Smt. Bhagwanti And Anr vs Union Of India on 29 August, 1989

Equivalent citations: 1989 AIR 2088, 1989 SCR (3)1010, AIR 1989 SUPREME COURT 2088, 1989 (4) SCC 397, 1989 LAB. I. C. 2007, (1989) 2 CURLR 514, (1990) 1 MAD LW 517, (1989) 2 LAB LN 496, (1990) 1 PAT LJR 15, 1989 SCC (L&S) 653, 1990 UJ(SC) 1 196, (1990) 1 UPLBEC 48, 1989 RAJLR 412, (1989) 15 ALL LR 814, (1989) 3 JT 545 (SC)

Author: Misra Rangnath

Bench: Misra Rangnath, G.L. Oza

PETITIONER:
SMT. BHAGWANTI AND ANR.

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT29/08/1989

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
OZA, G.L. (J)

CITATION:
1989 AIR 2088 1989 SCR (3)1010
1989 SCC (4) 397 JT 1989 (3) 545
1989 SCALE (2)377

ACT:
Central Civil Services (Pension) Rules 1972--Rule 54(14)(b)-'Family'--Definition of--Clauses (i) and (ii) held ultra vires Article 14--Spouses who get married after retirement of Government servant-Children born after retirement--Whether entitled to family pension.
Constitution of India-Article 14---Rule 54(14)(b)(i) and (ii)Central Civil Services (Pension) Rules--Held ultra vires.

HEADNOTE:
These two Writ Petitions have been filed by the widows of the pensioners viz. Smt. Bhagwati and Smt. Sharda Swamy,

as they have been refused family pension after the demise of their husbands.

Smt. Bhagwanti is the widow of an Ex-Subedar of the Indian Army who retired after serving for 18 years on 3.8.1947. He was given pension. In 1955 his wife died and in 1965 he married the petitioner. The Subedar died in September 1985 in an accident. The Petitioner Smt. Bhagwanti who has two minor children applied for family pension but the same was not granted to her.

The other Petitioner Smt. Sharda Swamy is the wife of the retired railway employee. Her husband took voluntary retirement at the age of 44 years in November 1979. The Petitioner married her deceased husband in 1981 and has a daughter born to her in 1984. Petitioner's husband died in 1986. The petitioner applied for a family pension but by a letter dated 3.8.1988, she was informed that her application has been rejected. It was stated therein that it has not been found possible to include wife of a Government Servant who had married after retirement in the definition of '' family" for grant of family pension.

In the counter affidavits filed on behalf of the Union, the stand taken in the first case is that the pension has been refused as the marriage was after retirement and in the other case the Union relied on the definition of "family" occurring in Rule 54(14)(b) of the Central Civil Services (Pension) Rules 1972, which speaks of marriage before retirement.

1011

The common stand taken thus by the Union is that family pension would not be admissible to spouses who get married after the retirement of the Government servant nor to children born after retirement.

Allowing the Writ Petitions this Court

HELD: Pension is payable, as pointed out in several Judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self-same consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary. [101411-1015B]

Admittedly, the definition of "family" as it stands after amendment excludes the spouse of the Government servant who has got married to such Government servant after his/her retirement and the children born after retirement also stand excluded. [1014F]

In most cases, marriage after retirement is done to provide protection, secure companionship and to secure support in old age. [1015C]

The consideration upon which pension proper is admissible or the benefit of the family pension has been extended do not justify the distinction envisaged in the definition

of "family" by keeping the postretiral spouse out of it. [1015D]

The two limitations incorporated in the definition of "family" suffer from the vice of arbitrariness and discrimination and cannot be supported by nexus or reasonable classification. [1016D]

The words "provided the marriage took place before retirement of the Government servant" in clause (i) and "but shall not include son or daughter born after retirement" in clause (ii) are thus ultra vires Article 14 of the Constitution and cannot be sustained. [1016E]

D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165; Deoki Nanaan Prasad v. State of Bihar & Ors., [1971] Suppl. SCR 634; Smt. Poonamal v. Union of India & Ors., [1985] 3 SCR 1042; referred to.

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition Nos. 1128 and 1204 of 1988, (Under Article 32 of the Constitution of India).

Mrs. S. Ramachandran for the Petitioners. V.C. Mahajan, Ms. A. Subhashini and Ms. Kusum Chaudhary for the Respondents.

The Judgment of the Court was delivered by RANGANATH MISRA, J. Each of these two writ petitions under Article 32 of the Constitution is by the widow of the respective pensioners. Since family pension under the Rules has not been given to them, they have asked for a mandamus to the respondent-Union of India to grant such pension in terms of the pension scheme applicable to the category to which the husbands of the respective petitioners belonged. Petitioner Smt. Bhagwanti is the widow of an ex-Subedar of the Indian Army. Her husband after serving for 18 years retired on 3.8.1947 and was given pension. In 1955, his wife died and in 1965 he was married to the petitioner. The Subedar died in September, 1985 in an accident. Petitioner who has two minor children applied for family pension and the same has not been granted.

