

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

LPA No. 159 of 2023

Date of decision: 5th June, 2025

Himachal Pradesh Vidhan Sabha

...Appellant

Versus

Vidya Devi & others

...Respondents.

Corum

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bipin C. Negi, Judge.

Whether approved for reporting?¹

For the Appellant :

Mr. K.S. Banyal, Sr Advocate with Mr.Uday Singh Banyal, Advocate.

For the Respondents:

Mr. Amrick Singh, Advocate for respondent No.1

Mr. Anup Rattan, Advocate General with Mr.Varun Chandel, Additional Advocate General for respondent No.2.

Mr. Tara Chand Chauhan, Advocate for respondent No.3.

Mr. Arvind Sharma, Advocate for respondent No.4-SBI.

Vivek Singh Thakur, Judge

This appeal has been preferred by appellant Himachal Pradesh Vidhan Sabha against judgment dated 11.01.2023 passed by learned Single Judge in ***Civil Review Petition No. 321 of 2022 titled***

¹***Whether the reporters of the local papers may be allowed to see the Judgment?***

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Himachal Pradesh Vidhan Sabha vs. Vidya Devi Kaith and others as well as impugned judgment dated 17th October, 2022 passed by learned Single Judge in ***CWP No. 771 of 2018 titled Vidya Devi Kaith vs. State of HP and others*** whereby claim of petitioner for receiving family pension after death of her mother, who was receiving the family pension after death of her husband late Joban Dass, retired from the Himachal Praesh Vidhan Sabha has been accepted and petitioner has been held entitled for family pension from the date of Office Memorandum dated 14.10.2009 with direction to appellants to release the family pension to petitioner/respondent from the month of December, 2022 prospectively and to pay arrears of family pension within a period of three months from passing of judgment dated 17th October, 2022 and on failure of payment of arrears within three months, simple interest at the rate of 6% per month shall also be payable to petitioner.

2 For convenience, parties to lis are being referred as per their status in Civil Writ Petition.

3 Joban Dass, father of petitioner, was getting pension after his retirement from the Himachal Pradesh Vidhan Sabha as Daftari. After his death in 1980, mother of petitioner received the family pension till her death on 9th July, 2001. Thereafter, family pension was not paid to any member of family of Joban Dass.

4 The Government of Himachal Pradesh issued Office Memorandum dated 14th October, 2009 (Annexure P-1 to writ petition) with categorization of family for the purpose of grant of family pension in Para 8.4 as under:-

“8.4 For the purpose of grant of Family Pension, the “Family” shall be categorized as under:-

Category-I

- (a) Widow or widower, upto the date of death or re-marriage whichever is earlier.
- (b) Son/daughter (including widowed daughter), upto the date of his/her marriage/re-marriage or till the date he/she starts earning or till the age of 25 years, whichever is the earliest.

Category-II

- (c) Un-married/widowed/Divorced daughter, not covered by Category-I above, upto the date of marriage/remarriage or till the date she starts earning or upto the date of death, whichever is earliest.
- (d) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child. Family pension to dependent parents, unmarried/divorced/widowed daughter will continue till the date of death.”

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5 On the basis of aforesaid categorization, unmarried daughter has become eligible to receive the family pension upto the date of marriage/re-marriage or till the date she starts earning or upto the date of death, whichever is earlier. Petitioner, after receiving certain information in this regard, obtained some documents under Right to Information Act, 2005 and thereafter vide communication dated 19.10.2017 submitted request to the Secretary of Himachal Pradesh Vidhan Sabha for granting family pension on the basis of categorization of family in Office Memorandum dated 14.10.2009.

6 Case of petitioner was submitted by the Secretary, Himachal Pradesh Vidhan Sabha vide communication dated 16th January, 2018 to the Accountant General Himachal Pradesh by stating that petitioner had requested to grant family pension to her in terms of Office Memorandum dated 14.10.2009 as she was unmarried and dependent upon her parents. It was stated in this communication that documents related to Government service of father of petitioner had been weeded off and, therefore, Accountant General was requested to do necessary action on application received from petitioner for granting family pension.

