

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**WP.CT 65 of 2017
Union Of India and Others
Vs
Smt. Suniti Sutradhar**

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Mr. Shankar Ranjan Sen.

..... for the Petitioners.

Mr. Kalyan Sarkar

..... for the Respondent

Heard On : 05.01.2022

Judgment on : 07.02.2022

Rabindranath Samanta, J:-

1. This writ petition has been preferred by the petitioners Union of India & Ors challenging the order dated 01.07.2016 passed by the Central Administrative Tribunal, Calcutta Bench, Kolkata (hereinafter be referred to as the Tribunal) in O.A. No. 350/01361/2015. The respondent Smt. Suniti Sutradhar (Dey) filed the Tribunal application seeking the following reliefs:-

“ i) to direct the respondents to cancel, quash, set aside the impugned order dated 03.07.2015 as contained in Annexure “A” herein;

ii) to direct the respondents to grant family pension to the applicant forthwith;

iii) to direct the respondents to declare that the impugned Circular of Pensions & Welfare Office Memorandum No. 1/13/09-P & PW (E) dated 11.09.2013 forthwith along with the impugned circular of DOPT dated 18.09.2014 to be declared as ultra vires;

iv) to issue further direction upon the respondents to produce the impugned circular No.1/13/09-P&PW (E) dated 11.09.2013 at the time of hearing;

v) and to pass such any other order or further order as to this Hon’ble Tribunal may deem fit and proper.”

2. By the impugned order dated 01.07.2016 the Learned Tribunal disposed of the application with a direction upon the petitioners to treat the respondent as a dependent of the deceased employee for the purpose of extension of family pension in accordance with RBE 152/2006 and pass appropriate orders by two months from the date of receipt of the copy of the order.

3. The seminal question involved in this writ petition is as to whether a daughter of a pensioner who was married,

but became widowed after the death of the pensioner is entitled to family pension.

4. Background facts which are necessary for adjudication may be summarized as under :

Kristo Kumar Dey, the father of the respondent was a carpenter, Commercial Department, Eastern Railway, Howrah and he retired from service on superannuation on 04.12.1967. He was a railway pensioner and died on 23.04.1986. After the death of her father, her mother Lakshmi Dey was a recipient of family pension from the Eastern railway. She died on 15.07.1999.

During the lifetime of her parents, the respondent was married to Nirmal Sutradhar in the year 1970. But her husband died on 02.06.2011. The husband of the respondent was an unemployed person having no individual income of his own. As such, the respondent and her husband were fully dependent on the income of her parents. From an advertisement published by the Eastern railway authorities in a daily Bengali newspaper namely Anandabazar Patrika on 01.01.2008, the respondent came to know that the railway authorities invited applications from unmarried/divorced/widowed daughters of the ex railway employees for sanctioning family pension under certain terms and conditions as mentioned therein. Pursuant to such advertisement the respondent applied for family pension in proper format on 31.12.2013 to the

concerned railway authority. She submitted all the required documents.

But, surprisingly the petitioner no. 6, the Divisional Railway Manager, Howrah Division, Eastern Railway rejected the prayer of her for grant of family pension vide Memo dated 17.03.2015 on the grounds that as her husband died on 02.06.2011 i.e. after the death of her parents as per information furnished by her, she was not entitled to get family pension.

5. The respondent submits that provision for grant of family pension to a widowed/divorcee daughter of a pensioner beyond the age of 25 years was made vide office memorandum dated 30.08.2004 and this provision was included in clause III of sub-Rule 54 (6) of the Central Civil Services (Pension) Rules, 1972 (in short CCS (Pension) Rules, 1972). The respondent submits that the Learned Tribunal by passing an order dated 30.03.2015 in O.A. No. 350/00495/2015 (**Smt. Anjana Roy -Vs- Union Of India and Ors.**) questioned the justification of issuance of office memorandum 18.09.2014 and declared it ultra vires the Constitution. In such context, the respondent contends that the clarificatory office memorandum dated 18.09.2014 by which family pension has been denied to a widowed daughter of a pensioner is wholly bad in law.

6. After the demise of her husband the respondent has been residing at her parental home. Under the aforesaid

circumstances the respondent sought for the reliefs as quoted above.

7. Admittedly and as it appears from the documents on record, Kristo Kumar Dey, the father of the respondent retired from service on superannuation on 04.12.1967 and as a retired employee of the Railways he used to draw pension. On his demise on 23.04.1986 his widow Lakshmi Dey became the recipient of family pension. She died on 15.07.1999. It is not in dispute that the respondent Smt. Suniti Sutradhar (Dey) was married to one Nirmal Sutradhar and he died on 02.07.2011 i.e. about 2 years after the death of her pensioner mother Lakshmi Dey.

8. What we find, the respondent in response to an advertisement published in a Bengali daily newspaper Anandabazar Patrika on 01.01.2008 made appeal for family pension in proper format on the demise of her pensioner mother on 31.12.2012 before the concerned railway authority. But, the prayer made by her for family pension was rejected by a Memo dated 17.03. 2015 issued by the petitioner No. 6, the Divisional Railway Manager, Howrah Division, Eastern railway. The Memo dated 17. 03.2015 of the petitioner no. 6 reads as under:

“You have appealed for family pension as per provision laid down in Railway Board’s letter No. F (E) III/98/PN1/4 dated 13.10.2006 (RBE No. 152/2006), circulated under CPO/ Eastern Railway’s Sl. No. 143/06 dated 23.11.2006.

