

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.6437 of 2020
Decided on: 12.08.2026

Parveen and others

...Petitioners

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioners: Mr. Dinesh K. Thakur, Advocate.

For the respondents: Mr. Rupinder Singh Thakur,
Additional Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners, by way of present petition, have
prayed for the following substantive reliefs:-

- "i) That the respondents may kindly be directed to admissible family pension to the applicants.*
- ii) That the impugned letter dated 27-01-2017 issued as clarification from the office of respondent No.3 may kindly be quashed and set-aside being arbitrary and against the CCS (Pension) rules.*
- iii) That the Para-2(3) of the Govt.O.M.No.Fin-C-D(1)-1/2000 dated 22-01-01 issued from the finance may kindly be summoned and quashed and set-aside being illegal and arbitrary and in violation of the judgement passed by Hon'ble Supreme Court of India in D.S. Nakra's case.*
- iv) That the respondents may be directed to resume*

¹ Whether reporters of Local Papers may be allowed to see the judgment?

the dearness allowance benefit to the applicants.”

2. Shorn of unnecessary details, the key facts of the case are that the sons and daughters of the petitioners were appointed on compassionate grounds, as per the compassionate policy dated 18.01.1990. The petitioners were not granted the dearness relief on the strength of the clarification dated 23.01.2017(Annexure A-4), wherein it was mentioned that the dearness relief on family pension shall not be admissible to the spouse where other member i.e. son/daughter of the deceased Government servant is simultaneously, given an appointment on compassionate grounds in Government Department without any competition.

3. The petitioners have laid challenge to the said clarification *inter alia* on the grounds that the action on the part of the respondents in not granting the dearness relief/allowance to them is highly illegal, arbitrary, unconstitutional, wrong and against the principles of natural justice, besides the principles of service jurisprudence and pension Rules. It has further been averred that the petitioners were given dearness allowance in their pension for more than 15 years, but certainly they came to know

that no dearness allowance would be given to them since their kin's have been given appointment on compassionate policy. The said action on the part of the respondents is illegal and violative of Articles 14 and 21 of the Constitution of India. The respondents have created a different class of pensioners, which is arbitrary and this practice has been deprecated by the Hon'ble Supreme Court. The dearness allowance is decided on the basis of price index to mitigate the impact of inflation on pensioners and thus prayed for quashing the clarification dated 23.01.2017 with a further direction to the respondents to release the dearness allowance benefit to the petitioners.

4. Respondents No.1, 3 and 4 filed reply to the petition and averred that the Government of Himachal Pradesh had issued a Notification dated 22.01.2001 and as per para 3 of the Notification, the concession of allowing dearness allowance on family pension shall also not be admissible to employed/re-employed family pensioners, who have been given appointment on compassionate grounds. Payment of dearness relief in these cases shall become admissible only from the date they cease to be re-employed. Further, as per the Finance (Pension) Department

clarification dated 22.01.2001, the dearness allowance on family pension shall not be admissible to the spouse where other members, i.e. son/daughter of the deceased Government servant is simultaneously given an appointment on compassionate grounds in Government Department without competition. As per the judgment passed by the Hon'ble Supreme Court in Civil Appeal No(s).6224 of 2008, titled, ***Union of India & Anr. vs. Shashank Goswami & Anr.***, appointment on compassionate grounds cannot be claimed as a matter of right. Further, the State Government has been allowing two benefits at the same time to family of deceased Government servant, one the family pension of the deceased employee and other an appointment in Government Department on contract/daily wage basis on compassionate grounds, as per the policy of the State Government and, as such, the State Government has the prerogative to disallow dearness relief on family pension to a person who is appointed on compassionate basis, keeping in view the financial consideration. In case, dependents of deceased Government servant intend to receive the dearness relief on family pension, he/she has option not to

accept appointment on compassionate basis and keep receiving dearness relief on family pension. The payment of dearness relief was stopped to the family of the pensioner by the District Treasury Officer, Nahan, as soon as it came to its notice that the kin of the petitioners were employed on compassionate grounds in the Health Department and thus, prayed for rejection of the writ petition.

