SUPREME COURT OF INDIA

State of Punjab

Vs.

Devinder Kaur

C.A.No.4254 of 1999

(S.B.Majmudar and U.C.Banerjee JJ.)

03.08.1999

ORDER

S.B. MAJMUDAR, J.

1. Leave granted.

2. We have heard learned Counsel for the parties finally in this appeal which is being disposed of by this order.

3. The short question is whether the deceased Respondent Kharak Singh and his surviving widow who is now the sole Respondent representing his estate were entitled to get family pension on the demise of their unmarried son Daljit Singh who died in harness on 5-11-1985 when he was in government service of the Appellant State.

4. It is not in dispute that there was a family pension scheme promulgated by the Appellant State being Pension Rules, 1951 which included the parents of the deceased government servant amongst the beneficiaries under the definition of "family". But the said Scheme underwent a metamorphosis in 1964 and as per the Family Pension Scheme of 1964 the parents of the deceased government servant were excluded from the definition of "family". As the Respondent's son Daljit Singh died in 1985, as stated above, it was the 1964 Pension Scheme which applied. In view of this Scheme, therefore, neither the deceased government servant's father Kharak Singh nor his wife could legally claim family pension on account of the death of Daljit Singh. Therefore, the Appellant State rejected their claim.

5. A Writ Petition was moved in the High Court of Punjab & Haryana by the original Respondents. A learned Single Judge of the High Court allowed the Writ Petition on the ground that pension was not a bounty and the Scheme which did not provide for granting family pension to the parents was arbitrary in nature. The result was that a writ of mandamus was issued directing the Appellant State and its officers to grant family pension to the Writ Petitioners at the rate admissible under the Family Pension Scheme, 1964 from the date of death of Daljit Singh as if father and mother stood included in the definition of "family" under the Family Pension Scheme of 1964. It is this order which was carried by the Appellant State in appeal by way of letters patent appeal. But the Appellant State failed to convince the Division Bench of the High Court about their case. The result was that the letters patent appeal was dismissed and that is how the Appellant State and its officers

are before us in these proceedings.

6. On a mere look at the relevant Family Pension Scheme of 1964 which applied at the relevant time when Daljit Singh died it became obvious that the parents, that is, father and mother of the deceased government servant were not entitled to get family pension under that Scheme. Maybe under some other scheme like the Wound Pension Scheme or the Gratuity Rules the parents may have been entitled to get the benefit of pension or gratuity, but so far as the Family Pension Scheme, 1964 is concerned they had no such right to claim any family pension.

7. It is true that strong reliance was placed by learned Counsel for the Respondent before the learned Single Judge and also before the Division Bench of the High Court on two judgments of this Court. In Poonamal v. Union of India: [1985]3SCR1042 a Bench of this Court noted that when a liberalised pension scheme was introduced in 1964 the widow and minor children of those government servants who died prior to 1964 were not made eligible for the benefit of the 1964 Pension Scheme. The said deprivation of the benefit of the 1964 Pension Scheme was held by this Court to be arbitrary and illegal. It must be kept in view that the said decision proceeded on its own facts, namely, that the Family Pension Scheme was already available to the heirs of the government servant concerned when the servant had died in harness. When that very scheme under which the beneficiaries were covered was liberalised if the beneficiary had survived introduction of the said liberalised scheme it was held that the benefit thereof was admissible to such surviving otherwise eligible beneficiaries. On the facts of the present case the said judgment cannot be of any avail for the simple reason that under the Scheme of 1964, as seen above, the parents were not at all eligible to get the benefit of the Family Pension Scheme on the death of their deceased son. Therefore, there was no question of getting the benefit of any liberalised scheme when the Pension Scheme itself did not apply to them.

8. The other judgment on which reliance was placed by learned Counsel for the Respondent is Bhagwanti v. Union of India: (1994)IIILLJ264SC . Even in that case the wife of a deceased government servant was included in the definition of the term "family" but what was found fault with was that a restrictive condition was attached to the said definition to the effect that provided the marriage of the government servant concerned took place before the retirement of the government servant. Thus the serving widows of government servants who had married after the government servants' retirement were excluded from the benefit of the Scheme. This restriction was found to be totally arbitrary and, therefore, this clause was struck down as being violative of Article 14 of the Constitution of India. Resultantly, the definition of "family" of the beneficiary as found by Clause (b) of Rule 54(14) of the CCS (Pension) Rules, 1972 in relation to a government servant including wife in the case of a male government servant, or husband in the case of a female government servant, remained fully operative. It becomes at once clear that in that case the Family Pension Scheme was made available to the entire class of wives of the male government servants. But the restrictive condition attached to that clause was found to be arbitrary, with the result that by judicial interpretative surgery the other part of the restrictive condition was set aside. In the facts and circumstances of the present case there is no question of setting aside any arbitrary condition. In fact, the class of parents is not included at all in the Scheme of 1964. Therefore, there is no occasion for striking down any part of the said supposed illegal or arbitrary condition. It is also pertinent to note that the rule has neither been challenged in the proceedings before the High Court nor before us. Therefore, there remains no occasion for the same to be read up or to remove any obnoxious part of the restrictive condition. On the contrary all that the learned Single Judge and the Division Bench have done is to add a new class of beneficiaries which is not a permissible exercise for the court. A

new policy is sought to be evolved by judicial intervention. It is, of course, true that parents now are included in the term "family" by a new amended scheme with effect from 1.1.1996. But that is entirely a different matter. If Daljit singh had died after 1-1-1996 the benefit of that Scheme would have been legally available to the Respondent. But that is not the case here. Consequently, even keeping in mind sympathy for the Respondent widow who at the time when Daljit Singh died was dependant on him as her husband, the other claimant had already retired and was aged 65. The judgment of the High Court cannot be sustained so far as the legal position goes.

