

# SUPREME COURT OF INDIA

State of Gujarat

Vs.

Bhaterdevi Ramnivas Sanwalram

C.A.No.4763 of 2000

(Doraiswamy Raju and Y.K. Sabharwal JJ.)

17.9.2002

## JUDGMENT

### **Y.K. Sabharwal, J.**

1. The husband of the respondent joined police service under the appellants as constable on 15th of January, 1977. He died in harness on 12th December, 1980 leaving behind the respondent and her two children. At the time of his death he had put in total service of about 3 years and 10 months as constable. The respondent made several representations for grant of family pension to her but without any success. As a result of denial of family pension a civil suit was filed by her claiming declaration that she was entitled to receive family pension. The said suit was dismissed on 21st September, 1990. The first appeal and second appeal therefrom were also dismissed.

2. The judgment of the High Court dismissing the second appeal was challenged by filing a special leave petition before this Court. Along with it, a writ petition was also filed by the respondent under Article 32 of the Constitution of India claiming the relief of family pension and also challenging the eligibility criteria for grant of family pension as laid down in the Government Resolution dated 1st January, 1972. The said Resolution relaxed the minimum period of service so as to be entitled to the benefit of family pension. The 1972 Resolution of Government of Gujarat notices that under the existing orders (The Revised Pension Rules, 1950, as amended) a Government servant has to complete service of not less than 10 years, in order to become eligible for family pension and on review a fresh scheme has been drawn for family pension for the State Government service. It stipulated that the family pension under the scheme would be admissible in case of death while in service on or after 1st June, 1971 provided a Government servant has completed a minimum of five years of continuous service on the date of death. Thus the eligibility period for minimum continuous service stood reduced from 10 years to five years. In Article 32 petition, the respondent also challenged the validity of fixing of any period so as to be entitled to benefit of family pension.

3. The special leave petition and the writ petition were dismissed by this Court on 16th August, 1994 and the following order was passed:

"We do not find any ground to grant the relief for family pension claimed by the petitioner. We may however observe that in case such a benefit is being granted to any other person similarly situate then the authorities may consider the petitioner's case also for grant of similar relief.

Special Leave Petition and the Writ Petition are dismissed with the above observations."

4. After the aforesaid order, the respondent sent representation to the Chief Secretary, Government of Gujarat. A notice under Section 80 of the CPC was also served on the Government. The respondent was informed that her husband did not satisfy the eligibility and she was not entitled to the grant of family pension.

5. Under the aforesaid circumstances a writ petition under Article 226 of the Constitution of India was filed before the High Court seeking quashing of the stipulation of minimum five years' service in 1972 Pension Scheme on the ground that it was violative of Articles 14 and 21 read with Articles 38, 39 and 41 of the Constitution of India and also for issue of directions to the State Government to fix family pension and for immediate payment thereof to her. The writ petition was dismissed by the learned Single Judge summarily noticing that the claim of the respondent was contrary to the Family Pension Scheme inasmuch as her husband had not put in five years' service as stipulated in the scheme.

6. The matter was taken in appeal before the Division Bench of the High Court.

7. By the impugned judgment the High Court setting aside the order of the learned Single Judge has declared that the respondent is entitled to benefit of family pension with effect from 12th December, 1980. The appellants have been directed to fix the family pension of respondent and to pay the same to her regularly.

8. The State Government is in appeal on grant of leave. While granting leave, the operation of the impugned judgment of the High Court was stayed. The High Court, by the impugned judgment, has granted to the respondent the benefit of Pension Scheme relying upon a Resolution of Government of Gujarat dated 31st July, 1987 doing away with the requirement of minimum length of service. The Resolution dated 31st July, 1987 read as under:-

"The Family Pension Scheme, 1972, vide GR, FD, No. FPS-1071-J, dated the 1st January, 1972, *inter alia* provides that the family pension under the scheme will be admissible in cases of death while in service on or after 1st June, 1971, provided the Government employee has completed a minimum period of 5 years of continuous service on the date of death.