5. I have heard the learned counsel for the parties and also perused the record carefully.

6. In the present case, the petitioners are the wives of the deceased employees who were working with the respondents-State and they have been denied the benefit of dearness relief only on the ground that their kith and kin have been offered the appointment by the respondents-State on compassionate grounds.

7. So far as the appointment of the dependents of the deceased who are sons/daughters of the petitioners are concerned, they have been offered the appointment under the compassionate policy framed by the respondents-State. The grant of dearness relief to the petitioners, who are the wives of the deceased, who had served with the respondents-State are entitled to family pension has

nothing to do with the employment of their sons/daughters, who are the dependents of the deceased. The petitioners have been granted the family pension as per the provisions of the Central Civil Services (Pension) Rules, 1972 (in short 'CCS (Pension) Rules, 1972'). It is relevant to mention that as per Rule 55-A of CCS (Pension) Rules, 1972, dearness relief on pension or family pension is granted against price rise to the pensioners and family pensioners in the form of dearness relief and thus, the said benefit cannot be denied to the petitioners, who admittedly are in receipt of family pension. Rule 55-A, of the CCS (Pension) Rules, 1972, is reproduced herein below :-

"55-A. Dearness Relief on Pension/Family Pension (i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time. (ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/ Body/Bank under them in India or abroad including permanent absorption in such Corporation/ Company/Body/Bank, he shall not be eligible to draw Dearness Relief on pension/family pension during the period of such re-employment."

8. A perusal of the aforesaid Rule clearly provides that the dearness relief is granted against the price rise at such rates and such conditions as the Government may

specify. However, if a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank, he/she shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment. However, the aforesaid provision nowhere says that where apart from grant of family pension in favour of spouse of deceased employee, the compassionate appointment is given to other family member on account of death of the deceased employee, the pensioner will not get the dearness relief. Therefore, the clarification issued by the State as per communication dated 23.01.2017, is contrary to the import of Rule 55-A of the CCS (Pension) Rules, 1972, and as such not sustainable in the eyes of law.

9. Learned counsel for the petitioner has also relied upon the judgment passed by the Division Bench of this Court in LPA No. 197 of 2023, titled, **Smt. Shakuntla Devi vs. State of Himachal Pradesh and Ors.**, wherein too, the similar issue had cropped up and the Hon'ble Division Bench, after considering the import of the office memorandum dated 22.01.2001, as well as clarification issued on 23.01.2017, which is also in question in the

present petition, has succinctly dealt with the issue after considering Rule 55-A of the CCS (Pension) Rules, 1972 discussed above and set aside the clarification dated 23.01.2017 and gave directions to the respondents to pay the dearness relief to the petitioner on the basic pension as per Government instructions and keep on paying the same in future in accordance with law. The relevant paras of the judgment read as under:-

“11. Having carefully perused office memorandum dated 22.1.2001, this Court finds that it nowhere deals with a situation where apart from grant of family pension in favour of wife/husband of the deceased employee, other family member of the deceased employee is given employment on compassionate grounds, as a result thereof, family pensioner is stopped from drawing Dearness Relief on the family pension. If it is so, it is not understood on what basis clarification dated 23.1.2017, which has been heavily relied upon by the learned Single Judge while passing impugned judgment came to be issued by the Additional Director, Treasuries, Accounts and Lotteries, Himachal Pradesh. Needless to say, clarification, if any, can be issued with regard to instructions/order, if any, in existence, but in the instant case, vide clarification dated 23.1.2017, department itself introduced new condition/situation, which was actually not provided in the office memorandum dated 22.1.2001. As has been observed herein above, office memorandum dated 22.1.2001, specifically deals with grant of Dearness Relief on pension to reemployed pensioners/ family pensioners and it nowhere deals with a situation, where apart from family pension to the spouse of the deceased employee, appointment is given to other family member of the deceased employee on

