

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.17388-90/2006**

% **Date of Decision: 04.12.2009**

Union of India & Ors. Petitioners
Through Mr.J.P.Sharma, Advocate.

Versus

Smt. Brahma Devi Respondent
Through Mr.Shyam Narayan, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J.

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1. The petitioners, Union of India through General Officer in Command Head Qtr and others have challenged the order dated 3rd March, 2006 passed in O.A. No, 2790/2004 titled Smt. Brahma Devi Vs. Union of India and Others directing the petitioners to release pension of her husband Late. Sh. Chaman Lal Geek for the period 11th April, 1965 to 20th July, 1975 and thereafter determine the family pension admissible to the respondent and to release the same to her.

2. Brief facts to appreciate the controversies are that the respondent filed an original application bearing OA no. 2790/2004 for grant of pension and retirement dues of her late husband, Sh. Chaman Lal Geek for the period after he resigned from service with petitioners from 11th April, 1965 to 20th July, 1975, the date on which her husband had died and thereafter for the family pension to her. The respondent also claimed interest on belated payment of family pension.

3. The husband of the respondent, Sh. Chaman Lal Geek, had joined the service as clerk on 20th April, 1948. After completing 16 years 11 months 21 days service, he tendered his resignation which was accepted on 10th April, 1965. The husband of the respondent died thereafter, on 20th July, 1975. Almost 18 years after the death of her husband, the respondent approached the petitioner on 15th March, 1988 for grant of pension etc. which according to her was payable to her husband during his lifetime and family pension which allegedly became due to her after her husband's death.

4. The claim of the respondent was rejected by the petitioners on 13th December, 2001. The respondent challenged the decision of the petitioners rejecting her claim for pension by filing an original application being OA No. 1535/2002. The said original application was disposed of at admission stage by order dated 6th June, 2002 directing the petitioners to treat the legal notice served on behalf of respondent

as a representation made by her and decide her representation by a speaking order.

5. The representation in the form of legal notice on behalf of respondent was disposed of by order dated 17th May, 2003 stipulating, inter alia, that no service record in respect of the husband of the respondent was traceable and therefore, she was asked vide letter no. 70122/II/Est (Pension) dated 7th August, 1998 to produce any record available with her for necessary action. The respondent's claim was on the basis of whatsoever record was available. While rejecting the claim for pension by order dated 17th May, 2003, it was held that according to Chapter IV (a) of CCS (Pension) Rules, 1972, the claim to pension or family pension is regulated by the provision of Rules enforced at the time when the Government Servant retires or is allowed to resign from service. Under liberalized Pension Rules, 1954 applicable at the time of resignation of Mr. Chaman Lal Geek in 1965, minimum 20 years of service was essential to become eligible for the benefits of pension/family pension, and therefore, the respondent was held not entitled for any family pension. It was further held that family pension was admissible in case of death while in service or after retirement or after 1st January, 1964, if at the time of death, the retired officer was in receipt of pension, invalid, retiring or superannuation pension. It was held that since respondent's husband was neither entitled, nor in

receipt of any pension at the time of his death on 20th July, 1975, therefore, she is not entitled for family pension.

6. On rejection of the representation of the respondent by order dated 17th May, 2003, the respondent filed contempt petition being CP No. 125/2004 which was, however, dismissed. While dismissing the contempt petition, the respondent was, however, given liberty to challenge the order declining her pension in appropriate proceedings. Pursuant to liberty granted to the respondent OA no. 2790/2004 was filed by the respondent which was allowed by the impugned order dated 3rd March, 2006 under challenge in these proceedings.

7. Before the Tribunal, Principal Bench the petitioners had contested the claim of the respondent on the ground that the husband of the respondent had resigned on 10th April, 1965 after completing 16 years 11 months and 21 days of service and later on, he had died on 20th July, 1975. However, the petition claiming retirement dues and pension has been filed after 23 years of his death and in the circumstances the claim of the respondent suffered from delay and latches. The petitioners had also averred that under Rule 26 of CCS Pension Rules, 1972, resignation from service would entail forfeiture of past service unless it was allowed to be withdrawn in public interest which, admittedly, was not the case of the husband of the respondent.

8. The petitioners also contended that under the Liberalized Pension Rules, 1954, applicable to the case of husband of the respondent at the time of his resignation in 1965, minimum 20 years of service was required and since he had not completed 20 years of service, he was not entitled for pension and consequently after the death of respondent's husband, even respondent is not entitled for family pension. Applicability of the precedents *Om Prakash Singh Maurya v. Union of India* and others in OA No. 353/1994 decided on 14th September, 1998 was also distinguished on the ground that the said case was under 1972 Pension Rules. It was contended that even under 1972 Pension Rules, the husband of the petitioner was not entitled for pension.

