(A)/75 dated the 13th February, 1976 and No.13(6)-E V(A)/76 dated the 6th April, 1976 (Annexure-R1(A)) and in the Govt. of India, Ministry of Railways Letter

No.F(E) III.75 PN.1/8, New Delhi Dated 18.3.1977(Annexure-R2(A) is valid and sustainable in law. The facts can be briefly stated as follows.

2. The applicant, Smt.E.Manikkam joined the service of the Govt. of Kerala as a Clerk in the Munsiff Court, Calicut on 17.2.1960. She got married to Mr.Kumaran who was employed as a Cabinman in the Olavakode Division of the Southern Railway. Kumaran expired on 9.5.1981. On the death of Kumaran, under PPO No.1965/Rly/QJA, she was granted family pension which she has been drawing through the Post Master, Tirur. In June, 1989 when the applicant approached the Sub Post Master, Parappanangadi for drawing the family pension she was informed that the family pension would not be disbursed to her till a sum of Rs.10,452.95 representing the relief on pension already paid to her from 9.1.1981 was fully recovered. Therefore the applicant submitted a representation on 28.6.1989 to the first respondent to continue to disburse^{to} her family pension without any recovery. She had also pointed out that Central Govt. pensioners employed in State Govts. and State Govt. pensioners employed in Central Govt. would be entitled to dearness allowance on pension as well as re-employment pay as per the GO(P) No.357/84/Fin dt. 23.7.1984 issued by the State Govt. of Kerala, the third respondent. In response to the representation the applicant was served with the impugned order at Annexure-43, ^{which stated} that the relief of family pension would ^{be} stopped and that

a sum of Rs.10,452.95 alleged to have been irregularly paid to her would be recovered from her family pension at the rate of Rs.300/- per month for 34 months and at Rs.252.95 at the 35th instalment. On receipt of this order the applicant caused a Lawyer Notice ^{be issued to} to the first respondent requesting to cancel the order suspending the payment of relief on pension. Though the first respondent has not so far sent any reply to this Lawyer Notice on the basis of a letter issued by the Ministry of Railways dated 18.3.1987 at Annexure-R2(A) the Sub Post Master, Parappanangadi refused to pay family pension to the applicant since June, 1989. The applicant has therefore filed this application praying that the impugned order at Annexure-A3 at the letter of the Ministry of Railways at Annexure-R2(A) may be quashed as arbitrary, discriminative and unconstitutional. Respondents 1, 2 and 4 have filed a reply statement justifying the impugned orders and opposing the grant of relief as prayed in this application.

3. We have heard the arguments of the counsel on either side and also carefully perused the documents on record.

4. That the applicant was employed with the Govt. of Kerala long prior to the date on which she married Shri Kumaran, that while family pension was granted to her she was in employment, and that she retired during the pendency of this application are facts beyond dispute.

The relief on family pension was also paid to her till June, 1989. When the Sub Post Master, Parappanangadi informed the applicant that she would not be paid the family pension till a total amount of Rs.10,452.95 representing the pension relief paid upto date was recovered ~~she would not be paid family pension~~ the applicant made a representation and it was in reply to that impugned order at Annexure-A3 was served on the applicant. In the impugned order it was stated that payment of relief on pension from from 9.5.1981 on totalling to Rs.10,452.95 being irregular the entire amount would be recovered in monthly instalment of Rs.300, and that the balance alone would be credited to her SB account. Even in the impugned order at Annexure-A3 the rule or instruction basing on which the payment of relief on pension was considered irregular was not quoted. To the lawyer notice, copy of which is at Annexure-A4 issued on behalf of the applicant the first respondent has not so far given any reply. But in the reply statement filed the respondents have contended that, according to the Govt. of India instruction contained in the Govt. of India, Ministry of Finance OM dated 13.2.1976 and 6.4.1976 (Annexure-R1(A) and also in terms of the clarification issued by the Ministry of Railways dated 18.3.1977 at Annexure-R2(A) the applicant is not entitled to get relief on family pension during the period when she was employed in the State Govt. of

Kerala. Annexure-R1(A) reads as follows:

"(3) Payment of relief on pension/ family pension shall be suspended during the period of employment/re-employment. The payment of relief in pension shall be suspended when a Central Government Pensioner is:

- (i) re-employed in a Department/ Office of the Central Government or a State Government Company/Corporation/undertaking or autonomous body or in Nationalised Bank including Reserve Bank of India and the State Bank of India or in a 'Local Fund' as defined in clause (m) of sub-rule (1) of Rule 3 of the CCS (Pension) Rules, 1972.

Note: For the purpose of (ii) above, Government Company/Corporation/Undertaking is the one in which not less than fifty one per cent of the paid-up share capital is held by the Central Government or by any State Government or more State Governments and includes a Company/ Corporation/Undertaking which is subsidiary of a Government Company.

A Government Servant who on permanent absorption in an organisation referred to in (ii) above elects the alternative of receiving the retirement gratuity and lumpsum amount in lieu of pension, will not be eligible to receive any relief even after he has ceased to be in the employment of the Organisation concerned.

The payment of relief on family pension shall similarly be suspended when a person in receipt of family pension is employed in any of the organisations mentioned in (i) and (ii) above."