7 Thereafter, petitioner had filed Original Application No. 1272 of 2018 which was permitted to be withdrawn by the H.P. State Administrative Tribunal on 27th March, 2018 with liberty to petitioner to seek her remedy, if

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any, before the competent Court/Forum, in accordance with law, if so advised. Thereafter, Civil Writ Petition, in reference, has been preferred.

8 In response to petition, no reply was filed on behalf of respondent No.4 State Bank of India. Respondent No.3 Accountant General had filed short reply stating therein that in absence of supply of particulars of retiree Joban Dass i.e. PPO number, Case File number, any reference number etc. to be provided by Pension Sanctioning Authority or the applicant, it would not be possible for respondent No.3 (Accountant General) to take further action to provide family pension to the petitioner and respondent Department/Vidhan Sabha vide letter dated 18th May, 2018, had been requested to re-cast/prepare duplicate record on the basis of record available in their office/ District Treasury Office and to forward the relevant documents/papers to the Office of Accountant General duly recommended with details of sanctioned quantum of family pension.

9 Respondent No.1/State had filed reply through Additional Chief Secretary (Finance) stating therein that matter was to be examined and decided by the Himachal Pradesh Vidhan Sabha Secretariat and, therefore, State of Himachal Pradesh had nothing to do with case. However, Office Memorandum dated 14th October, 2009, applicable to petitioner, has been placed on record with reply as Annexure R-1 with submission that Government had issued these instructions to regulate pension/gratuity/commutation of pension and family pension in respect of

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employees who had retired or died in harness on or after 1.1.2006. Categorization of family for the purpose of grant of family pension contained in Para 8.4 of the said Office Memorandum has also been referred stating that this categorization has been done for the purpose of grant of family pension and it was further stated that Office Memorandum dated 14th October, 2009 had been made applicable w.e.f. 1.1.2006. It was stated that in this matter, State of Himachal Pradesh had no role to play and function of the Finance Department was as Advisory Department and therefore, any eligibility or entitlement of family pension had to be decided by the Department/Office where late Joban Dass had been working and retired.

10 In reply filed by respondent No.2, Vidhan Sabha, it was stated that record pertaining of officials serving in Himachal Pradesh Vidhan Sabha prior to 1990 had been weeded out as per Rules applicable and only information available with Himachal Pradesh Vidhan Sabha in weeding out register was that Joban Dass was serving in H.P. Vidhan Sabha and retired as Daftari and, thus, contention raised by petitioner cannot be corroborated from the official record. Issuance of Office Memorandum dated 14.10.2009 and contents thereof were admitted in the reply being matter of record but it was denied for want of knowledge that petitioner belongs to any interior area. It was further stated in reply that Office Memorandum was issued in the year 2009 and petitioner woke up from her slumber only in the year 2017 and, therefore, she was not entitled for relief. Further that original

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legal heirs certificate, dependent certificate and no objection certificate, received in the Office of Himachal Pradesh Vidhan Sabha, were forwarded to the Accountant General on 16.1.2018 for necessary action as other documents pertaining to Joban Dass had been weeded out.

11 Perusal of Annexure P-1 (to the Writ Petition) and Annexure R-1(to the reply of State), which is one and same Office Memorandum dated 14.10.2009, depicts that this Memorandum was issued regarding the revision of provisions regulating pension/gratuity/commutation of pension/family pension. Applicability of this Office Memorandum to the subject of family pension has not been disputed, rather has been admitted by referring the definition of “family” contained in Para 8.4 of this Office Memorandum.

12 Memorandum dated 14.10.2009 placed on record with Writ Petition as Annexure P-1 was applicable only to Government servants who retired/died in harness on or after 1.1.2006 and separate order with respect to the employees who retired or died before 1.1.2006 was issued vide Office Memorandum dated 14th October, 2009 placed on record with appeal as Annexure ‘A-4’.

13 It is apt to record that w.e.f. 1.1.1996 for the purpose of grant of family pension in the definition of “family”, following Clauses were also added by G.I., Department of P.& P.W., O.M. No. F.No.45/86/97-P&P.W.(A), Part-I, dated 27th October, 1997, para 7.2.:-

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“(21) Dependent parents and widowed/divorced daughter also included in the definition of family from 1-1-1996-For the purpose of grant of Family Pension, the definition of Family shall also include:

(a) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.

(b) Son/daughter including*widowed/divorced daughter till he/she attains the age of 25 years or up to the date of his/her marriage/remarriage, whichever is earlier.”