9. The tribunal has, however allowed the petition of the respondent holding that Article 468 in Chapter 19 of pension scheme estimates the amount of pension that may be granted on the basis of length of service. As set forth in Article 474 to 485 referring to Article 471 (1), the tribunal noted that after service of less than 10 years, a gratuity not exceeding (except in special cases, and under the order of the Government of India up to a maximum of 12 months, emoluments) one month's emoluments for each completed year of service is to be granted. However, after the service of not less than 10 years pension, not exceeding the amount as indicated in Article 471(1B) is admissible. According to the Tribunal since the husband of the respondent had completed more than 10 years of service on 11th April, 1965 when his

service came to an end by resignation, the pension became payable to him at a minimum qualifying service of 10 years. It has therefore, been held that the pension was admissible to the husband of the respondent as he had completed more than 10 years of service on the date of his resignation from the service which will be deemed voluntary retirement in April, 1965. Since pension had not been paid, the claim of the respondent to that extent has to be sustained. The Tribunal also held that since the respondent has been denied family pension on the premise that her husband was not receiving any pension at the time of his death, therefore, the respondent shall also be entitled for a family pension, as the family pension is a statutory right and it is to be treated for all intents and purposes as a deferred salary, on employee completing prescribed qualification service. In the circumstances, it was held that delay in pressing the claim by the respondent will not deprive her of actual monetary benefits. The relevant paras 13,14,15 of the order dated 3rd March, 2006, the order impugned by the petitioners are as under:-

13. The respondent in their counter reply have also relied upon the aforesaid rules. Counsel for respondents has not been able to produce Liberalized Pension Rules which would be applicable exclusively in regard to the voluntary retirement cases. He has also not argued that Article 474 (!) Clause (b) will not be applicable to the case of the husband of the applicant. He had admittedly completed more than 10 years of service on 11.04.1965 when his service came to an end by resignation. The Article is, if not precisely the same, more or less similar to the present rule 49 of CCS (Pension) Rules, 1972 where pension is payable on a minimum qualifying service of 10 years. The amount of the pension in the case where the service of the retired

employee was not less than 10 years would be as provided in the table below Article 471 (!) aforesaid cited. In other words, the pension was admissible to the deceased employee he having competed more than 10 years of service on the date of his deemed voluntary retirement in April, 1965. The pension has not been paid, the claim of the applicant to that extent has to be sustained.

14. Applicant has been denied family pension on the premises that her husband late Sh. Chaman Lal Gheek was not receiving any pension at the time of death. It is well-settled by catena of judgments of Hon'ble Supreme Court that the pension was not a bounty. It was a statutory right and it was treated for all intent and purport to be a deferred salary and it was granted when the employee completed prescribed qualifying service. The pension is to be paid to the employee not only when it is claimed, but it is the statutory duty of the employer to pay it as provided in the applicable rules. In case the applicant have not discharged their duties enjoined upon them under the service rules, they cannot pass on the blame to the applicant nor can they be excused as the statutory rules were not followed by them and the admissible pension was not paid to the employee when it was due. Therefore, when late Sh. Chaman Lal Gheek died in 1975 applicant to the contrary does not hold good. The delay in pressing her claim will not deprive her of actual monetary benefit.

15. Accordingly, the OA is allowed. the respondents are directed to release pension to late Sh. Chaman Lal Gheek for the period from 11.4.1965 to 20.7.1975 and thereafter determine the family pension admissible to the applicant and release the same to the applicant. This order shall be implemented preferably within a period of 4 months from the date on which the certified copy of the order is received by the respondent. In the circumstances, parties shall bear their own costs.

10. Learned counsel for the petitioners has contended that the Tribunal has erred in holding that the delay by the respondent in pressing her claim will not deprive her of actual monetary benefit, even

if it was her statutory right and it had to be treated for all intent and purport to be a deferred salary. The petitioner has relied on **C. Jacob v. Director, Geology and Mining and another**, 2008 (13) SCALE 434 to contend that since the husband of the respondent had abandoned the service by resignation, which fact is not even denied by the respondent, two decades after his resignation and his death she could not claim that her husband was entitled for family pension and she is also entitled for pension despite her husband being not eligible for family pension as he had not completed 20 years of minimum service which was required under Family Pension Scheme for Central Government Employees, 1964. Reliance has also been placed on **S S Balu and another v. State of Kerala and others**; 2009 (2) All India Service Law Journal 480. The petitioner has also contended that even if the case of the respondent's husband is to be treated as a case of voluntary retirement (though he had tendered his resignation), the period of service already rendered by him would not have entitled him for pension under the provisions of Family Pension Scheme for Central Government Employees, 1954 which was applicable in 1965 when the resignation was tendered/voluntary retirement taken.

