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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: 20.01.2023

Reserved on: 09.09.2022

+ **Review Pet.No.21/2022 in**
LPA 476/2021

UNION OF INDIA

.....Appellant

Through : Mr Harish Vaidyanathan Shankar,
CGSC.

versus

KOLLI UDAY KUMARI

.....Respondent

Through : Mr Mahesh Kumar Tiwari, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE TALWANT SINGH

[Physical Hearing/Hybrid Hearing (as per request)]

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RAJIV SHAKDHER, J.:

Preface:

1. This appeal is directed against the judgment dated 10.08.2021 rendered by the learned Single Judge in W.P.(C) 7343/2020. Before the learned Single Judge, the respondent (who we are told expired after the impugned judgment was rendered, but before the institution of the appeal) had assailed the communication dated 12.02.2020 issued by the appellant

i.e., Union of India [hereafter referred to as “UOI”], whereby a request for grant of pension under the Swatantrata Sainik Samman Pension Scheme, 1980 [hereafter referred to as “1980 Scheme”] was rejected, based on the provisions of para 5.2.5 of the guidelines issued by the UOI on 06.08.2014 [hereafter referred to as “2014 Guidelines”].

1.1. For the sake of convenience, the deceased respondent would be referred to as Ms Indira Kumari, unless the context requires otherwise.

1.2. In short, the reason furnished for declining Ms Indira Kumari’s request for grant of pension was that a “widowed/divorced daughter” was not eligible for pension under the 1980 Scheme.

2. The learned Single Judge was not impressed with this reasoning as, according to him, the issue was no longer *res integra* in view of the judgement delivered by a Division Bench of the Punjab and Haryana High Court in ***Khajani Devi vs. Union of India and Others***, 2016 SCC OnLine P&H 15867.

2.1 The learned Single Judge also took note of the fact that not only the Special Leave Petition (SLP), but also a review petition preferred by UOI, against the said judgement, was dismissed on 27.09.2019 and 19.01.2021, respectively.

2.2. Besides this, it is important to note that ***Khajani Devi*** concerned the case of a divorced daughter. In the said case, the Division Bench of the Punjab and Haryana High Court saw no good reason to differentiate between an “unmarried” daughter, who, admittedly, is an eligible beneficiary under the 1980 Scheme and a “divorced daughter”.

3. Besides in ***Khajani Devi’s*** case, the learned Single Judge also took note of the judgments rendered by two Single Judges of the Punjab and

Haryana High Court and the Calcutta High Court.

3.1. The learned Single Judge of the Punjab & Haryana High Court *via* the judgment dated 02.05.2019, passed in C.W.P. No.8008 of 2017, titled ***Smt. Kamlesh vs Union of India and Anr.*** followed the Division Bench's judgment rendered in ***Khajani Devi's*** case and extended the benefit to a widowed daughter.

3.2. Insofar as the learned Single Judge of the Calcutta High Court is concerned, in his judgment, rendered in ***Sonali Hatua Giri vs. Union of India and Ors.***, 2021 SCC Online Cal 1644, para 5.2.5 of the 2014 Guidelines was declared *ultra vires*; on the ground that it violated Article 14 of the Constitution. This judgment had declared that the expression "unmarried" in para 5.2.5 of the 2014 Guidelines would include widowed/divorced daughters, provided they fulfilled the other condition i.e., of not having any independent source of income.

4. It must also be stated that the learned Single Judge in the impugned judgement also noticed that contra view taken by a Single Judge of Himachal Pradesh High Court in judgement dated 18.07.2019, rendered in CWP No.1504/2019, titled ***Tulsi Devi v Union of India and Anr.***

4.1. Having noticed the said judgment, the learned Single Judge, after having regard to the fact that an SLP was pending *qua* the same in the Supreme Court (a fact recorded in the judgment of the Calcutta High Court in ***Sonali Hatua Giri's*** case), concurred with the view taken by the Punjab & Haryana High Court and Calcutta High Court in ***Khajani Devi's*** case and ***Sonali Hatua Giri's*** case and thus, allowed the prayer made in the writ petition, *via* the impugned judgement.

5. Consequently, the impugned communication dated 12.02.2020 issued

by the UOI declining Ms Indira Kumari's request for granting pension under the 1980 Scheme was "set aside" with a direction to the UOI to consider the grant of pension, provided other conditions contained in the 1980 Scheme stood satisfied. For this purpose, the UOI was accorded eight weeks from the date of the judgment.

