

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.A. No. 1399 of 2017
&
W.P.No. 3816 of 2017

JUDGMENT:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ appeal is preferred against the interim order dated 06.02.2017 in W.P.M.P.No. 4534 of 2017 in W.P.No. 3816 of 2017 passed by the learned Single Judge, whereby the petition filed by the appellant seeking a direction to the 4th respondent to sanction family pension in favour of the appellant, with immediate effect, was dismissed.

The learned counsel for the appellant submits that Clause (xvi) of the Executive Instructions enumerated in Rule 50 of the Revised Pension Rules, 1980 (for brevity "Pension Rules") deals with definition of "Family" for the purpose of family pension – Inclusion of widowed/ divorced daughters and dependent parent, and consequently, G.O.(P) No.523, Fin.(Pen.I) Department, dated 22.06.2004 was issued by the Government. Clause (xvi)(a) of the Executive Instructions in Rule 50 of the Pension Rules reads as under:

- a) The Family pension in respect of sons/ daughters (including widowed/ divorced daughter) will be admissible subject to the condition that the payment should be discontinued/ not admissible when the eligible son/ daughter starts earning a sum of Rs.2,440/- (Rupees Two Thousand Four Hundred and Fourty Only) per month from employment in the Government, private

sector, self-employment, etc. It is further clarified that the family pension to the sons/daughters will be admissible till he/she attains 25 years of age or up to the date of his/her marriage / re-marriage whichever is earlier.”

The learned counsel for the appellant further submits that the son of the deceased-employee who was aged about 45 years was married and is working with the 4th respondent – Corporation, thus, he is not dependent and not entitled to family pension. The daughter of the deceased-employee also got married and is not dependent on her father and she is also not entitled to family pension. However, the respondents have not considered the case of the appellant in terms of Rule 50 of the Pension Rules and G.O.(P) No.523, Fin.(Pen.I) Department, dated 22.06.2004.

It is not in dispute that the writ petition is pending for adjudication on merits before the learned Single Judge. The order dated 06.02.2017 impugned in the writ appeal reads as under:

“The issue concerns payment of terminal benefits on the ground of death of an employee. Petitioner was directed to obtain appropriate Orders from the competent Court whether such direction is valid is a matter which requires consideration. Balance of convenience is not in favour of the petitioner.

Hence, the WPMP is dismissed.”

At this stage, the learned counsel for the appellant submits that the appellant made representations dated 10.08.2016 and 28.11.2016 indicating pension provisions and

her entitlement thereof, and as no decision has been taken thereon, he prays that the respondents may be directed to decide the representations.

Having heard the learned counsel for the appellant at length, we are of the considered opinion that substantial justice would be met if the respondents are directed to consider the representations.

Accordingly, the writ appeal is disposed of directing respondent Nos.3 and 4 to decide the representations dated 10.08.2016 and 28.11.2016 said to have been filed by the appellant, in terms of Clause (xvi) of the Executive Instructions enumerated in Rule 50 of the Pension Rules and the orders issued by the Government in G.O.(P) No.523, Fin.(Pen.I) Department, dated 22.06.2004, within a period of four weeks from the date of receipt of a copy of this order and communicate the decision that may be taken, to the petitioner, in writing, within two weeks thereafter. It is made clear that if the appellant is still aggrieved by the decision of the respondents, she is at liberty to challenge the same at the appropriate forum.

In view of the above directions, no further orders are required to be passed in W.P.No. 3816 of 2017, and accordingly, the same is closed. Consequently, the writ appeal is disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending,
shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

31.01.2018

ABHINAND KUMAR SHAVILI, J

bcj