11. The petition is contested by the by the respondent contending, inter alia, that at the time of his resignation from service, the husband of the respondent had already rendered 16 years 11 months 21 days of service which entitled him for pension and therefore, even after his

death the respondent shall be entitled for family pension. She asserted that though the application was filed on 15th March, 1988, after the husband had died on 20th July, 1975 however, the right to get the pension being a statutory right and not a bounty, and for all intents and purposes it was a deferred salary which was to be granted when her husband completed prescribed qualifying service, therefore, on the ground of delay, the pension which her husband was entitled for, and thereafter, the respondent is entitled, could not be denied. According to the respondent, it was the statutory duty of the petitioners to pay the family pension and pension under CSS Rules and since the petitioners had not discharged their duties, the respondent could not be blamed for the same. Regarding the entitlement of the family pension relying on Article 474(1)(b), it is asserted that the said Article categorically stipulates the maximum limit of pension payable after completing minimum numbers of years in service. Since it does not provide any pension for less than 10 years and different amounts of pension payable after completing 10 years or more of service as detailed, therefore, it could not be said that the husband of the respondent after completing about 16 years 11 months and 21 days of service was not entitled for family pension under Family Pension Scheme for Central Government Employees, 1964.

12. We have heard the learned counsel for the parties in detail and have also perused the writ petition, replies and the precedents relied on

by the parties. One of the primary question for determination is as to what is the qualifying service to become eligible for pension, if an employee has resigned and has not superannuated.

13. Payment of pension depends upon completion of qualifying service. A person who completes the qualifying service is entitled to pension. Where the applicable service rules entitle the employee to opt for voluntary retirement after putting in the specified length of service, whether the relationship of employer and employee comes to an end by way of resignation or voluntary retirement in a given situation, may not be relevant and the employer cannot deprive the employee the benefits of the beneficent voluntary retirement scheme. However, he has to be eligible for the pension under the applicable scheme or the rules. As voluntary retirement may or may not be accepted similarly the resignation of an employee may or may not be accepted. Thus the employer having accepted the resignation of an employee, cannot be permitted to contend that the employee is not entitled for pensionary benefits, if he is otherwise entitled under the applicable rules. However, to be entitled for pension, the employee has to be eligible for pension under the scheme or the rules whatsoever are applicable to him. To that extent the decision of the tribunal has to be sustained. However, what is to be considered and decided is whether the husband of the respondent was entitled for pension or not upon resignation after completing more than 10 years of service but less than 20 years of

service. The tribunal has gone on the premise that since the relevant article of the family pension scheme of 1954, details the pension payable after 10 years of service, therefore, after 10 years of service and an employee shall be entitled for pension even upon resignation. The other point for consideration is the delay by the respondent in claiming the pension for her husband and thereafter for herself.

14. In S.S.Balu and Anr (Supra) it was held that delay defeats equity. The writ petitioner who approaches the High Court after a long delay, may be denied relief on the ground of delay and laches irrespective of the fact that similarly situated other persons had been granted benefit of the judgment. In para 18 of the order the Supreme Court had held as under:-

“18. It is also well settled principle of law that “delay defeats equity”. Government Order was issued on 15.1.2002. Appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and State of Kerala preferred an appeal there against, they impleaded themselves as party respondents. **It is now a trite law that where the writ petitioners approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.** It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.”

15. In ***Union of India and Ors v. Rakesh Kumar*** (Supra) considering Rule 3(q) of the CCS (Pension) Rules defining “qualifying service” and noticing Rule 13 which prescribes the point of commencement of qualifying service, it was held that Rule 49 of the CCS (Pension) Rules nowhere provides that qualifying service for getting pension is 10 years. The Supreme Court held that there is no specific provision that if a Government servant retires before completing the qualifying service of 10 years because of his attaining the age of compulsory retirement, he would get pension though he would get the amount of service gratuity. Interpreting Rule 49(2) (b) it was held that the said section means only that in case a Government servant retires on superannuation i.e at the age of compulsory retirement as per service condition or in accordance with the CCS (Pension) Rules, after completing 10 years of qualifying service, he would get pension which has to be calculated and quantified as provided under Rule 49(2). In the circumstances, it covers cases of retirement under Rules 35 and 36 i.e voluntary retirement after 20 years of qualifying service, compulsory retirement after a prescribed age and such other cases as are provided under the rules. The Apex Court was categorical that this has nothing to do with the quitting of service after tendering resignation. Para 16 of the judgment at page 317 is as under:-

