

# SUPREME COURT OF INDIA

H.S.E.B.

Vs.

Azad Kaur

(S V Manohar and M J Rao JJ.)

18.08.1999

## ORDER

### **MS. SUJATA V. MANOHAR, J.**

1. The husband of the respondent was working as an Upper Division Clerk in Haryana State Electricity Board. He died on November 14, 1996 while in service. The respondent was working as a teacher prior to the date of the death of her husband. After her husband's death, she claimed family pension to which the respondent and her family were entitled. The respondent was granted the family pension but was not given dearness allowance/relief and interim relief on the ground that the respondent was working as a teacher. The denial of dearness relief was challenged by the respondent in a writ petition filed before the High Court. The High Court granted her dearness relief on family pension. Hence, the appellant Haryana State Electricity Board has filed this appeal.

2. The Appellants have placed reliance on a decision of this Court in *Union of India v. G. Vasudevan Pillay*. The decision in that case dealt with ex-servicemen who had been re-employed. The Court said that pensioners who have got re-employment can be treated differently from other pensioners; and in the case of re-employed pensioners, it would be permissible in law to deny dearness relief on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of money because of a rise in prices. The Court also observed that the denial of dearness relief on family pension on a fresh employment being granted to the dependent/widow of an ex-serviceman will also be sustained.

3. This decision, therefore, deals with cases where (i) the petitioner himself gets re-employment or (ii) the widow or a dependant of the pensioner such as a son, gets fresh employment on compassionate grounds. It does not deal with any case where one of the recipients of the family pension is also independently employed elsewhere.

4. The other decision which was relied upon by the Appellants is a decision of the 'Punjab & Haryana High Court in the case of Haryana Civil Pensioners Assn. (Regd.) v. State of Haryana 1995 7 SLR 181 (P&H-DB) where also the High Court followed the decision of this Court in Union of India v. G. Vasudevan Pillay (supra). The High Court dealt with Rule 55-A of the Central Services (Pension) Rules and the instructions issued by the Central Government as well as by the Government of Haryana under which a pensioner was not liable to dearness allowance on pension during the period of his re-employment. The Court said that the person who was re-employed after retirement and who had got the pay of the re-employed post together with dearness relief, can be denied the dearness relief on his pension. The same observations were made in respect of the employment of a dependant on compassionate grounds. This case also, therefore, had not dealt with situation where one of the recipients of the family pension is independently employed even prior to the death of the employee.

5. It is not the case of the appellant that the respondent secured employment on 5 compassionate grounds as a teacher after the death of her husband. In fact, we fail to see how she could have secured any employment on compassionate grounds in a totally different service.

6. The appellants have relied upon a letter dated March 20, 1980 from the Secretary to the Government, Finance Department, Government of Haryana circulated to all the Heads of the Departments under which it is clarified that the payment of ad hoc relief on pension shall remain suspended when a person in receipt of family pension/extraordinary pension is employed/re-employed. The appellants contend that whenever a recipient of a family pension is employed, the ad hoc relief on pension shall not be granted. In our view, this is not a correct interpretation of the letter of March 20, 1980. As the ratio of the judgment of this Court in Union of India v. G. Vasudevan Pillay (supra) shows, the principle on which ad hoc relief is withheld, is that if a recipient of a family pension has received an additional benefit in the form of either re-employment or an employment on compassionate grounds on account of the death of the employee, the need to provide another cushion in the form of ad hoc relief is not there. The word "employed" used in the letter of March 20, 1980 in that context can only refer to the kind of employment which is secured by the widow or a family member on account of or in the context of the death of the employee in respect of whom family pension is being paid. It can have no reference to any independent employment or any other independent source of livelihood which the family members may possess. The mere fact that the widow is independently employed as a teacher elsewhere even prior to the death of her husband, cannot deprive the family of the benefit of the ad hoc relief on family pension.

7. Our attention is drawn to a decision of the Division Bench of the Punjab & Haryana High Court in the case of Swaran Kaur v. State of Punjab 1997 1 RSJ 325 (P&H-DB) where the High Court, after ascertaining that the petitioner therein had not secured any job on compassionate grounds on account of the death of her husband, nor had any family member done so, held that dearness allowance on family pension could not be withheld. It said that the fact that the widow was in service at the time when her husband died would not deprive her of dearness allowance on family pension when the employment was not on compassionate grounds. We, therefore, agree with the reasoning and conclusion reached by the High Court in the impugned judgment.

8. The civil appeal is, therefore, dismissed with costs.

