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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 01.02.2024***+ **W.P.(C) 9742/2019 AND CM APPL. 40225/2019****UNION OF INDIA AND ORS.****..... Petitioners**

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kujmar Mishra,
Mr. Alexander Mathai Paikaday and
Mr. Krishanan V. Advocates.

versus

SMT. RENU GUPTA AND ANR.**..... Respondents**

Through: Mr. M. K. Bhardwaj, Advocate
(*through video conferencing*).

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail order dated 10.09.2018 passed by the Central Administrative Tribunal in O. A. No. 2822/2016. Vide the impugned order, the learned Tribunal has allowed the original application preferred by the respondent by directing the petitioner to restore the Family Pension of her late husband, Sh. Pawan Kumar Gupta, which was being paid to her till 2002, and was thereafter being paid to her son, who has now attained majority.

2. In support of the petition, learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned



Tribunal has, without examining the provisions of Rule 54 (6) of CCS (Pension) Rules, 1972 proceeded to allow the respondent's claim. He submits that since the respondent already had a son when her husband, Late. Sh. Pawan Kumar Gupta expired, she would fall in the category of 'widow who has a child'. According to sub clause (i) of Rule 54 (6), she was not entitled to claim family pension once she re-married, which he submits is an admitted position, and therefore, at her request, the family pension was being paid to her son from 2002. He further submits that the learned Tribunal has also erred in placing reliance on the O.M. dated 01.04.2011 issued by the Ministry of Personnel Public Grievances and Pensions, which is not at all applicable to persons like the respondent, who fall in the category of widow with a child. He, therefore, prays that the impugned order be set aside.

3. On the other hand, learned counsel for the respondent seeks to support the impugned order by contending that the learned Tribunal has rightly allowed the claim of the respondent by relying on the O.M. dated 01.04.2011 issued by the Ministry of Personnel Public Grievances and Pensions. By drawing our attention to para 4 of the said OM, he submits that it has been clarified that a childless widow of a deceased central government employee, who had expired before 01.01.2006, would also be eligible for family pension irrespective of the fact as to whether the marriage had taken place on or after 01.01.2006. He, therefore, contends that the respondent, having re-married before 01.01.2006, would also be eligible to receive family pension. The clause, he submits, has to be read holistically and cannot



exclude widows like the respondent merely because they have a child. The learned Tribunal was, therefore, justified in extending to the respondent the benefits of this clarification issued on 01.04.2011, which was meant to protect the rights of those widows like the respondent, who had re-married before 01.01.2006.

4. Having considered the submissions of the learned counsel for the parties, we may begin by noting Rule 54 (6) (i) to (v) of the CCS (Pension) Rules, 1972, along with the first proviso thereto, which deals with the period for which family pension is payable and also specifies the family members who are entitled to receive family pension. The same reads as under:

“(6) The period for which family pension is payable shall be as follows:-

- (i) subject to first proviso, in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;*
- (ii) subject to second proviso, in the case of an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest;*
- (iii) subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier;*
- (iv) subject to sub-rule (10-A), in the case of parents, who were wholly dependent on the Government servant immediately before the death of the Government servant, for life;*
- (v) Subject to sub-rule 10(B) and the fourth proviso, in the case of disabled siblings (i.e. brother and sister) who were dependent on the Government Servant immediately before the death of Government servant, for life:*

Provide that family pension shall continue to be payable to a childless widow on re-marriage, if her income from all other



sources is less than the amount of minimum, family pension under sub-rule (2) of this rule and the dearness relief admissible thereon: ...”

5. From a bare perusal of the aforesaid provision, especially sub clause (i) of sub-rule (6) of Rule 54, it is evident that except as stated in the first proviso, a widow or widower will be entitled to receive family pension only upto the date of his/her death or re-marriage, whichever is earlier. The respondent, who admittedly has been blessed with a son, would therefore, be barred under Rule 54(6) (i) from receiving family pension after her re-marriage. She is not even covered under the first proviso which is applicable only to childless widows.