compassionate grounds. Moreover, clarification dated 23.1.2017, if perused in its entirety, itself suggests that same has been issued with regard to admissibility of Dearness Relief to the employed/reemployed family pensioner appointed on compassionate grounds. If the aforesaid communication is read in entirety, it clearly provides that matter was referred to the Finance Department, which has clarified that in terms of para 2 (3) of Office Memorandum dated 22.1.2001, Dearness Relief on family pension shall not be admissible to the spouse where other member i.e. son/daughter of the deceased Government servant is simultaneously given an appointment on compassionate grounds in Government Department without any competition. Aforesaid clarification issued by the authority concerned has no basis because though same has been issued in clarification of office memorandum dated 22.1.2001, but since condition with regard to non admissibility of Dearness Relief to the family pensioner on account of appointment given to other family members on compassionate grounds is/was not part of the office memorandum dated 22.1.2001, it is not understood that on what pretext or basis, the department issued clarification dated 23.1.2017.

12. Otherwise also, careful perusal of order dated 23.1.2017, nowhere suggests that clarification given therein has been actually issued by the government, rather such letter has been issued by the Additional Director, Treasuries, Accounts and Lotteries, Himachal Pradesh, who though has made reference to the clarification given by the Department of Finance in terms of para 2 (3) of the office memorandum dated 22.1.2001, but as has been observed herein above, that since point qua which clarification has been sought to be given vide communication dated 23.1.2017, was never the subject matter of original Office memorandum dated 22.1.2001, clarification, if any, qua the same given vide communication dated 23.1.2017, is of no consequence. At this stage, it would also be relevant to take note of the Rule 55-A of the Central Civil

Services (Pension) Rules, 1972:

“55-A. Dearness Relief on Pension/Family Pension (i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time. (ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/ Body/Bank under them in India or abroad including permanent absorption in such Corporation/ Company/Body/Bank, he shall not be eligible to draw Dearness Relief on pension/family pension during the period of such re-employment.”

13. Careful perusal of aforesaid Rule 55-A clearly provides that if a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank in India or abroad, he shall not be eligible to draw Dearness Relief on pension/family pension during the period of such re-employment but aforesaid provision nowhere talks about a situation, where apart from grant of family pension in favour of the spouse of deceased employee, compassionate appointment is given to other family member on account of death of the deceased employee.

14. Having perused the office memorandum dated 22.1.2001 and clarification dated 23.1.2017, juxtaposing Rule 55-A of the Central Civil Services (pension) Rules, 1972 as reproduced supra, though this court finds no fault with the finding returned by the learned Single Judge that para 2 (3) of the office memorandum dated 22.1.2001, is in tune with Rule 55-A of the CCS(Pension) Rules, but certainly, there is no reason to concur with another finding returned by the learned Single Judge that import of clarification issued by the respondents on 23.1.2017, is also in sync with office memorandum dated 22.1.2001, which otherwise nowhere specifically deals with issue

of grant of Dearness Relief on pension to reemployed pensioners/family pensioners. Learned Single Judge has erred in concluding that office letter dated 23.1.2017, simply clarifies what is already contained in the office memorandum dated 22.1.2001 because it only provides that Dearness Relief to the reemployed pensioner/family pensioner shall remain suspended during the period they remain reemployed/employed under the Central or State Government or in the Public Sector Undertaking/Board. It nowhere deals with a situation where apart from granting family pension to the spouse of a deceased employee, appointment on compassionate grounds is also provided to other family member, be it son or daughter of the deceased employee.

15. At the cost of repetition, it may be noticed that even in office memorandum dated 22.1.2001 taken note by the learned Single Judge, it has been clarified that the question of allowing Dearness Relief to reemployed pensioners was engaging the attention of the Government for quite some time and after careful consideration, the Governor, Himachal Pradesh, clarified this concession will also not be admissible to employed/re-employed family pensioners, who have been given appointment on compassionate grounds. The Governor of Himachal Pradesh nowhere clarified that Dearness Relief on family pension shall not be admissible to the spouse, where other member i.e. son/daughter of the deceased Government servant is simultaneously given an appointment on compassionate grounds in Government Department without any competition. Though aforesaid clarification dated 23.1.2017, is stated to have been given on the basis of clarification issued by the Department of Finance, but no such document has been placed on record.