14 With effect from 1.1.2006 “family”, for the purpose of grant of family pension, has been categorized as under:-

*“Family for Family Pension-*For the purpose of grant of Family Pension, the “Family” shall be categorized as under:-

Category-I

(a) Widow or widower, upto the date of death or re-marriage whichever is earlier.

(b) Son/daughter (including widowed daughter), upto the date of his/her marriage/re-marriage or till the date he/she starts earning or till the age of 25 years, whichever is the earliest.

Category-II

(c) Un-married/widowed/Divorced daughter, not covered by Category-I above, upto the date of marriage/remarriage or till the date she starts earning or upto the date of death, whichever is earliest.

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(d) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.

Family pension to dependent parents, unmarried/divorced/widowed daughter will continue till the date of death.

Family pension to unmarried/widowed/divorced daughters in Category-II and dependent parents shall be payable only after the other eligible family members in Category I have ceased to be eligible to receive family pension and there is no disabled child to receive the family pension. Grant of family pension to children in respective categories shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above him/her has become ineligible for grant of family pension in that category.

[G.I. Dept. of Pen.&P.W., O.M. No. F. No. 38/37/08-P&PW (A), pt. II, dated the 3rd October, 2008.]

15 In furtherance to the aforesaid expansion of the definition of “family”, State of Himachal Pradesh had issued separate even dated Office Memorandums on 14.10.2009 with respect to revision of provisions regulating pension/gratuity/commutation of pension/family pension with respect to Government servants who retired/died in harness on or after and on or before 1.1.2006 which also includes the definition of “family” in Para

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8.4 of the Office Memorandum issued with respect to Government servants, who retire/die in harness on or after 1.1.2006.

16 It is evident from the record that though petitioner had appended the Office Memorandum dated 14.10.2009 related to Government servants, who retire/die in harness on or after 1.1.2006, however, respondents had not disputed the applicability thereof to the petitioner, particularly with respect to definition of “family” rather had admitted the same and in fact, Financial Department, with its reply, had also placed on record the same Office Memorandum admitting the applicability thereof to the petitioner. The only ground for opposing the claim of petitioner was that she was in slumber till 2017 after 2009.

17 Though, it is true that admission contrary to the provisions/Office Memorandum shall not entitle the petitioner for grant of family pension, however, even otherwise petitioner shall be entitled for family pension for the discussion made here-in-after.

18 A daughter, including the widowed/divorced daughter, was made entitled for family pension w.e.f. 1.1.1996 till attaining the age of 25 years or upto the date of her marriage/re-marriage, whichever is earlier. Thereafter, from 1.1.2006 unmarried/widowed/divorced daughter falling in Category-II notified in Government of India's Office Memorandum dated 3.10.2008 was made entitled for family pension upto date of marriage/re-marriage or till the date she starts earning or upto the death whichever is

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earliest. The same definition has been adopted by the respondents/State in Himachal Pradesh and is applicable to the Himachal Pradesh Vidhan Sabha also.

19 Though separate Office Memorandum dated 14.10.2009 was issued with respect to Pre-2006 pensioners, but it does not mean that a daughter of a Pre-2006 pensioner, covered under the definition of “family” notified vide Office Memorandum dated 3rd October, 2008 by the Government of India and Office Memorandum dated 14th October, 2009 issued by the State of Himachal Pradesh, with respect to provisions of pension after 1.1.2006, shall not be entitled for family pension even after 1.1.2006.

20 In case, the plea of State is accepted, then there shall be two classes of daughter despite having identical circumstances based on no intelligible differentia/criteria. There cannot be two sets of unmarried daughter for the purpose of granting family pension at one and the same time irrespective of the fact that retiree through whom they derive right to receive the family pension, retired or died before 1.1.2006 or after 1.1.2006. Unmarried daughter fulfilling the criteria, included in the definition of “family”, has to be considered to have been made applicable after 1.1.2006 to all pensioners irrespective of date of their retirement or death before or after 1.1.2006 form an identical class which is one and the same for the purpose of family pension. There cannot be any logic depriving some

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unmarried daughters from family pension only for the reason that pensioner/Government servant/employee through whom she is claiming right of family pension had retired or died before or after 1.1.2006.