6. Before we proceed further, it would be relevant to take note of the backdrop in which Ms Indira Kumari (now represented by her legal representative i.e., her daughter, Ms Kolli Uday Kumari), approached the learned Single Judge by way of a writ action.

7. Ms Indira Kumari's father, one Mr K. Appa Rao had applied for grant of freedom fighters' pension under the 1980 Scheme. Mr Rao had claimed that he was involved in the freedom struggle between 1941-42. However, on 05.01.1996, Mr Rao's application was rejected on the ground that his claim of having participated in the freedom struggle could not be substantiated.

7.1. UOI, subsequently, reversed its view and accordingly, on 15.12.1997, took a decision to accord pension under the 1980 Scheme to Mr Rao.

8. As noticed above, on 06.08.2014, the UOI *via* Ministry of Home Affairs [hereafter referred to as, "MHA"] issued an Office Memorandum [hereafter referred to as, "OM"] putting into place revised policy guidelines with the object of closing the gaps that subsisted in the 1980 Scheme. The revised guidelines i.e., the 2014 Guidelines alluded to the fact that the designated banks were dispensing pension to married daughters, who were otherwise not eligible under the 1980 Scheme.

9. The aforesaid was followed by an OM dated 30.12.2015 issued by the UOI, reiterating the twin conditions provided in the 2014 Guidelines

concerning grant of dependent pension to widow/widower/unmarried daughter/mother or father of the deceased freedom fighter. While doing so, it was reasserted that in ascertaining whether or not the dependent had independent means of livelihood, recourse should be taken to provisions of para 6.1.2. of the 2014 Guidelines; which, broadly, provided that the eligible dependent should not have a subsisting source of income which exceeded Rs.20,000/- per month or Rs.2,40,000/- per annum.

10. The record reveals that Mr Rao, on 18.07.2019, had submitted a sworn affidavit authorizing Ms Indira Kumari, during her lifetime, to receive benefits under the 1980 Scheme. Unfortunately, nearly four months later, on 01.11.2019, Mr Rao passed away.

11. This resulted in an application being filed on 11.11.2019 by Ms Indira Kumari for grant of pension under the 1980 Scheme upon demise of Mr Rao, i.e., her father.

12. The concerned official at the designated bank i.e., Bank of Baroda forwarded Ms Indira Kumari's application to the MHA under the cover of the letter dated 17.12.2019. This communication was followed by a reminder dated 20.01.2020.

13. As noticed above, the UOI *via* MHA rejected Ms Indira Kumari's request on 12.02.2020.

14. Being aggrieved, Ms Indira Kumari, as adverted to hereinabove, filed a writ action on 18.09.2020, whereby she assailed UOI/MHA's communication dated 12.02.2020.

15. As noticed above, the impugned judgment was rendered on 10.08.2021 by the learned Single Judge.

16. Sadly, before Ms Indira Kumari could reap the benefits of her labour,

she passed away on 02.10.2021.

17. The UOI instituted the instant appeal on 15.11.2021. Interestingly, when the appeal came up for hearing for the first time on 15.12.2021, an eminently fair stand was taken on behalf of the UOI, which was that the benefit of the 1980 Scheme would be extended to Ms Indira Kumari. Based on the stand taken on behalf of the UOI, the appeal and the pending applications were closed.

18. However, it appears that the UOI has had a change of heart and thus, moved a review petition on 11.01.2022. Notice in the review petition was issued on 15.02.2022. While the review petition was pending, an application was filed by the legal representative of Ms Indira Kumari i.e., her daughter Ms Kolli Uday Kumari, seeking impleadment, which was allowed on 18.05.2022.

19. After hearing arguments in the appeal and review petition, judgment was reserved in the matter on 09.09.2022.

Submissions of Counsels:

20. Given this backdrop, arguments were advanced on behalf of the UOI by Mr Harish Vaidyanathan Shankar, while the submissions were advanced on behalf of the deceased respondent by Mr Mahesh Kumar Tiwari.

21. Mr Shankar's submission can be, broadly, paraphrased as follows:

(i) First, the learned Single Judge erred in putting at par the 1980 Scheme with a "pension scheme", whereas the benefits extended under the 1980 Scheme are a measure of "token of respect" accorded by the nation for the sacrifices made and thus, do not have the attributes of a typical pension scheme.