However, in terms of Railway Board's letter No. F (E) III/2007/PN1/5 dated 30.09.2014 (RBE No. 109/2014), it has inter alia been clarified that 'Family Pension in respect of widowed/divorced daughter who got widowhood/divorcee after the death of their parents will not be considered. Your case has been examined under the purview of Railway Board's aforesaid letter and it is found that your husband died on 02.06.2011, i.e. after the death of your parents as per information furnished by you (father died on 23.04.1986 and mother died on 15.07.1999). Hence your appeal for family pension is regretted."

9. As regards sanctioning of family pension to a widow, son or daughter of a pensioner Rule 54 (6) of the CCS (Pension) Rules, 1972 provides as follows:

The period from which the family pension is payable shall be as under :

i) in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;

ii) in the case of a son, until he attains the age of 25 years; and

iii) in the case of unmarried daughter until she attains the age of 25 years or until she gets married whichever is earlier.

10. However, it is explained in this Rule that a daughter shall become ineligible for family pension under

this sub Rule from the date she gets married. Besides, the family pension payable to a son or daughter shall be stopped if he or she starts earning his/her livelihood .

11. It is evident from the office memorandum dated 30.08. 2004 that provision for grant of family pension was made to a widowed/divorcee daughter beyond the age of 25 years and such provision has been included in clause III of sub-Rule 54(6) of the CCS (Pension) Rules, 1972. However, the aforesaid provision was clarified vide office memorandum dated 11.09.2013 to this extent that if a daughter became widowed/divorcee during the period when the pension/family pension was payable to her father/mother, such daughter, on fulfilment of other conditions, shall be entitled to family pension. It is spelt therein that this clarification was aimed at correctly interpreting the conditions of eligibility of a widowed/divorcee daughter in terms of the concept of family pension under the CCS (Pension) Rules, 1972. By the office memorandum dated 18.09.2014 it was clarified that the family pension should discontinue in those cases where it has been sanctioned in pursuance of those office memorandums, but without taking into consideration that the widowed/divorcee daughter was leading a married life at the time of death of her father/mother, whoever died later and was therefore ineligible for family pension. By this memorandum dated 18.09.2014 it was clarified that it would be appropriate that in order to maintain equality before law family pension payable to such daughter should

be discontinued. However, recovery of the already paid amount of the family pension would be extremely harsh on them and should not be resorted to.

12. Learned counsel appearing for the respondent has submitted that the office memorandum dated 18.09.2014 by which the family pension was sanctioned in favour of a widowed daughter of a deceased pensioner is unconstitutional as the memorandum discriminates a girl child of the deceased on getting family pension.

13. Per contra, Learned Counsel appearing for the appellants has submitted that the object of family pension under Rule 54(6) of CCS (Pension) Rules, 1972 from the very inception was to take care of an unmarried daughter who lost her father before she attained the age of 25 years or until she got married whichever was earlier. However, this benefit was extended to a widowed/divorcee daughter of the family pensioner beyond the age of 25 years, but such benefit was not available to her if she got married at the time of the death of her pensioner father/mother.

14. A conjoint reading of all the relevant office memorandums of the Railways in the light of Rule 54(6) of CCS (Pension), Rules shows that it was the intention of the legislature that the benefit of family pension would be extended to an unmarried daughter till she attained the age of 25 years or until she got married whichever is earlier. Such benefit, subsequently was extended to a

widowed/divorcee daughter of a pensioner beyond the age of 25 years.

15. Now let us advert to the contention raised on behalf of the appellants as to whether a widowed daughter of the family pensioner will be entitled to family pension after the death of her father or mother when she was married.

16. As stated above, the explanation to Rule 54 (6) clearly mandates that a daughter shall become ineligible for family pension under this sub-Rule from the date she gets married. Learned Tribunal by the impugned order directed the petitioners railway authorities to treat the respondent as a dependent of the deceased employee for the purpose of extension of family pension in accordance with RBE 152/2006 and pass appropriate orders within two months from the date of receipt of the copy of the order.

17. Undisputedly, Lakshmi Dey, the pensioner mother of the respondent died on 15.07.1999. Nirmal Sutradhar, the husband of the respondent died on 02.06.2011. Therefore, at the time of the death of her mother the respondent was married.

18. As the legislative intent is demonstrated, the scheme of family pension never included a daughter of a pensioner who was married at the time of the death of the pensioner. The legislature has extended the benefit of family pension to a child/children of a family pensioner on his/her

demise under different circumstances as enumerated in the relevant rule. As an instance, a mentally retarded child is bestowed with the legislative blessings to have family pension throughout his life after the demise of his/her parent. But, such benefit is not extended to a married daughter. Extending family pension to a child in distress of the deceased family pensioner is a policy decision of the government. A daughter who became widowed after the demise of her father/mother does not possess any fundamental or statutory right to claim family pension. In the absence of any legislation in this regard, the benefit of family pension cannot be extended to a daughter of a family pensioner who was married at the time of the death of her father/mother. It will be unwise on the part of this Court to exercise its extraordinary or discretionary power to come to any inference contrary to the policy decision of the Government.

19. The clarificatory office memorandum dated 18.09.2014 which manifests the very object of family pension enshrined in Rule 54(6) cannot be termed as discriminatory and ultra vires the constitution.

20. In view of the observations as above, the point as raised for determination is answered in the negative.

21. In view of the above, we find that the impugned order passed by the Learned Tribunal is not sustainable in law.

22. Accordingly, the order dated 01.07.2016 passed by the Learned Tribunal in O.A. no. 350/01361/2015 is hereby set aside. Consequently, the Tribunal application is dismissed.

23. The interim order of stay stands vacated.

24. No order as to costs.

25. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)

I agree,

(Harish Tandon,J.)