

Laxmi Kunwar (Smt)

Vs

State of Rajasthan

Writ Petition (Civil) No. 738 Of 1991

(Kuldip Singh, N.M. Kasliwal JJ)

11.12.1992

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 to Tej Dan, patwari after he retired from the service of the State of Rajasthan."

Rule 268-D which defines the family is as under :

"(1) 'Family', for the purpose 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 a 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 Smt Bhagwanti v. Union of India ((1989) 4 SCC 397 : 1989 SCC (L&S) 653 : (1989) 11 ATC 857 : (1989) 3 SCR 1010) 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 case ((1989) 4 SCC 397 : 1989 SCC (L&S) 653 : (1989) 11 ATC 857 : (1989) 3 SCR 1010) and hold that Note 2 to Rule 268-D 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 268-D 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.

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