

Serial No. 33
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 161 of 2023

Date of Decision: 02.05.2024

Shri. Jamshed Ali
S/o (L) Asmotulla,
Resident of village & P.O. New Bhaitbari,
P.S. Phulbari, West Garo Hills District,
Meghalaya

:::Petitioner

-Vs-

1.State of Meghalaya represented by the
Commissioner and Secretary Education,
Government of Meghalaya, Shillong

2.The Director of School Education &
Literacy, Meghalaya, Shillong

3.The Sub-Divisional School Education
Officer, Dadenggre, West Garo Hills

4.The Accountant General (A&E)
Meghalaya, Shillong

5.The Treasury Officer, West Garo Hills,
Tura, Meghalaya

:::Respondents

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Applicant(s) : Mr. S.A. Sheikh, Adv.

For the Respondent(s) : Mrs. N.G. Shylla, Sr. GA with
Ms. Z.E. Nongkynrih, GA(For R 1-3,5)
Mr. K. Kharmawphlang, Adv. (For R 4).

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. The brief facts are that the petitioner a retired Government Teacher, on the demise of his first wife namely one Smti. Saleka Khatun, who was entered as a nominee in his pension papers had contracted a second marriage to one Smti. Alima Khatun, and an application was made before the respondent No. 3, for change of nomination in the pension papers. The same being rejected vide the impugned letter dated 10.01.2022, the writ petitioner is before this Court with the instant writ petition.

2. Mr. S.A. Sheikh, learned counsel for the petitioner has submitted that, the return of the application by the impugned letter dated 10.01.2022,

was on the ground that the Meghalaya Civil Service (Pension) Rules 1983, particularly Note-2 of Rule 48 of the said Rules, did not recognise family pension to post retiral spouses of persons who retired before 01.01.2007. He submits that the ground taken is incorrect, inasmuch as, Rule 48 has since been amended vide a Notification dated 04.11.2010, wherein at Note-2 of the said amended rules, provisions had been made for payment of family pension to post retiral spouses. It has further been submitted that, in the event of the petitioner's death and if the name of the second wife is not entered as nominee, grave injustice will be caused to her. The learned counsel has then placed the following decisions in support of his case, and submits that by virtue of the ratio of the said cases, the instant case is also covered.

(i) *Smti. Tipmon Lyngdoh vs. State of Meghalaya & Ors.*

(2016) SCC OnLine Megh 260 : 2017 Lab IC 559

(ii) *Smti. Nanji T. Sangma vs. State of Meghalaya & Ors.*

(2016) SCC OnLine Megh 259: 2017 Lab IC (NOC 74) 25.

3. Mrs. N.G. Shylla, learned Senior Government Advocate appearing for the State respondents No. 1-3 and 5 has relied on the affidavit and submits that as the petitioner had retired on 30.06.2002, before the

amendment including post-retirement spouses came into effect from 01.01.2007, the petitioner will not be covered by the said amendment.

4. Mr. K. Kharmawphlang, learned counsel for the respondent No. 4 has submitted that due to the stand taken by the State respondents, and by application of the relevant pension rules and Office Memorandum, the case cannot be settled by the said respondents, and that acceptance or rejection of such pension cases, is dependent on the provisions of the Rules and orders framed and amended by the Government of Meghalaya from time to time.

5. I have heard learned counsel for the parties. The only issue it can be seen is with regard to the applicability of the amendment to Rule 48 of the Meghalaya Civil Service (Pension) Rules 1983, which allows family pension to post retiral spouses. The amended Rule 48 for the sake of convenience is reproduced herein below.

“7. Amendment of Rule 48:- (1) Rule 48 (i) of the Principal Rule shall be renumbered as “48(1)” and substituted by the following:-

“48 (1) For the purpose of this rule, family shall include the following relatives of the Government servants:-

“(a) First Category:-

(i) Widow or widower, up to the date of death or re-marriage, whichever is earlier;

(ii) *Son/daughter including widowed daughter up to the date of his/her marriage/re-marriage or till the date he/she starts earning or till the age of twenty five years, whichever is earlier.*

Note 1 : (ii) above will include legally adopted sons/daughters.

Note 2 : *Post-retiral spouses/children born after retirement:- The family pension is admissible to post-retiral spouses and children born/adopted legally after retirement.”*

6. The amended Rule therefore, has clearly provided for post retiral spouses to be admissible for payment of family pension. Though the question has been raised as to applicability, the judgments of this Court, as cited by the counsel for the petitioner will essentially cover the instant case, inasmuch as, as quoted in the said judgment, the Supreme Court has held that, pension is payable and had struck down the part of the rule which excluded the marriage after retirement from the definition of ‘Family’. In this context, the judgment of this Court in the case of *Smti. Tipmon Lyngdoh vs. State of Meghalaya & Ors.(supra)*, at Para – 13, had held as follows.

