

Bhagwanti Mamtani

Vs

Union of India and Others

Civil Appeal No. 5478 of 1993

(Kuldip Singh, S. C. Agarwal, S. P. Bharucha JJ)

01.10.1993

ORDER

1. Leave granted.

2. This Court passed the following order on July 19, 1993 :

"The question for our determination is whether the petitioner is entitled to Family Pension in terms of proviso to Rule 54(6) of the Central Civil Services (Pension) Rules, 1972. The said proviso is reproduced hereunder :

'Provided that if the son or daughter of a government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of (twenty-one years in the case of the son and thirty years in the case of the daughter) the family pension shall be payable to such son or daughter for life subject to the following conditions; namely :

(i) if such son or daughter is one among two or more children of the government servant, the family pension shall be initially payable to the minor children in the order set out in clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of (twenty-one or thirty, as the case may be), and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him/her for life;

(ii) if there are more than one such son or daughter suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the following order namely :

(a) firstly to the son and if there are more than one son, the younger of them will get the family pension only after the lifetime of the elder;

(b) secondly, to the daughter, and if there are more than one daughter, the younger of them will get the family pension only after the lifetime of the elder;

(iii) (the family pension shall be paid to such son or daughter through the guardian as

if he or she were a minor except in the case of the physically crippled son/daughter who has attained the age of majority);

(iv) before allowing the family pension for life to any such son or daughter, the (appointing authority) shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child;

(v) The person receiving the family pension as guardian of such son or daughter (or such son or daughter not receiving the family pension through a guardian) shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.'

We are of the view that the appellant be examined by the Psychiatry Department of the All India Medical Institute, New Delhi with a view to find out as to whether the appellant is suffering from any 'disorder of mind or is physically crippled or disabled' due to which she is unable to earn her living even after attaining the age of 21 years.

The Registry is directed to address a letter to the Psychiatry Department of All India Medical Institute and get the examination done within 2 months from today. The learned counsel for the petitioner undertakes to approach the AIIMS thereafter and get a date fixed for examination of his client. The matter to come up on September 20, 1993. Copy of this order be sent to AIIMS along with the letter. Copy of the letter be sent to the learned counsel for the petitioner."

3. Pursuant to the above-quoted order of this Court, Dr S. Saxena, Additional Professor, Department of Psychiatry of All India Institute of Medical Sciences examined the appellant and sent a report dated September 8, 1993 which is in the following terms :

"As directed by you, I have examined the appellant (Bhagwanti Mamtani) on September 8, 1993. She has earlier been examined in our OPD on July 29, 1992 and August 5, 1992. Her psychological assessment was also done on August 4, 1993.

In my opinion she has mental subnormality with dull average adaptive skills. Because of this mental condition she is unable to earn her living even after attaining the age of 21 and also at present."

4. We have heard learned counsel for the parties. Mr N. N. Goswami, learned counsel appearing for the Union of India has contended that the appellant's father died in 1976 whereas the appellant approached the Government of India for the grant of pension in the year 1982. According to him the claim of the appellant being belated, she is not entitled to any relief by this Court. We do not agree with the learned counsel. The benefit of the provisions of the rule to the appellant who is mentally disabled cannot be denied, in the facts and circumstances of this case, on the ground of delay in approaching the Government of India. Mr Goswami further stated that the rule cannot be made operative retrospectively. According to him the rule came into force with effect from September 30, 1974, whereas the appellant's father had retired from service in the year 1969. We see no force in

the contention. The appellant's father was drawing pension till he died in the year 1976. The appellant only became entitled to the disability pension under the above-quoted rule after the death of her father. We therefore hold that the appellant is entitled to the family pension in terms of proviso to Rule 54(6) of the Central Civil Services (Pension) Rules, 1972.

5. We are, however, of the view that the interest of justice would be met if we direct the Government of India to grant family pension to the appellant from May 1986 when she approached the Central Administrative Tribunal, New Delhi. Under the circumstances, we direct the Government of India to grant family pension to the appellant with effect from May 1, 1986. The arrears of pension shall be paid to the appellant within six months from today. In case the arrears are not paid within the abovesaid period, the appellant shall be entitled to earn interest at the rate of 12% per annum from the expiry of the period of six months. The payment of arrears and the future pension shall be made by way of payee's account cheque in the name of the appellant. The arrears shall be spread over the period from May 1986 onwards for the purposes of income tax. The appellant shall not be liable to pay any further court fee as a result of this order.

6. We allow the appeal and set aside the impugned order of the Tribunal. No costs.

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