16. Leaving everything aside, clarification dated 23.1.2017, if accepted in toto, would create an anomalous situation. There may be a situation where two persons of a family i.e. husband and wife on account of their being in service must be getting

Dearness Relief alongwith their salary, but if analogy sought to be applied through aforesaid communication dated 23.1.2017, is accepted or pressed into service, that would cause serious prejudice to such category of persons, who though may be related to each other, but were got inducted in government service on account of their independent merit. Very purpose of granting Dearness Relief is to provide succor to employees on account of price index. Rise in price index, if any, shall remain same in the case of all employees serving in the State/Central Government or other autonomous bodies. Merely that one family member on account of his/her being in employment is in receipt of Dearness Relief alongwith his/her salary cannot be a ground to deny such relief to other family member on account of his in government service, which otherwise, he/she would get independently as per his/her entitlement.

17. Besides this, there may be some logic in not providing dearness allowance/relief to one person in two components i.e. pension /family pension as well as salary, as the purpose of providing dearness allowance/relief is to cover for the price hike, which may not be granted in two components, but where pensioner/family pensioner and employee are two separate persons i.e. family pension is being received by one person and reemployment on compassionate grounds is provided to another person, said logic may not apply and in that case, dearness relief/allowance being provided to one person cannot be stopped, on the pretext that another person is either in government service or is in receipt of pension/family pension. Otherwise, this view gains strength from the fact that Rule 55 (supra) and O.M. dated 22.1.2001 only speaks of not providing dearness relief to a reemployed pensioner/family pensioner, in case of reemployment and the inference drawn by the respondents to the effect that in case of reemployment of a family member, another family member, who is in receipt of family pension/pension, shall not be paid any

dearness relief/allowance, appears to be sans any logic or legal foundation.

18. Since this Court is of the definite view that clarification dated 23.1.2017 is without any basis, finding given by the learned Singe Judge, qua the applicability of the same need not be gone into by this Court. Learned Single Judge has wrongly placed reliance upon the clarification dated 23.1.2017 while considering prayer made by the petitioner. Clause 2(3) of office memorandum dated 22.1.2001 specifically talks about admissibility of Dearness Relief to reemployed family pensioners appointed on compassionate grounds and does not take away the right of a family pensioner to receive Dearness Relief, that too, on the ground that other family members has been given appointment on compassionate grounds.

19. Consequently, in view of detailed discussion made herein above, this Court finds merit in the present appeal and accordingly, same is allowed. Judgment dated 8.8.2023 passed by learned Single Judge in CWP No. 7495 of 2021 titled Shakuntala Devi v. State of H.P. and others is set aside. Writ petition filed by the petitioner is allowed. Clarification dated 23.1.2017 (Annexure P-6 of the writ petition) is set aside being illegal and contrary to Rule 55 itself. Respondents are directed to pay the dearness relief to the petitioner on the basic pension, as per Government instructions and keep on paying the same in future, in accordance with law. It is also directed that in case any recovery has been made from the petitioner, same be also refunded to her forthwith."

10. Keeping in view the provisions of Rule 55-A of the CCS (Pension) Rules, 1972 coupled with the fact that the issue has already been decided by Division Bench of this Court, the clarification dated 23.01.2017 is quashed and set

aside.

11. Consequently, the present petition is allowed and the impugned clarification dated 23.01.2017 (Annexure A-4) is quashed and set aside, with a direction to the respondents-State to grant dearness relief to the petitioners on the basic pension, as was granted to them earlier to issuance of clarification dated 23.01.2017. The respondents are directed to pay the arrears to the petitioners within three months from today and in case the arrears are not paid to them within three months from today, the same shall be paid with interest @6% per annum from today till actual payment. No order as to costs. Pending applications, if any, also stand disposed of.

12th August, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**