(ii) Second, para 3 of the 1980 Scheme defines, as to who is to be treated

as “eligible dependents”. Amongst others, eligible dependent, as per para 3 of the 1980 Scheme is an unmarried daughter. Consequently, widowed and divorced daughters stand excluded, an aspect which is clarified, expressly, in para 5.2.5 of the 2014 Guidelines.

(iii) Third, allowing benefits to widowed daughters would result in opening the “flood gates” and ultimately, burden the exchequer.

(iv) Fourth, pension available under the 1980 Scheme cannot be equated with pension accorded under regimes put in place by Central/State Governments, which are interlinked to services rendered by the pensioner in his or her capacity of an employee. On the other hand, the pension benefit extended under the 1980 Scheme is “just a token of respect” which is accorded to a freedom fighter and is “non-transferable”. It, thus, cannot be extended to anyone else, such as ineligible legal representatives, and certainly not for their lifetime.

(v) Fifth, the benefit under the 1980 Scheme cannot be extended on grounds of sympathy. Policy parameters cannot be relaxed based on sympathy and hardship.

(vi) Sixth, the assertion made in the writ petition that Ms Indira Kumari, at the relevant point in time, was a dependent was incorrect as even at that point in time, she was living with her daughter. This becomes apparent upon cross-referencing the averments made paragraph 3 and Ground E of the writ petition preferred by the petitioner with paragraph 8 of the impleadment application i.e., CM No.23322/2022 preferred by Ms Uday Kumari. Furthermore, Ms Indira Kumari, at the relevant point in time, had concealed the fact that she had legal heirs, as is evident upon perusal of paragraphs 7 and 9 of CM No. 23322/2022.

(vii) Seventh, the dismissal of the SLP preferred by the UOI against the judgment of the Division Bench of Punjab & Haryana High court in ***Khajani Devi's*** case does not constitute a precedent. The UOI had also preferred a curative petition, which is pending adjudication in the Supreme Court. Moreover, insofar as the judgment of the learned Single Judge in ***Smt. Kamlesh's*** case is concerned, the operation of the same has been stayed by the Division Bench of the Punjab & Haryana High Court *via* order dated 16.09.2019.

(viii) In support of his submission, Mr Shankar placed reliance upon the following judgments:

(a) ***State of Orissa vs K. Srinivas Rao***, (2001) 4 SCC 743.

(b) Judgment dated 11.02.2022, rendered in Civil Appeal No.987/2020, titled ***Government of India and Ors. Vs. Sita Kant Dubashish and Anr.***

22. Mr Tiwari, on the other hand, has made the following submissions:

(i) At the point in time when Ms Indira Kumari preferred an application for grant of pension under the 1980 Scheme, she had, not only lost her father i.e., Mr Rao, but had also lost her husband, Mr Kolli Lakshmana Rao and her mother, i.e., Ms Koppala Sundari Mani. The deceased respondent's husband passed away on 26.10.2000, while her mother, expired on 16.02.2009. Besides these tragedies, the respondent had also lost her sister i.e., Ms Chandrakala Kolli on 07.01.2013.

(ii) The application for grant of benefits under the 1980 Scheme was lodged after the death of the respondent's father, Mr Rao on 01.11.2019. Prior to his death, Mr Rao had signed an affidavit dated 18.07.2019

authorizing Ms Indira Kumari to receive benefits under the 1980 Scheme.

(iii) Ms Indira Kumari, since her birth, was differently abled, which is evident from a perusal of the certificate dated 15.06.1992, which sets forth the fact that insofar as her mental capacity was concerned, she suffered from a 50% disability. Likewise, the certificate issued concerning persons with disability [hereafter referred to as, “PWD”], notes that Ms Indira Kumari suffered from a speech and hearing impairment in the range of 78-80%.

(iv) Pursuant to Mr Rao being granted benefits under the 1980 Scheme, Ms Indira Kumari became eligible and was also accorded benefits under the Central Government Health Scheme.

(v) The rejection of her application *via* UOI’s communication dated 12.02.2020 is legally unsustainable as it is contrary to the ratio of the judgment of the Division Bench of the Punjab & Haryana High Court in ***Khajani Devi’s*** case, which received the *imprimatur* of the Supreme Court with the dismissal of the SLP on 27.09.2019 and the review petition on 19.01.2021.