21 Office Memorandum dated 14.10.2009 related to the employees, retired or died in harness on or after 1.1.2006, no where declares that definition of “family”, notified under Para 8.4 thereof, shall be applicable only to pensioners/Government employees who retired/died on or after 1.1.2006 and not to unmarried daughter or Government servant retired or died on or before 1.1.2006. Even if for not including the definition of “family”, contained in Para 8.4 in Office Memorandum dated 14.10.2009 applicable to the employees who retired or died on or before 1.1.2006, it is construed that the definition of “family” applicable after 1.1.2006 has not been made applicable to Government servants, retired or died on or before 1.1.2006, then also such act of respondents is an irrational, unreasonable and discriminatory classification based on intelligible criteria, is violative of the mandate of equality clause of Constitution.

22 There is denial for not extending the benefit of definition of family to the petitioner or similar situated unmarried daughter of Government employees who retired or died on or before 1.1.2006. Such classification is arbitrary. It is settled that arbitrariness is ante-thesis of Article 14 of Constitution of India. Therefore, denial of family pension by respondents to petitioner is unconstitutional and not sustainable. There is

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no logic for treating the unmarried daughters having no source of earning as there is clause for retirement of Government employees through whom they are entitled for family pension on the basis of date of death or retirement on or before or after 1.1.2006.

23 In view of above, we find that petitioner being unmarried daughter fulfilling the criteria of definition of “family” notified by the Government of India vide Office Memorandum dated 3.10.2008 and Government of Himachal Pradesh vide Office Memorandum dated 14.10.2009 is entitled for family pension and therefore, direction passed by learned Single Judge in this regard does not warrant any interference.

24 However, it is also apt to notice that the Office Memorandum, declaring the unmarried daughters eligible for family pension in terms of definition of “family” made applicable after 1.1.2006, was notified vide Office Memorandum dated 14.10.2009, the petitioner had approached the respondents only in the year 2017. Though it has been claimed that petitioner lives in remote area of Himachal Pradesh and was not aware about the inclusion of unmarried daughter in definition of “family” for the purpose of granting family pension but nothing concrete material has been placed on record to substantiate the same and therefore, period from 2006 till she approaches the respondents in the year 2017 is definitely depicting extraordinary inordinate delay in pursuing her case.

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25 Denial of pension which is payable every month constitutes a recurring cause of action for initiating the prosecution. Therefore, delay and latches on the part of petitioner cannot be made a ground to oust her from claiming the family pension subject to her eligibility at the time of putting forth her claim. Delay, in such cases, shall not defeat the justice.

26 Petitioner, in given facts and circumstances, may be denied arrears of pension prior to three years of initiating the claim for getting family pension and also may be held not entitled for arrears of pension. But she is definitely entitled for pension from three years prior to the date on which she approached the respondents for the first time i.e.19.10.2017.

27 In view of above, we are of the opinion that vide impugned judgment declaring the petitioner entitled for pension from the date of Office Memorandum dated 14th October, 2009 is wrong.

28 In view of above discussion, petitioner is held entitled for family pension w.e.f. 1.1.2006 the date from which definition of family was expanded by including unmarried daughter till her marriage or date of starting earning. However, petitioner shall not be entitled for arrears of pension for beyond three years prior to 19.10.2017 as discussed supra. She shall also be entitled for actual family pension from 19.10.2014 till she remains eligible for the same. Benefits prior to 19.10.2024 shall be on nominal basis.

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29 Accordingly, respondents are directed to grant family pension from 19.10.2017 by ensuring the completion of all formalities in this regard on or before **31st July, 2025** and to pay regular family pension to her from the month of August, 2025 and also ensure the payment of arrears from 19.10.2017 on or before **31st October, 2025**.

30 The petitioner shall not be entitled for interest on arrears. However, in case payment of arrears is not made on or before 31st October, 2025, the petitioner shall also be entitled for interest at the rate of 6% per annum from the date of accrual till final payment thereof.

31 Accordingly, the appeal is dismissed in aforesaid terms with aforesaid modification with respect to date of entitlement of petitioner to receive the family pension as well as arrears thereof.

(Vivek Singh Thakur),
Judge.

(Bipin C. Negi),
Judge.

5th June, 2025
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