Annexure-R2(A) reads as follows:

" Reference Railway Ministry's letter of even No. dated 11.6.'76 on the subject mentioned above. Clarifications have been sought in respect of admissibility of ad-hoc relief and the graded relief in respect of a person who is in the receipt of family pension.

It is hereby clarified that:-

- i) the payment of ad-hoc relief and graded relief shall be suspended when a person in receipt of family pension is employed in a Department/Office of the Central Government or a State Government, or in a Central Government Company/Corporation /undertaking or autonomous body or in a Nationalised Bank or in a 'local fund' as defined in sub-rule (15) of Rule 2003 of Indian Railway Establishment Code, Vol.II.

Note: For this purpose, Government company/ Corporation/Undertaking is the one in which not less than fifty one percent of the paid up share capital is held by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a Company/Corporation/Undertaking which is subsidiary of a Government Company.

2. The above has the sanction of the President."

According to these instructions payment of relief on family pension is to be suspended when a recipient of a family pension is employed in a Department/Office of the Central or a State Govt. or in a Central Govt. Company/Corporation/Undertaking or Autonomous body or in a Nationalised Bank or in a Local Fund. The learned counsel for the applicant argued that these instructions being only administrative instructions have no force of statutory rules especially when they purport to abridge the statutory benefits conferred on pensioners

...7/-

under the Civil Service Pension Rules. The learned counsel further argued that classification of recipients of family pension as persons employed with Govt. or Govt. Undertaking or not so employed are irrational and discriminatory and violative of Articles 14 and 16 of Constitution of India and therefore these instructions have no binding force. We have given our anxious consideration to this argument. Family pension would be payable to the family of a deceased Govt. servant as per provisions of Rule 54 of the Civil Service Pension Rules. As per the provisions of this rule the quantum of family pension is dependent on the basic pay of the Govt. servant and the length of his service. It has absolutely no relation to the number of dependent members in the family and the financial position of the family. The quantum of family pension would be the same if two Govt. servants with identical service conditions die and if on one case, the family is possessed of substantial properties yielding sufficient income for the luxurious living of the family and in the other the family has nothing to fall back upon apart from the family pension. Similarly there is nothing in the CCS(Pension) Rules which would suggest that, if a recipient of a family pension is employed there should be a reduction in the pension or in the relief on pension. The family pension payable to the family of a deceased Govt. Servant

...8/-



has absolutely no bearing on the question whether the recipient of the family pension is employed or unemployed. Family pension is granted to the family of the deceased Govt. Servant not solely as a welfare measure but also in consideration of service rendered by the Govt. Servant during the period while he was in service. So the family pension also cannot be considered as an exgratia payment or a bounty. Family pension therefore is a property earned by the recipient and deprival of such property either in part or in whole without observing the due process of law has to be struck down as unreasonable and unjust. It is well settled by now that relief of pension is an adjunct of pension. As the salary of the recipient of family pension is not fixed taking into account of the family pension, the fact that the recipient of the family pension is an employee under the Govt. receiving a regular salary cannot be considered as a ground ^{to} ~~deprive~~ him of a portion of the pension or the pension relief. In a case where one or more members of the family in receipt of family pension is or are employed in private sector undertakings or in business and are earning substantial income the relief on pension is not suspended on account of they being so employed. But even if one member of the family who is a recipient of the family pension is employed either in the State Govt. or in Central Govt. or in any company or corporation owned by such Govt. ^{though} ~~in~~ the lowest post, as per the instructions at R1(A) and R2(A) the

relief on pension is to be suspended during the period when the recipient of the family pension is thus employed. This discrimination to our mind is highly arbitrary and unreasonable. Since the instructions contained in Annexure-R1(A) and the clarification contained in Annexure-R2(A) are only in the nature of administrative instructions which have no statutory force and since they purport to abridge the statutory benefit conferred by Rule 54 of the Civil Service (Pension) Rules, we are of the view that these instructions are unsustainable.

5. In view of what is stated above, we allow the application, set aside the impugned order at Annexure-A3 declare that the Annexure-R2(A) order of the 4th respondent is unsustainable and unreasonable and direct the respondents not to suspend the relief on family pension and to continue to pay to the applicant the full family pension with the pension relief treating that Annexure-R1(A) and R2(A) have no legal force. The undisbursed family pension should be disbursed to the applicant within a period of one month from the date of communication of this order.

6. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

25/11/91


(S.P. MUKERJI)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A. 54 of 1992 in
O. A. No. 282 of 1990
T. A. No.

DATE OF DECISION 5-6-1992

Union of India, Divisional Review
Manager, S. Railway, Madras / Applicant (s)

Mr MC Cherian Advocate for the Applicant (s)

Versus

Smt E Manikkam & 2 others Respondent (s)

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN
&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *mb*
2. To be referred to the Reporter or not? *mb*
3. Whether their Lordships wish to see the fair copy of the Judgement? *mb*
4. To be circulated to all Benches of the Tribunal? *mb*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The respondents in the O.A. are challenging the decision in the final order on merits on the same ground which they had taken up in their counter statement and were rejected. That is not permissible in a review application. There is no error on the face of records nor is there any new point of law or facts brought out in the review application warranting a review of the order. Hence the R.A. is devoid of any merit and the same is dismissed.

[Signature]

(AV HARIDASAN)
JUDICIAL MEMBER

[Signature]

(SP MUKERJI)
VICE CHAIRMAN

5-6-1992

trs