(vi) The decision of the UOI dated 12.02.2020 is also contrary to the judgment rendered by two Single Judges of the Punjab & Haryana High Court and the Calcutta High Court, in the matters of ***Smt. Kamlesh*** and ***Sonali Hatua Giri***. In ***Sonali Hatua Giri’s*** case, the Calcutta High Court, in fact, has struck down para 5.2.5 of the 2014 Guidelines.

(vii) The judgment rendered by a Division Bench of the Himachal Pradesh High Court in ***Tulsi Devi’s*** case did not notice the judgment rendered by the Division Bench of Punjab & Haryana High Court in ***Khajani Devi’s*** case

and the orders rendered by the Supreme Court in the appeal and review petition preferred by the UOI. Pertinently, *Tulsi Devi's* case did not involve a challenge to the provisions of para 5.2.5 of the 2014 Guidelines and hence is distinguishable.

Reasons and Analysis:

23. Having heard the counsel for the parties and perused the record, what has emerged is that there is no contestation concerning the following facts and circumstances:

(i) Firstly, Mr Rao's claim to freedom fighters' pension under the 1980 Scheme was accepted on 15.12.1997.

(ii) Secondly, the UOI *via* MHA issued the 2014 Guidelines, which includes para 5.2.5, based on which, Ms Indira Kumari's application for grant of pension under the 1980 Scheme was declined, on the ground that since she fell in the category of a widowed-daughter, she was not eligible for benefits available under the 1980 Scheme.

(iii) Thirdly, Ms Indira Kumari had been afflicted with a mental disability since birth and that she had a speech and hearing impairment ranging between 78-80%.

(iv) Fourthly, she did not have an independent source of income, as per parameters provided in para 6.1.2 of the 2014 Guidelines, and reiterated in the OM dated 30.12.2015.

24. Given this backdrop, one needs to unravel as to whether or not a widowed-daughter could be excluded from the benefits of the 1980 Scheme. Therefore, it would be useful, at this juncture, to briefly advert to the history of the 1980 Scheme framed by the Central Government for according

pension to the freedom fighters.

24.1. The record seems to suggest that in 1969, “Ex-Andaman Political Prisoners Pension Scheme” [hereafter referred to as the “1969 Scheme”] was framed. Under the 1969 Scheme, grant of pension was confined to those freedom fighters who, at the relevant time, had been incarcerated in the Cellular Jail, located in Port Blair (Andaman Islands) for at least five years.

24.2. On the occasion of 25th Anniversary of Independence, a central scheme for grant of pension was introduced by the Government of India [hereafter referred to as, “GOI”] which brought within its ambit not only the freedom fighters, but also their family members, in cases where the freedom fighter/martyr was no longer alive. This scheme kicked in on 15.08.1972 [hereafter referred to as, “1972 Scheme”]. Notably, the 1972 Scheme had incorporated an annual income ceiling of Rs.5000/- as an eligibility criteria for grant of pension.

24.3. However, with the formulation of the 1980 Scheme, with effect from 01.08.1980, the benefit of pension was extended to all freedom fighters. In effect, the annual ceiling limit of Rs.5000/- provided in the 1972 Scheme was removed. Therefore, since 01.08.1980, pension is granted to the freedom fighter during her or his lifetime and upon her or his death, to her or his eligible dependent(s). As to who is an eligible dependent is provided in para 3 of the 1980 Scheme which reads as follows:

“3. WHO ARE ELIGIBLE DEPENDENTS:

*For the purpose of grant of Samman pension, family **includes (if the freedom fighter is not alive) mother, father, widower/widow if he/she has not since remarried, unmarried daughters.***

*Not more than one eligible dependent can be granted pension and in the event of availability of more than one dependent the sequence of eligibility will be widow/widower, **unmarried***

daughters, mother and father.”

[Emphasis is ours.]

24.4. The above extract would show that the unmarried daughters fall within the category of eligible dependents.

24.5. In the context of unmarried daughters, a provision is made in para 12 of the 1980 Scheme, which provides the period during which pension would be granted to such dependents:

“12. DURATION

*Except in the case of **unmarried daughters**, the pension is for the life-time of the recipient. In the case of unmarried daughters, pension ceases immediately after they are married or become otherwise independent. In the case of death of a pensioner his/her heirs though otherwise eligible for pension will not automatically succeed to such a pension. They shall have to apply afresh with proof of the pensioner and their applications will be considered in terms of the Pension Scheme.”*

24.6. A perusal of para 12 of the 1980 Scheme would show that unmarried daughters would not be able to draw pension once they get married or become independent.