16. On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is without any basis. Qualifying service is defined under Rule 3(q) to mean

service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules. Rule 13 provides that qualifying service by a government servant commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. **This Rule nowhere provides that qualifying service for getting pension is 10 years.** On the contrary, there is a specific provision that if a government servant retires before completing qualifying service of 10 years because of his attaining the age of compulsory retirement, he would not get pension but would get the amount of service gratuity calculated at the rate of half month's emoluments for every completed six-monthly period of qualifying service. In these appeals, we are not required to consider other conditions prescribed for qualifying service as it is admitted that the respondent members of BSF have completed more than 10 years of qualifying service. Further clause (2)(a) of Rule 49 specifically provides for grant of pension if a government servant retires after completing qualifying service of not less than 33 years. The amount of pension is to be calculated at fifty per cent of average emoluments subject to maximum provided therein. Clause (2)(b) upon which much reliance is placed indicates that in case of a government servant retiring in accordance with the provisions of the Rules before completing qualifying service of 33 years, but after completing qualifying service of ten years, the pension shall be proportionate to the amount of pension admissible under clause (2)(a) and in no case, the amount of pension shall be less than Rs.375 per month. This would only mean that in case where a government servant retires on superannuation i.e. *the age of compulsory retirement as per service conditions or in accordance with the CCS (Pension) Rules*, after completing 10 years of qualifying service, he would get pension which is to be calculated and quantified as provided under clause (2) of Rule 49. This clause would cover cases of retirement under Rules 35 and 36, that is, voluntary retirement after 20 years of qualifying service, compulsory retirement after the prescribed age and such other cases as provided under the Rules. However, this has nothing to do with the quitting of service after tendering resignation. It is also to be stated that Rule 26 of the CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the Government where service qualifies. **Hence, on the basis of Rule 49 a member of BSF who has resigned from his post after**

completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefits. There is no other provision in the CCS (Pension) Rules giving such benefit to such government servants.

16. Similarly in **C.Jacob** (Supra) the Apex Court while dealing with Tamil Nadu Pension Rules, 1978, which were similar to CCS (Pension) Rules, held that a Government servant whose case does not fall under any of the classes as enumerated in Chapter V, is not entitled to pension. It was held that if a Government servant is not able to make out entitlement to any class of pension specified in Chapter V of the Pension Rules, there is no question of having recourse to the rules in the Chapter dealing with the regulation of amount of Pension (Chapter VI of TNP Rules or Chapter VII of CCSP Rules for determining the quantum of pension. Entitlement of pension is under Chapter V and determination is under the Chapter VII of the CCSP Rules and merely on the basis of quantum of pension, it cannot be held that a person is also entitle or eligible for pension. In the case relied on by the petitioners, the pension was claimed for a service rendered for less than 20 years taking advantage of the fact that the department did not have any records. The Supreme Court had considered the frequently raised contentions in the corresponding Rule 49(2) (b) of CCS (Pension) Rules which was considered in para 19 of the judgment which is as under:-

19. Rule 43(2) relied on by the petitioner falls under Chapter VI of the TNP Rules [corresponding to Rule 49(2)(b) in Chapter VII of the CCSP Rules] dealing with “regulation of amount of pension”.

The said Rule relates to quantum and lays down how the pension of a retired government servant should be calculated if he is entitled to pension. Entitlement to pension is governed by Chapter V of the said Rules, which enumerates the classes of pension and conditions for entitlement. The enumerated classes of pension are:

Classes of Pension (vide Chapter V of the Pension Rules)
CCSP Rules TNP Rules

- | | | | |
|-------|--|-------------------|---------|
| (i) | Superannuation pension | Rule 35 | Rule 32 |
| (ii) | Retiring pension | Rule 36 | Rule 33 |
| (iii) | Pension on absorption in or under a corporation, company or body owned/controlled by the State/ Central Government | Rule 37 Rule 37-A | Rule 34 |
| (iv) | Invalid pension | Rule 38 | Rule 36 |
| (v) | Compensation pension payable on discharge owing to abolition of the post | Rule 39 | Rule 38 |
| (vi) | Compulsory retirement pension | Rule 40 | Rule 39 |
| (vii) | Compassionate allowance to government servants who forfeit their pension on being dismissed or removed | Rule 41 | Rule 40 |

20. A government servant, whose case does not fall under any of the classes of pensions enumerated in Chapter V, is not entitled to pension. If a government servant is not able to make out entitlement to any class of pension specified in Chapter V of the Pension Rules, there is no question of having recourse to the

Rules in the Chapter dealing with regulation of amount of pension (Chapter VI of the TNP Rules or Chapter VII of the CCSP Rules) for determining the quantum of pension.

