

Court No. - 52

Case :- WRIT - A No. - 5545 of 2021

Petitioner :- Urmila Singh

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Jitendra Prasad, Niraj Kumar Singh, Rajesh Kumar Singh

Counsel for Respondent :- C.S.C., Jay Ram Pandey

Hon'ble Mrs. Manju Rani Chauhan, J.

1. The petitioner has preferred this writ petition challenging an order dated 21.09.2020 passed by respondent no. 3 – Finance and Accounts Officer, Basic Education, Mirzapur, vide which the claim of the petitioner for payment of family pension has been rejected.

2. Brief facts of the case are that the petitioner's husband was appointed as an Assistant Teacher in a Basic School run by Basic Shiksha Parishad and was superannuated on 31.03.2016, after which he was getting pension. He passed away on 29.11.2019, therefore, his wife (petitioner herein) became entitled for family pension. The petitioner (wife) moved an application requesting for sanction of family pension. However, her claim of family pension been rejected vide order impugned dated 21.09.2020 on the ground that in the application requesting for payment of pension as moved by the petitioner's husband, in the column 'details of family' in Part-I, name of the petitioner has not been mentioned. As neither in Part-III of the application, photo of the petitioner has been pasted nor her name finds place in the earlier pension papers which were submitted by her husband for sanction of pension.

3. Learned counsel for the petitioner submits that, admittedly, the petitioner is wife of late Prabhu Narayan Singh, which has been certified by the Gram Pradhan of the village. Name of petitioner's husband has

been mentioned in the passbook of the bank account of the petitioner. Even in the proceedings under Section 125 Cr.P.C., the petitioner has been granted maintenance of Rs. 8,000/- per month which proves that she is the wife of late Prabhu Narayan Singh, hence she is entitled for family pension.

4. Learned counsel for the petitioner contends that in the special circumstances, where it is an admitted fact that the petitioner is wife of late Prabhu Narayan Singh and the son, who was 34 years old at the time of death of Prabhu Narayan Singh, was not entitled for family pension, the respondent authorities ought to have verified the fact, which has already been certified by the Gram Pradhan and the judgement dated 20.08.2015 passed by Principal Judge, Family Court, Mirzapur in Application No. 404 of 2014, Smt. Urmila Singh v. Prabhu Narayan Singh, and should have released the family pension in favour of the petitioner. However, the respondent authority without taking note of the said relevant material, has proceeded to reject the petitioner's claim sans application of mind.

5. Placing reliance upon the Pension Payment Rules, learned counsel for the petitioner submits that the petitioner, being the wife of late Prabhu Narayan Singh, is entitled for pension.

6. Learned counsel for the Basic Education Department i.e. respondent nos. 2, 3 & 4, submits that there is no illegality or infirmity in the order impugned as the deceased government servant has not mentioned name of the petitioner in his application requesting for pension. In Part-III of the pension application, name of Atul Kumar Singh has been mentioned as the applicant for family pension, therefore, the petitioner is not entitled for any such claim being sought for in the writ petition.

7. Heard learned counsel for the petitioner, Sri Shailendra Singh, learned Standing Counsel for the State, Sri Sunil Kumar Dubey, learned counsel for respondent nos. 2, 3 & 4, and perused the record.

8. The family pension is governed by the provisions of the Civil Service Regulations and the U.P. Retirement Benefit Rules, 1961¹. 'Family' is defined under Sub-Rule (3) of Rule 3, which reads thus:

"(3) "Family" means the following relatives of an officer:

- (i) wife, in the case of any male officer;
- (ii) husband, in the case of a female officer;
- (iii) sons (including step-children and adopted children)
- (iv) unmarried and widowed daughters. (Including step-children and adopted children)
- (v) brothers below the age of 18 years and unmarried and widowed sisters (including step-brothers and step-sisters);
- (vi) father;
- (vii) mother;
- (viii) married daughters (including step-daughters), and
- (ix) children of a pre-deceased son"

9. Rule 6 of the Rules, 1961 provides for nomination of one or more persons, and right to receive any gratuity that may be sanctioned. The proviso clarifies that at the time of making nomination if the officer has a family, the nomination shall not be in favour of any person other than one or more members of the family. Rule 6 is extracted:

"6. Nomination. – (1) A Government Servant shall, as soon as he acquires or if he already holds a lien on a permanent pensionable right to receive any gratuity that may be sanctioned under sub-rule (2) or sub-rule (3) of rule 5 and gratuity which after becoming admissible to him under sub-rule (1) of that rule is not paid to him before death :

Provided that if at the time of marking the Nomination the officer has a family, the nomination shall not be in favour of any person other than one or more of the members of the family."