24.7. The 2014 Guidelines, it appears, were framed on account of “confusion amongst bankers”, which led to the pension granted under the 1980 Scheme being put at par with pension accorded to employees of the Central Government. MHA, it appears, came across cases where banks had dispersed pension to married daughters. MHA, therefore, had felt it was necessary to clarify certain aspects of the 1980 Scheme, which led to the issuance of the 2014 Guidelines. In this context, it becomes necessary to refer to certain paras of the 2014 Guidelines, which, in our view, are relevant for adjudication of the case:

“5.2.2 The dependent pension shall be paid from the date of

application by the spouse/daughter and not from the date of death of the pensioner.

5.2.3 *The spouse/daughter must fulfil twin conditions of being “unmarried” and “having no independent source of income”. They have to submit two certificates (As per Annexure-VI & Annexure-VII) to the Bank every year.*

5.2.5 *Widowed/divorced daughter is not eligible for samman pension.*

5.3.2 *In case of death of one of the widows, the daughter of the deceased widow is not eligible for the pension till the death of other living widow. Dependent unmarried daughters come into the picture only after the demise of both the widows of freedom fighter.*

6. *Twin conditions for dependent pension to spouse or daughter(s):- Two important conditions for the dependent pension to spouse or daughter(s) must be met. Firstly, they should not have independent sources of income and secondly they should not have remarried.*

6.1.2 *The banks must ensure that a dependent pension is not sanctioned to a spouse or a daughter of a freedom fighter if:-*

(i) The spouse/daughter is already employed in a Central or a State Government, Central/State PSU or local body.

(ii) In case the spouse/daughter is working in a private sector or having his/her own business/activity then income from such job/activity exceeds Rs.20,000/- per month.

(iii) The spouse/daughter should not be receiving a pension/salary on account of his or her own job or by virtue of the previous employment of the deceased freedom fighter.

Explanation-I:

As a thumb Rule, if a spouse/daughter is already receiving one salary/pension (excluding the State Freedom Fighters' pension), either due to his/her own job or deceased husband's/father's/mother's previous job, then such spouse/daughter should not be sanctioned Central Freedom Fighter Pension.

Explanation-II:

Whether both husband and wife are drawing central freedom fighters' pension individually the Samman Pension should not be transferred in the name of the spouse consequent on death of either of them as the surviving spouse is already getting his/her own central samman pension.

Explanation-III:

There may be cases where a dependent is denied pension because she is having a job or her pension is rightfully stopped by the Bank the day she gets a job. However in future, at a subsequent stage, if she resigns on her own or loses the job due to any reason, even then she is not entitled to the family pension.

6.2. Ascertaining the marital status:-

6.2.1 *Dependent pension is transferred to the widow of the Pensioner/daughter, who are unmarried. If a wife/daughter of the deceased pensioner gets re-married then the pension has to be stopped.*

6.2.2 *However, in case the husband of a deceased woman freedom fighter re-marries then the family pension continues in such a case. In nutshell, the re-marriage clause is not applicable in case of a husband, who is getting dependent pension on account of his deceased wife who was a freedom fighter.*

6.2.4 *The unmarried daughter must get the Certificate (Annexure-VI) countersigned by the local Tehsildar of the District or any Revenue Officer Senior to the Tehsildar. She must submit such Certificate twice a year, May and November."*

25. Thus, a quick read of paragraphs 3 and 12 of the 1980 Scheme and the aforementioned paragraphs of the 2014 Guidelines would show that, undoubtedly, an unmarried daughter falls in the category of eligible dependents, and hence, is entitled to pension upon the expiry of the freedom fighter.

26. However, insofar as the spouse or daughter is concerned, two conditions are required to be fulfilled. First, the spouse or daughter should be unmarried [See paras 5.2.3 and 6 of the 2014 Guidelines]. Second, the

spouse or daughter should not have an independent source of income; what would constitute parameters of independent source of income are, as noted above, set forth in 6.1.2 of the 2014 Guidelines.