“13. The Hon'ble Supreme Court in the case of ‘Smt. Bhagawanti’ (supra) dealt with the issue of family pension and struck down the part of the rule which excluded the marriage after retirement from the

definition of “family”. The Court considered the question whether the spouse-man or woman, as the case may be-married after the retirement of the concerned Government servant can be kept out of the definition so as to deprive him from the benefit of the family pension. It was held by the Supreme Court as under:-

“8. Admittedly, the definition of ‘family’ as it stands after amendment excludes that the scope of the Government servant after his/her retirement and the children born after retirement also stands excluded. Petitioners have challenged the stand of the Union of India and the definition in the Pension Rules as arbitrary and discriminatory. It has been contented that if family pension is payable to the widow or the husband as the case may be, of the Government servant, the category which the definition keeps out, namely, those who have married after retirement and offsprings of regular marriage born after retirement, is discriminatory.

9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self-same consideration. Since pension is linked with past service and avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary. There are instances where a Government servant contracts his first marriage after retirement. In these two cases before us, retirement had been at an early age. In the Subedar's case, he has retired after putting in 18 years of service and the Railway employee had retired prematurely at the age of 44. Premature or early retirement has

indeed no relevance for deciding the point at issue. It is not the case of the Union of India and, perhaps there would have been no force in such contention if raised, that family pension is admissible on the account of the facts that the spouse contributed to the efficiency of the Government servant during his service career. In most cases, marriage after retirement is done to provide protection, secure companionship and to secure support in old age. The consideration upon which pension proper is admissible or the benefit of the family pension has been extended do not justify the distinction envisaged in the definition 'family' by keeping the postretiral spouse out of it.

10. Government Servants' Conduct Rules prohibit marriage during the life-time of a spouse. Section 494 of the Penal Code, 1860 makes second marriage void and makes it a criminal offence. Thereafter, both before retirement and even after retirement there is no scope for a person to have a second wife or a husband, as the case may be, during the lifetime of an existing spouse.

11. Reliance has been placed on the recommendations of the Third Pay Commission on the basis of which the amendment in the Pension Rules is said to have been made. Apart from referring to the recommendations, no attempt has been made at the hearing by counsel for the Union of India to drive support from the recommendations. We really see no justification as to why post-retirement marriage should have been kept out of the purview of the definition.

12. In clause (ii) of the definition son or daughter born after retirement even out of wedlock prior to retirement have been excluded from the definition. No plausible explanation has been

placed for our consideration for this exclusion. The purpose for which family pension is provided, as indicated in Smt. Poonamal's case (AIR 1985 SC 1196), is frustrated if children born after retirement are excluded from the benefits of the family pension. Prospect of children being born at such advanced age (keeping the age of normal superannuation in view) is minimal but for the few that may be born after the retirement, family pension would be most necessary as in the absence thereof, in the event of death of the Government servant such minor children would go without support. The social purpose which was noticed in some pension cases by this court would not justify the stand taken by the Union of India in the counter-affidavit. It is not the case of the Union Government that as the matter of public policy to contain the growth of population, the definition has been so modified. Even if such a contention had been advanced it would not have stood logical scrutiny on account of the position that the Government servant may not have any child prior to retirement and in view of the accepted public policy that a couple could have children up to two, the only child born after superannuation should not be denied family pension.

13. Considered from any angle, we are of the view that the two limitations incorporated in the definition of 'family' suffer from the vice of arbitrariness and discrimination and cannot be supported by nexus or reasonable classification. The words 'provided the marriage took place before retirement of the Government servant' in clause (i) and 'but shall not include son or daughter born after retirement in clause (ii) are thus ultra vires of Article 14 of the Constitution and cannot be sustained.'

7. Accordingly, in line with the judgments of this Court and the Supreme Court, it is held that the objection raised as to the inclusion of the petitioner's second wife name in the pension papers as a nominee is unsustainable, and the restrictive clause is read down.

8. The respondents are therefore directed to accept the application of the writ petitioner for inclusion of the name of his post retiral spouse into the pension papers as a nominee, for receipt of family pension.

9. Writ petition as ordered above is allowed and disposed of.

Judge

Meghalaya
02.05.2024
"D.Thabab-PS"