17. Relying on the ratio of the said judgments relied on by the petitioner, the respondent is not entitled for pension under the CCS (Pension) Rules. Apparently the husband of the respondent who had tendered resignation, is not entitled for grant of the pension under the CCS (Pension) Rules and if the husband of the respondent was not entitled for the pension, the petitioner after a number of years cannot claim pension or family pension. In the circumstances, the Tribunal has committed an error in directing the petitioners to release pension of Late Sh.Chaman Lal Geek, husband of the respondent for the period 11th April, 1965 to 20th July, 1995 as he was not eligible for pension under the CCS (Pension) Rules, 1972 nor the respondent is entitled for family pension after the death of her husband. Shri Chaman Lal Gheek did not have twenty years of service on the date he resigned and therefore, he could not claim pension.

18. Sh.Chaman Lal Geek, deceased husband of the respondent was not entitled for pension under the Liberalised Pension Scheme, 1954 and Rules, 1957 as he had not completed service of not less than 20 years. The said scheme also categorically contemplated eligibility for grant of pension limited to a maximum period of 10 years or 5 years after the date of superannuation, whichever is earlier. The relevant

provisions of voluntary pension scheme for Central Government Employees, 1964 are as under:-

“Appendix No. 12

The Government of India have for some time past been considering measures to be adopted for providing social security to their employees.

2. Under the existing orders (the Liberalised Pension Rules 1957). **An officer has normally to complete service of not less than 20 years in order to become eligible for the benefits of Family Pension** and also the duration of the pension is limited to a maximum period of 10 years or 5 years after the date of superannuation, whichever is earlier.

6. The Scheme will be admissible as below:-

(i) The Family pension will be admissible in case of death while in service or after retirement on or after the 1st January, 1964, if at the time of death, the retired officer was in receipt of a compensation, invalid, retired or superannuation pension. In case of death while in service the Government servant should have completed a minimum period of one year of service.

(ii) ‘Family’ for purposes of this Scheme will include the following relatives of the officer :-

- (a) Wife, in the case of a male officer :-
- (b) Husband, in the case of a female officer ;
- (c) Minor sons; and
- (d) Unmarried minor daughters.

Note 1. (c) and (d) will include children adopted legally before retirement.

Note 2. Marriage after retirement will not be recognized for purposes of this Scheme.

(iii) The pension will be admissible :-

- (a) In the case of widow/widower up to the date of death or re-marriage whichever is earlier.
- (b) In the case of minor son until he attains the age of 18 years.
- (c) In the case of unmarried daughter until she attains the age of 21 years or marriage whichever is earlier.”

19. Therefore, in the facts and circumstances, even if the case of the husband of the respondent is considered as a voluntary retirement either under the Liberalised Pension Rules, 1954 which were in force in 1964-65 or under the CCS (Pension) Rules he had not become eligible for pension. If the husband of the respondent was not eligible for pension under any of the schemes after considering the number of years of service rendered by her husband before his resignation, it will not entitle respondent to claim family pension nor the decision of the Tribunal can be sustained granting of family pension to the respondent husband under the Liberalised Pension Rules, 1957 or under Rule 49 of the CCS (Pension) Rules, 1972. As has been held by the Supreme Court in **C.Jacob** (Supra) that the provision for computing the quantum of pension cannot be relied on to consider the eligibility for grant of pension. Apparently the Tribunal was in error in relying on the scales of pensions given for services from 10 years to 25 years under the Liberalised Pension Scheme, 1975 to hold that husband of the respondent was entitled for pension.

20. In the circumstances, the order of the Tribunal dated 3rd March, 2006 in O.A No.2790/2004 cannot be sustained and suffers from an apparent error and the petitioners cannot be directed to grant family pension to the respondent nor it could held that Sh.Chaman Lal Geek was entitled to pension for the period 11th April, 1965 to 20th July, 1975 nor could direct the petitioner to release the same to the respondent. The respondent also could not be directed to be paid the pension in the facts and circumstances. Consequently, the writ petition is allowed. The order dated 3rd March, 2006 in O.A No.2790/2004 titled Smt.Brahma Devi v. Union of India through General Officer in Command Headquarter, Western Command, Chandi Mandir is set aside, however, considering the facts and circumstances the parties are left to bear their own cost.

ANIL KUMAR, J.

December 4th, 2009
'ss'

VIPIN SANGHI, J.