27. Inexplicably, while para 3 of the 1980 Scheme provides that a widow/widower (if he or she has not since remarried), unmarried daughters, mother and father in the said sequence, would be eligible for grant of pension if the freedom fighter was not alive, para 6.2.1. of the 2014 Guidelines, *inter alia*, excludes from the category of dependent person, a widow of the deceased freedom fighter in case she remarries, but does not extend this exclusion to a widower. This inexplicable provision is engrafted in para 6.2.2 of the 2014 Guidelines.

27.1. In other words, if a freedom fighter was a woman, and if she was to pass away, then, even if the husband was to remarry, he could still avail the pension under the 1980 Scheme. There is a distinct possibility of para 6.2.2 of the 2014 Guidelines being declared violative of Article 14 of the constitution, if it were to be challenged. We need not dwell further on this aspect of the matter as it is not the remit of the instant writ action.

27.2. Moving further, a plain reading of para 6.2.1 would show that, as far as the daughter of the freedom fighter is concerned, she gets excluded from the category of an eligible dependent only if she *remarries*. Para 6.2.1, thus, is aligned to para 3 of the 1980 Scheme and other paras of 1980 Scheme; something which cannot be said for para 5.2.5.

28. To our minds, the para 5.2.5 of the 2014 Guidelines cannot go beyond what is provided in the parent document i.e., the 1980 Scheme. As noted above, para 5.2.5. is also inconsistent with other paras of the 2014 Guidelines, including para 6.2.1.

29. As pointed out hereinabove, the exclusion of a widow from the category of eligible dependents, once she remarries (which is not an exclusionary criteria in the case of a widower), is also not in consonance with para 3 of the 1980 Scheme, where no such caveat has been put in place. Therefore, if the 1980 Scheme is the *grund norm* for identifying eligible dependents, all that we have to examine in this case is, as to whether or not a widowed daughter falls within the ambit and scope of unmarried daughter.

30. The expression “unmarried” adverts to a person who is not married¹. It includes a woman who is single i.e., who was married but divorced and even a woman who is widowed.

31. Therefore, in our view, the 1980 Scheme did not contemplate exclusion of widowed daughters, as is sought to be contended on behalf of UOI. The 2014 Guidelines were framed to clarify the 1980 Scheme and not amend it.

31.1. As alluded to hereinabove, para 5.2.5 of the 2014 Guidelines is intrinsically inconsistent with the remaining provisions of both 2014 Guidelines as also the provisions of the 1980 Scheme.

32. Besides this, it has to be borne in mind that the Division Bench of the Punjab and Haryana High Court in *Khajani Devi’s* case, in a somewhat similar situation, in our view, correctly ruled that the expression “unmarried daughter” included a divorced daughter. In this regard, the Division Bench of the Punjab and Haryana High Court made the following observations:

“5. The underlying object in the clause of the Scheme listing eligible dependents is that only one be granted the pension. Therefore, the authorities have to construe the admissibility of benefit from that angle. It is not the case that the daughters are excluded altogether. An unmarried

¹ Oxford English Dictionary, 11th Edition, 2013.

daughter finds mention in the list of eligible dependents. It would, thus, be a travesty to exclude a divorced daughter. There would be no rationality to the reason that the unmarried daughter can be included in the list of eligible dependents and a divorced daughter would stand excluded, particularly when she is the sole eligible dependent and thus, qualifies for the benefit, which is concededly made admissible only to one dependent. Even otherwise, we are of the opinion that a beneficial Scheme such as the one in hand should not be fettered or constructed by a rigorous interpretation which tends to deprive the claimants of the benefit to result in virtual frustration or negation of the laudable motive of the Scheme itself. We also notice that the Ministry of Defence has issued instructions dated 14.12.2012 (on record as Annexure P8) which included a divorced daughter in the category of eligible dependents for grant of liberalized/special family pension beyond 25 years. We may extract the same herebelow:

"2. The above matter is considered by the Government and it has been decided in consultation with Department of P&PW that unmarried/widowed/divorced daughter shall also be eligible for grant of liberalised/special family pension beyond 25 years of age subject to fulfillment of other prescribed conditions as hitherto fore."

