

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2915 of 2012**

Rajo Bai W/o Lt. Shri Patru Ram Aged About 28 Years R/o Bhattipara,
Baikunthpur Distt. Korea, C.G.

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Revenue,
D.K.S. Bhawan Mantralaya, Raipur C.G.
2. Collector Distt. Korea Collectorate Baikunthpur Distt Korea Cg.
3. Tahsildar Baikunthpur Teh. Office, Baikunthpur Distt. Korea C.G
4. Pension Redressal Committee, Government of C.G., through Secretary,
General Administration Department, Government of Chhattisgarh,
Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

---- **Respondents**

For Petitioner	:	Mr. R.S. Baghel, Advocate
For State	:	Mr. Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board**

24/08/2017

Return has not been filed.

Learned State counsel prays for time to file return.

It being a matter of claim of family pension by widow, I am not inclined to grant further time.

The matter is heard finally.

Widow of a deceased employee has knocked the door of justice seeking redressal of her grievance arising on account of non-payment of family pension.

The facts necessary for adjudication of controversy involved in this case are in narrow compass and quintessentially stated infra.

2. The husband of the petitioner, while in the services of the respondent, working as 'Peon' in the department of Revenue Government of Chhattisgarh, died in harness on 25.12.2008. The petitioner, being undisputed legally wedded wife, claimed all the retiral dues including family pension payable under Rule 47 of the Madhya Pradesh (now Chhattisgarh) Civil Services (Pension) Rules, 1976. (herein after referred to as 'Pension Rules, 1976')

3. The respondents authorities, however, apportioned the retiral dues of the deceased employee including family pension between the petitioner and the mother of the deceased employee in the manner that while monetary benefits under GIS Scheme, 25 days of salary and Ex-gratia was released in favour of the petitioner, the GPF, gratuity, leave encashment benefits, arrears of pay were released in favour of Smt. Kothari Bai, mother of deceased employee.

4. Aggrieved by the decision, the petitioner filed a petition before this Court which was disposed off vide order dated 16.03.2012 for consideration by the Committee constituted under judicial orders. The Pension Committee rejected petitioner's claim vide its resolution dated 23.05.2012. The petitioner thereafter filed this petition.

5. Focused and pointed submission of learned counsel for the petitioner is that entitlement to family pension is prescribed statutorily under the Pension Rules and family members, who are entitled to such benefit are also prescribed therein. Therefore, it is contended, except the petitioner, no other relative unless included within the definition of 'family' provided under the Rules, could be held entitled to receive family pension. In support of his submission, learned counsel for the petitioner places reliance on the provision contained in Rule 47 of the Pension Rules, 1976.

6. In reply, learned State counsel sought to justify the action by submitting the deceased employee had submitted his nomination in which he had nominated his mother to receive these benefits. He submits that once there is a nomination, then in addition to those who would have ordinarily been entitled to pensionary benefits under Rule 47 of the Pension Rules, 1976, a nominee would also be entitled. Keeping this aspect in view, the authority proceeded to apportion benefits. Family pension and anticipatory pension were released in favour of the mother of deceased employee and the petitioner was directed to submit a succession certificate in support of her claim. As such certificate was

never submitted, pension was being paid to the deceased mother till she died.

7. In order to decide the controversy, it will be appropriate to examine the statutory scheme of the Pension Rules, 1976 with regard to entitlement to receive family pension.

8. The Pension Rules, 1976 makes provision with regard to payment of pension to a Government servant after his retirement and also payment of family pension upon death of the Government servant. The family pension has been defined in Rule 3 of sub-rule (1) of clause (e) as below :

“3(1)(a) xxxxxxxxxxxxxxxxxxxxxxxxxxxx

3(1)(b)xxxxxxxxxxxxxxxxxxxxxxxxxxxx

3(1)(c) xxxxxxxxxxxxxxxxxxxxxxxxxxxx

3(1)(d) xxxxxxxxxxxxxxxxxxxxxxxxxxxx

3(1)(e) “Family Pension” means contributory family pension admissible under rule 47 and includes non-contributory family pension admissible under rule 48;

9. Rule 47 of the Pension Rules, 1976 dealing with contributory family pension provides *inter alia* that where a Government servant dies while in service or after retirement from service in the circumstances enumerated in clause (a) & (b) of sub-rule (2) of Rule 47, the family of the deceased shall be entitled to a contributory family pension. For the purposes of payment of family pension, the Rule also defines as to which relatives are included in the family for the purposes of payment of family pension. In this regard, relevant Rule is extracted herein below :

Rule 47(14) – For the purpose of this rule-

(a) “continuous service” means all periods from the date of entry into pensionable service which counts for pension/gratuity admissible to the Government servant under these rules.