10. Rule 7 of Part-III of the Rules, 1961 provides that family pension may be granted to the family of an officer who dies, whether after

1 The Rules, 1961

retirement or while still in service after completion of not less than twenty years' qualifying service. Sub-Rule (4) of Rule 7 provides who shall be entitled to receive the pension in the event the deceased employee had two wives. Sub-rule (4) is extracted below:

(4) "Except as may be provided by a nomination under sub-rule (5) below:

(a) a pension sanctioned under this Part shall be granted—

- (i) to the eldest surviving widow, if the deceased was a male officer or to the husband, if the deceased was a female officer;
- (ii) failing the widow or husband, as the case may be, to the eldest surviving son;
- (iii) failing (i) and (ii) above, to the eldest surviving unmarried daughter;
- (iv) these failing, to the eldest widowed daughter; and

(b) in the event of the pension not becoming payable under clause (a) the pension may be granted—

- (i) to the father;
- (ii) failing the father, to the mother;
- (iii) failing the father and mother both, to the eldest surviving brother below the age of 18;
- (iv) these failing, to the eldest surviving unmarried sister;
- (v) these failing (i) to (iv) above, to the children of a predeceased son in the order it is payable to the children of the deceased officer under clause (a) (ii), (iii) and (iv), above.

Note.—The expression "eldest surviving widow" occurring in clause (a) (i) above, should be construed with reference to the seniority according to the date of marriage with the officer and not with reference to the age of surviving widows."

11. From the arguments as placed by learned counsel for the parties, it is not disputed that the petitioner is legally wedded wife of the deceased government servant. The same is evident from the certificate as issued by by the concerned Gram Pradhan and the judgement dated 20.08.2015 passed by Principal Judge, Family Court, Mirzapur in Application No.

404 of 2014, Smt. Urmila Singh v. Prabhu Narayan Singh, and the same is not disputed.

12. A bare perusal of the Rules, 1961 is indicative of the fact that the definition of ‘family’ includes spouse, wife or husband, as the case may be, sons (including step and adopted), unmarried and widowed daughters (including step and adopted), brothers below the age of 18 years and unmarried and widowed sisters (including step-brothers and step-sisters), father, mother, married daughters (including step-daughters) and children of pre-deceased son.

13. In the present case, the petitioner is legally wedded wife of the deceased government servant. Sub-rule (5) of Rule-6 of the Rules, 1961 requires government servants to make a nomination indicating the order, in which pension, sanctioned, would be payable to the members of their family. Provided the nominee is not ineligible on the date on which the pension may become payable to him or her to receive the pension under the provisions of sub-rule (3) of Rule-7 of the Rules, 1961. Thus, the scheme of the Rules, 1961 provides that in case a government servant leaves behind any of the family members, there should be a nomination in favour of them and the pension would accordingly be payable, provided the nominee is not ineligible on the date, on which the pension became payable to her in sub-rule (3) of Rules-7.

14. In the present case, the nomination was in favour of the elder son who was nearly 32 years of age at the time of death of his father, therefore, it was the petitioner who was legally wedded wife, and was entitled for the family pension. The age, and the fact that the son might have been earning at that stage makes him ineligible for the family pension.

15. This Court feels that the family pension is a statutory right of a wife under the Rules, 1961. The aforesaid fact has been affirmed by Kerala High Court in the case of **Union of India v. Sathikumari Amma**², wherein the Court held that family pension is not a part of employee's estate and cannot be revoked via any declaration or nomination by the deceased. It further observed that the employee cannot exclude legally wedded spouse from receiving pension, such departure is constitutionally invalid.

16. It is now a well-settled legal principle, as affirmed by the Kerala High Court in **S. Sathikumari Amma (supra)**, that family pension is a statutory entitlement of the legally wedded spouse and cannot be revoked or excluded by any declaration, nomination or action of the deceased employee.

17. This Court finds that admittedly the petitioner was the wife of late Prabhu Narayan Singh. Said fact is also proved from the judgement dated 20.08.2015 passed by Family Court in Application No. 404 of 2014, Smt. Urmila Singh v. Prabhu Narayan Singh. The ground taken in the maintenance application shows that there were some differences between the applicant and her husband, therefore, she was residing at her parental place and as soon as she came to know about the death of her husband, she moved an application mentioning therein the details of family. In the application for family pension, the date of birth of the petitioner is mentioned as 01.01.1962, date of birth of Atul Kumar is 20.07.1985 and that of Sandeep is 05.12.1987. Accordingly, at the time of death of petitioner's husband, Atul Kumar Singh, whose name was mentioned in pension papers, was nearly 34 years old and another son was 32 years old. The petitioner not being aware of the conduct of her husband, who nominated one of his sons, for family pension as required under law, had

no other remedy but to move an application, to which proper decision should have been taken, keeping in mind the provisions of the Pension Rules, 1961. However, the respondent authority has rejected the application only on one ground that name of the petitioner was not mentioned in pension papers as required under law.

18. From the record, it is evident that the petitioner was getting Rs. 8,000/- per month from her husband to maintain herself, however, after his death, when she was 62 years old, there was nothing to maintain herself except family pension, therefore, the impugned order is liable to be set aside.

19. This Court feels that the family pension is statutory and beyond the employee's unilateral control. Family pension is recognized as a legal entitlement, not charity.

20. Having considered the submissions of learned counsel for the parties and peculiar facts and circumstances of the case, and in view of the admitted fact that the petitioner is legally wedded wife of late Prabhu Narayan Singh who has no other source of her livelihood, this Court finds that the petitioner is entitled for family pension. Thus, the impugned order dated 21.09.2020 is quashed. The respondent no. 3 is directed to release family pension in favour of the petitioner, forthwith.

21. The writ petition stands allowed accordingly.

22. There shall be no order as to costs.

Order Date :- 24.7.2025

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