2. The question of eligibility to family pension on par with the orders of the Government of India contained in their OM, dated the 14th April, 1987, referred to above, was under the consideration of the State Government. After careful consideration of the matter, the Government of Gujarat is pleased to introduce the modification in regard to admissibility of family pension to the effect that families of Government employees who die in harness shall be allowed family pension irrespective of their length of service.

3. The other conditions and provisions contained in the Family Pension Scheme, 1972, as amended from time to time, shall remain unchanged.

4. The provision of this resolution shall apply to those Government employee who are/were in service on 1st January, 1986."

9. It cannot be disputed that the respondent had not relied upon or referred to the aforesaid resolution dated 31st July, 1987 either in the writ petition or in the LPA. A perusal of judgment shows that the counsel for the respondent herein during the course of the hearing of the appeal brought to the notice of the Division Bench the Resolution dated 31st July, 1987. Referring to 1972 Resolution, the Division Bench has observed that if the Resolution of 1972 had not been subsequently amended, the respondent would not have been entitled to the benefit of family pension because her husband has not completed minimum of five years' service on the date of his death. The Bench, however, goes on to observe that by Resolution dated 31st July, 1987 the Government decided to allow the family pension to the families of Government employees who died in harness irrespective of their length of service and thus the requirement of five years' service was done away and to that extent the Family Pension Scheme framed under the Government Resolution dated January 1, 1972 stood modified by making pension scheme admissible to family members of those employees who had died while in service.

10. It seems evident that the attention of the High Court was not drawn to Clause 4 of the Resolution dated 31st July, 1987 which clearly stipulates that it shall apply to those Government employees who are/were in service on 1st January, 1986. The husband of the respondent had died in December, 1980. Clearly, therefore, 1987 Resolution is not applicable to the respondent. She cannot claim benefit of family pension under 1987 Resolution.

11. Faced with the aforesaid difficulty, learned Counsel for the respondent submits that the stipulation for restricting the applicability of 1987 Resolution to those Government employees who were in service on 1st January, 1986 is illegal and unconstitutional. We are afraid the respondent cannot be permitted to challenge the 1987 Resolution in this appeal. As already noticed the said Resolution was not referred to in the writ petition or in the appeal before the Division Bench. It was produced and relied upon by her during the course of hearing before the Division Bench of the High Court. It is evident that it was not contended nor it could be contended in the appeal proceedings before the High Court that clause 4 was invalid. Under these circumstances, in this appeal, the respondent cannot be allowed to challenge the validity of clause 4 of Resolution dated 31st July, 1987.

12. It was also contended that the Scheme of 1972 to the extent it lays down minimum five years' eligibility criteria to be entitled to grant of family pension is illegal and unconstitutional. This contention is again without any merit. The said challenge was also made earlier and was rejected on the dismissal of the special leave petition and the writ petition by this Court on 16th August, 1994. The respondent cannot be permitted to reopen that question again in this appeal.

13. The impugned judgment does not make any reference to Clause 4 of 1987 Resolution. It is clear that if the said clause had been brought to the notice of the Division Bench of the High Court there would have been no question of grant of any relief to the respondent as the impugned judgment notices that if 1972 Resolution had not been amended the respondent would not have been entitled to the benefit of family pension. In view of Clause 4 of 1987 Resolution, the respondent is not entitled to benefit of family pension. She is also not entitled to family pension under 1972 Resolution for want of minimum five years' continuous service of her husband. No other resolution, rule or scheme was brought to our notice on basis whereof directions could be issued for grant of family pension to her.

14. For the aforesaid reasons we set aside the impugned judgment of the Division Bench of the High Court and restore that of the learned Single Judge dismissing the writ petition. The appeal is thus allowed leaving the parties to bear their own costs.

Appeal allowed.