9. Now remains the question as to what appropriate order can be passed in these proceedings to bring down the curtain. It must be stated and for which there is no dispute that pursuant to the High Court's order the Appellant State went on paying the family pension amount to the Respondent window of Kharak Singh, the mother of the deceased Daljit singh. We are told that the stay was granted for the first time by this Court on 12-10-1998. Therefore, whatever amount has been paid to the Respondent under the impugned order of the High Court should not be recovered by the Appellant even though the Appellants succeed in this appeal. This order is required to be passed in exercise of our powers under Article 142 of the Constitution of India for the simple reason that the Respondent widow has not only lost her son since 5-11-1985 when she was dependant on him but her husband, the other claimant, Kharak Singh was also killed by terrorists. Under these circumstances, even the Appellant State itself has granted her a monthly pension of Rs. 2500/- on that account. Considering all these aspects, therefore, there is no question of effecting any recovery by the Appellant from the Respondent only because the appeal is being allowed.

10. However, one more aspect of the matter requires to be considered. The Appellant State itself in its wisdom thought it fit to include the parents of the deceased government servant under this very Family Pension Scheme w.e.f. 1-1-1996 by appropriate amendment in the Scheme brought about in 1998 with retrospective effect. The said Scheme is brought on record at p. 96 of the paper-book. Para 4.3 of the said amended Scheme reads as under:

4.3. For the purpose of Rule 6.17(3) of Punjab Civil Services Rules Vol. II, the definition of family shall also include the following relatives of the deceased government employee:

(i) Son/daughter including widowed/divorced daughter till he/she attains the age of 25 years or up to the cater of his/her marriage/re-marriage or till he/she starts earning his/her livelihood, whichever is earlier; son/daughter including widowed/divorced daughter shall be deemed to be earning his/her livelihood if his/her income is Rs. 2620/- per mensem or more.

(ii) Parents who were wholly dependant on the government employee when, he/she was alive provided the deceased employee had left behind neither a widow nor a child. The parents whose total income from all sources was Rs. 2620/-per mensem or more at the time of death of the employee shall not be considered to be dependent.

11. It becomes, therefore, clear that at least from 1-1-1996 the definition of "family" as found in the erstwhile Rule 6.17 of the Punjab Civil Services Rules Vol. II has undergone a change and the parents of the deceased concerned are made eligible to get family pension subject to their satisfying condition mentioned in this amended Scheme. So far as the second condition is concerned as Daljit Singh had died much prior to 1-1-1996 the same will not be applicable to the Respondent. However, drawing an analogy from these rules on the peculiar facts of this case and not as a precedent we find that if Daljit Singh had died after 1-1-1996 the Respondent mother would have got total amount of

at least Rs. 2619/- per month as family pension if she was wholly dependant upon him when Daljit Singh died. We have already seen above that when Daljit Singh died in 1985 the Respondent mother was dependant on him as her husband, the other claimant had already retired and was aged 65. But even that apart, the report of the Deputy Superintendent of Police, CID Unit, Ludhiana which is also produced on record shows that deceased Kharak Singh was maintaining a parallel family life and was staying with another woman Harinder Kaur and had two daughters through her. In view of these peculiar facts and circumstances, therefore, the Respondent mother of the deceased Daljit Singh had only Daljit Singh to fall back upon as otherwise her husband Kharak Singh did not appear to be taking any interest in her. In the light of these facts, therefore even though the Scheme of 1998 does not apply to her case it is found that even under that Scheme if it had applied, her total income from all sources should not have exceeded Rs. 2619/- per month to get the benefit of even the amended Scheme it at all it had applied. The Appellant State granted Rs. 2500/- per month by way of pension to her because Kharak Singh, her husband was killed by terrorists. Consequently, even if the Scheme of 1998 had applied she would have got Rs. 119/- per month more. Thus this amount can be made available to her at least from 1-8-1999 as we are deciding this matter in the first week of August 1999. Accordingly, the appeal is allowed. The judgment of the learned Single Judge as well as that of the Division Bench are set aside. Writ Petition filed by the original Respondents is dismissed subject to the following directions:

1. Despite the dismissal of the Writ Petition if any amount has been paid uptil now pursuant to the orders of the High Court to the Respondent it shall not be recovered by the Appellant.

2. From 1-8-1999, not as a precedent but on the peculiar facts of this case and on compassionate grounds, the Appellant State will pay Rs. 119/- per month additionally to the Respondent.

12. No costs.