6. We may now note the relevant extracts of the impugned order, which read as under:

“9. However, regarding grant of family pension, transferred to her son in the year, 2002, I find that there is no dispute that (childless) widow of a deceased government servant, is eligible for family pension even if she remarries. I do not agree with the contention of learned counsel for respondents, Shri Rajinder Nischal that OM dated 01.04.2011 can only be prospective in nature since the OM is only clarificatory in nature. Principally, it has been held by the Government that even in the case of re-marriage of a widow, family pension can be given.

10. The applicant in the OA was sanctioned family pension as per her entitlement. Without understanding the consequences, she requested for transfer of the family pension in the name of her son after her marriage. However, the said family pension will become inadmissible after the son attains the age of 25 years. This fact is also mentioned by the respondents in their letter dated 17.05.2013.

11. Since the applicant is legally entitled for family pension under CCS (Pension) Rules, 1972, there seems no legal bar in re-transferring the pension in her name. The NOC from her son,



current recipient of the family pension, is also reportedly available.

12. In view of these facts, the respondents are directed to restore the family pension of the applicant in her name, prospectively. The rejection orders dated 26.10.2015, 05.10.2015, 27.03.2015 and 25.09.2014 are set aside. The respondents are directed to transfer the claim of the applicant for transfer of family pension to herself from her son, within a span of four months from the date of receipt of a certified copy of this order. No costs."

7. From the aforesaid findings in the impugned order, we find that the learned Tribunal has allowed the respondent's claim by relying on para 4 of the O.M. dated 01.04.2011. We, may, therefore, note herein below, this para of the O.M as well.

"4. The issue has been examined in this Department in consultation with Department of Expenditure. It is hereby clarified that the childless widow of a deceased Central Government employees who had expired before 1.1.2006, shall be eligible for family pension in the light of 6th CPC's recommendations irrespective of the fact that the remarriage of the widow had taken place prior to/on or after 1.1.2006. The financial benefits in such case, however, will accrue from 1.1.2006. This, however, would be subject to the fulfilment of certain conditions laid down therein, including the income criterion that the income of the widow from all sources does not become equal to or higher than the minimum prescribed for family pension in the Central Government."

8. From a bare perusal of the aforesaid extract of the O.M, we find that the same refers only to a childless widow who, as noted hereinabove, is entitled to receive family pension in terms of Rule 54 (6) (i) of CCS (Pension) Rule, 1972. We are, unable to agree with the respondents that the benefit of this O.M. would also be applicable to a widow with a child. Once the language used in the O.M is crystal clear, the Court cannot add words to this plain language and extend



the benefits thereof to widows with children who are, by Rule 54 (6) (i), debarred from receiving family pension once they re-marry. The learned Tribunal, therefore, erred in allowing the O.A. by relying on an O.M. which was wholly inapplicable to the facts of the present case.

9. For the aforesaid reasons, we are of the considered view that the impugned order is wholly unsustainable and is liable to be set aside.

10. At this stage, learned counsel for the respondent submits that the clause which permits only on a childless widow to receive family pension is clearly arbitrary and discriminatory. He, however, concedes that this plea has not been raised by the respondent in her O.A before the learned Tribunal but prays that the matter be remanded back by granting the respondent, permission to amend the O.A by incorporating grounds to assail the aforesaid rule. Learned counsel for the petitioner has no objection to this limited request.

11. Accordingly, while setting aside the impugned order, the O.A. is remanded back to the learned Tribunal for fresh adjudication of the additional grounds, which the respondent is being permitted to urge. As prayed for, the respondent is granted four weeks' time to move an appropriate application for raising additional grounds. It is, however, made clear that merely because the matter is being remanded back to enable the respondent to raise additional grounds will not be construed as an expression of opinion by this Court on merits of the



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additional grounds, as may be raised by the respondent.

12. List before the learned Central Administrative Tribunal on 01.04.2024.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 1, 2024

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