6. Both the liberalized/special family pension and Swatantrata Sainik Samman Pension Scheme are intended to honour the valour of the 3 of 4 uniformed people who laid down their lives or suffered for the cause of the country. We would, thus, not place any demeaning interpretation on the Scheme to deprive the unsung heroes of the country of benefits meant to ensure a life of dignity to their dependents.

33. As is evident upon the perusal of the aforesaid extract culled from the judgement in ***Khajani Devi's*** case, the court adverted to Ministry of Defence's instructions dated 14.12.2012, which extended the benefits under the liberalized/special family pension beyond 25 years to a divorced daughter. The court, in our opinion, once again, correctly observed that if the intention was to honour those who laid down their lives or had suffered for the cause of the country, whether in uniform or otherwise, the expression eligible dependent should include a divorced daughter.

34. The Supreme Court, while dismissing the SLP preferred by the UOI

in **Khajani Devi's** case, did not simply dismiss it *in limine*. The court, after hearing the counsel for the contesting parties, *via* the order dated 27.09.2019 dismissed the appeal preferred by the UOI. The said order, being brief is extracted below:

“Delay condoned.

We have heard learned counsel for the parties. We are of the view that the impugned order adopts a progressive and socially constructive approach to give benefits to daughter who was divorced treating her at parity with the un-married daughter. We fully agree with this view.

No ground for interference is made out. The special leave petition is accordingly dismissed.

Pending application shall also stand disposed of.”

[Emphasis is ours.]

34.1. To our minds, a plain reading of the order of the Supreme Court would show that the dismissal of the SLP was on merits and not *in limine*. It appears this facet of the order dismissing the SLP in **Khajani Devi's** case, was not brought to the notice of the Calcutta High Court in **Sonali Hatua Giri's** case.

35. We see no reason not to extend the benefit of the 1980 Scheme to a widowed/divorced daughter. We respectfully agree with the view enunciated by the learned Single Judge of the Punjab and Haryana High Court in **Smt. Kamlesh's** case, as well as the view expressed by the learned Single Judge of the Calcutta High Court in **Sonali Hatua Giri's** case.

36. Although it was pointed out to us that the Division Bench of the

Punjab and Haryana High Court had stayed the operation of the judgment of the learned Single Judge in *Smt. Kamlesh's* case, nothing is placed before us which would show that an appeal has been preferred against the judgment of the learned Single Judge of the Calcutta High Court in *Sonali Hatua Giri's* case.

37. We notice that insofar as the judgment of the Division Bench of the Himachal Pradesh High Court in the matter of *Tulsi Devi* is concerned, it does not advert to the judgment of the Division Bench of the Punjab and Haryana High Court in *Khajani Devi's* case or for that matter, the judgement of the learned Single Judge of Punjab and Haryana High Court in *Smt. Kamlesh's* case. It appears these judgements were not brought to the notice of the Court.

38. What is not in dispute is that although an SLP has been preferred in *Tulsi Devi's* case, the same is pending adjudication before the Supreme Court.

39. Thus, at the moment, the only clear view that we have is that of the Supreme Court in *Khajani Devi's* case. The ratio of this judgement is binding on all courts including this court.

Conclusion:

40. Thus, for the foregoing reasons and the view expressed by the Supreme Court *Khajani Devi's* case, we are not inclined to interfere with the judgment of the learned Single Judge.

41. However, before we conclude, we may emphasize that our decision in the instant matter is not based on a concession given by the counsel for the UOI, but is based on the merits of the case. Therefore, we inclined to allow the review petition and recall our order dated 15.12.2021, only to save Mr

Shankar from any further embarrassment. It is so ordered.

42. Furthermore, we are, as indicated above, inclined to dismiss the appeal preferred by the UOI.

42.1. It is ordered accordingly.

43. Since the legal representative of Ms Indira Kumari has been brought on record, she would receive pension (if otherwise, deceased Ms Indira Kumari fulfilled other conditions provided in the 1980 Scheme) from the date of the application made in that behalf by her mother, Ms Indira Kumari, till the date of her death, which, we are told, occurred on 02.10.2021.

44. The UOI will ensure that the monetary benefit is extended to the legal representative of the deceased respondent Ms Indira Kumari, if otherwise there is no impediment under the 1980 Scheme, within the next six weeks.

45. Costs will follow the result in the appeal.

**RAJIV SHAKDHER
(JUDGE)**

**TALWANT SINGH
(JUDGE)**

JANUARY 20th, 2023 / pmc