(b) “family” in relation to the Government servant means-

[(i) Wife or wives in the case of a male Government servant or husband in the case of a female Government servant. Where a female Government servant or a male Government servant dies leaving behind widower or widow and eligible child or children and the widower or the widow, as the case may be, remarried before the death of the Government servant, the family pension payable to a child or children in respect of the deceased shall be payable to the surviving person provided he or she is the guardian of such child or children. Where the surviving person has ceased to be

guardian of such child or children, such family pension shall be payable to the person who is the actual guardian of such child or children].

[(ii) sons and unmarried daughters who have not attained the age of 25 years, including such sons and daughters adopted legally before retirement.]

(c) "Pay" means the emoluments as specified in rule 30."

10. It is relevant to note here that such Rule 46 of the Pension Rules, 1976 provides for nomination. However, the nomination is for the limited purposes of receiving death-cum-retirement gratuity payable under clause (b) of sub-rule (1) or sub-rule (2) of Rule 44.

11. There is nothing either in Rule 46 or Rule 47 which by express stipulation or by necessary implication entitles a person who is a nominee to receive as of right, family pension. There may be a situation where member of a family as defined under clause 14 has also been nominated to receive death-cum-retirement gratuity. However, in case, where it involves payment of family pension, it is payable only to that relative who is included within the definition of 'family' for the purposes of Rule. The Rule does not include the mother of the deceased employee to receive family pension.

12. The contention of learned State counsel, however is that in appropriate cases, even the mother of the deceased employee is entitled to family pension. He submits that the provision contained in Rule 47 of the Pension Rules includes not only the widow, sons and daughters but also parent of the deceased employee. Therefore, it is contended that when the competent authority found that the mother and the widow of the deceased employee are raising competing claim and the nomination of the deceased employee was found in favour of his mother, the authority, in best interest of the widow and the mother, apportioned retiral benefits and family pension between the mother and the wife.

13. The submission of learned State counsel is based on Rule 47 as amended in 2002 in the State of Madhya Pradesh and published in M.P. & C.G. Local Acts (Volume-3) by S.K. Awasthi published by Suvidha Law House Pvt. Ltd at page 658. Unamended Rule 47 which was in force on 01.11.2000 i.e. the date on which the State of C.G. came into existence under M.P. Reorganization Act, 2000, published in "Service Laws in M.P." (Volume-2) by M.L. Jindal published by Rajkamal Publications at Page 167 contains unamended Rule 47 (14) of M.P. (now C.G.) Civil Services

(Pension) Rules, 1976 relevant part of which have been extracted herein above. The State counsel has not placed before the Court any notification issued by the State of Chhattisgarh carrying out amendment in the aforesaid Rule on the similar lines as has been done in the State of M.P. in the year 2002. Therefore, the contention of the State counsel is liable to be rejected.

14. In so far as a petitioner's claim for death-cum-retirement gratuity is concerned, the claim is liable to be rejected because according to the provision contained in Rule 46 of the Pension Rules, 1976, it was open for the deceased Government servant to nominate his mother in place of petitioner as the person entitled to receive the amount of gratuity. If the petitioner has any claim against deceased against Smt. Kothari Bai, who was paid Rs.43,000/- towards gratuity on 01.07.2009 based on successory right under the personal law, the petitioner's remedy lies elsewhere.

15. In the result, this petition is partly allowed in the manner that the petitioner is held entitled to payment of family pension and the action of the respondents in making payment of family pension to the mother of the deceased employee, to the exclusion of the petitioner, is held unsustainable in law.

16. It has been stated that after the employee died on 25.12.2008, provisional family pension was being paid to his deceased mother/respondent No.4 (since dead) until that was also discontinued, because of the pendency of the dispute before the Court. As respondent No.4 has died, no recovery can be ordered, against her, it is directed that the petitioner would be entitled to payment of family pension from the month next to the next in which deceased Smt. Kothari Bai was last paid provisional family pension. The family pension amount shall be determined and whatever arrears are found due and payable to the petitioner shall also be paid to her as early as possible.

17. The petition is accordingly partly allowed in the manner and to the extent stated in above.

Sd/-
(Manindra Mohan Shrivastava)
Judge