The petitioner in the connected writ petition is the wife of a retired Railway employee. Her husband took volun- tary retirement at the age of 44 in November, 1979. Peti- tioner got married to her husband in 1981 and has a daughter born in 1984 out of the said wedlock. Petitioner's husband died in 1986. The petitioner applied for family pension but by a letter dated 3rd of August, 1988, her application was rejected by saying: 'It has not been found possible to include wife of a Government servant who had married after retirement in the definition of 'family' for grant of family pension'.

Counter-affidavits have been filed in both the writ petitions. In the first case, in the return made by Captain N.K. Vishwakarma from the Office of Records AMC, Lucknow in paragraph A, it has been stated that pension has been re- fused as petitioner's marriage was after retirement of the Subedar. In the connected matter, the Senior Personnel Manager of the South-Central Railway has placed

reliance on the definition of 'family' occurring in Rule 54(14)(b) of the Central Civil Services (Pension) Rules, 1972. As far as relevant, the definition reads thus:

> "(b). 'Family' in relation to a Government servant means--
>
> (i) wife in the case of a male Gov-

ernment servant, Or husband in the case of a female Government servant, provided the mar- riage took place before retirement of the Government servant.

....

(ii) son who has not attained the age of twenty-one years and unmarried daughter who has not attained the age of thirty years, including such son and daughter adopted legal- ly before retirement but shall not include son or daughter born after retirement."

The common stand of the Union of India in the two cases, therefore, is that family pension would not be admissible to spouses who get married after the retirement of the Govern- ment servant, nor to children born after such retirement. The only question for consideration in these two writ petitions therefore, has two facets: (i) whether the spouse--man or woman, as the case may be--married after the retirement of the concerned Government servant can be kept out of the definition so as to deprive him from the benefit of the family pension, and (ii) whether off-springs born after retirement are entitled to benefits of such pension. In D.S. Nakara & Ors. v. Union of India, [1983] 2 SCR 165, a Constitution Bench of this Court at p. 185 of the Reports observed:

> " ..... pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service- Thus the pension payable to be a Government employee is earned by rendering long and efficient service and, therefore, can be said to be a deferred portion of the com- pensation or for service rendered. In one sentence one can say that the most practical raison detre for pension,, is the inability to provide for oneself due to old age ..... In Deoki Nandan Prasad v. State of Bihar & Ors., [1971] Suppl. SCR 634, it was held by this Court:
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> "The payment of pension does not depend upon the discretion of the Government but is gov- erned by the relevant rules and anyone enti- tled to the pension under the rules can claim it as a matter of right."

In Smt. Poonamal v. Union of India & Ors., [1985] 3 SCR 1042, it was pointed out:

> "Where the Government servant rendered serv- ice, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise in as much as it partakes the charac- ter of public assistance in cases of unemploy- ment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. That is how pension has been looked upon in D.S. Nakara's judgment."

Admittedly, the definition of 'family' as it stands after amendment excludes that scope of the Government serv- ant who has got married to such Government servant after his/her retirement and the children born after retirement also stand excluded. Petitioners have challenged the stand of the Union of India and the definition in the Pension Rules as arbitrary and discriminatory- It has been contended that if family pension is payable to the widow or the hus- band as the case may be, of the Government servant, the category which the definition keeps out, namely, those who have married after retirement and offsprings of regular marriage born after retirement, is discriminatory. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self same consideration. Since pension is linked with past service and the avowed purpose of the Pension Rules is to provide sustenance in old age, distinc- tion between marriage during service and marriage after retirement appears to be indeed arbitrary. There are in- stances where a Government servant contracts his first marriage after retirement. In these two cases before us, retirement had been at an early age. In the Subedar's case, he had retired after putting in 18 years of service and the Railway employee had retired prematurely at the age of 44. Premature or early retirement has indeed no relevance for deciding the point at issue. It is not the case of the Union of India and, perhaps there would have been no force in such contention if raised, that family pension is admissible on account of the fact that the spouse contributed to the efficiency of the Government servant during his service career. In most cases, marriage after retirement is done to provide protection, secure companionship and to secure support in old age. The consideration upon which pension proper is admissible or the benefit of the family pension has been extended do not justify the distinction envisaged in the definition of 'family' by keeping the postretiral spouse out of it.

Government Servants Conduct Rules prohibit marriage during the life-time of a spouse. Section 494 of the Indian Penal Code makes second marriage void and makes it a crimi- nal offence. Thereafter, both before retirement and even after retirement there is no scope for a person to have a second wife or a husband. as the case may be, during the life-time of an existing spouse.

Reliance has been placed on the recommendations of the Third Pay Commission on the basis of which the amendment in the Pension Rules is said to have been made. Apart from referring to the recommendations, no attempt has been made at the hearing by counsel for the Union of India to derive support from the recommendations. We really see no justifi- cation as to why post-retirement marriages should have been kept out of the purview of the definition.

In clause (ii) of the definition son or daughter born after retirement even out of wedlock prior to retirement have been excluded from the definition. No plausible expla- nation has been placed for our consideration for this exclu- sion. The purpose for which family pension is provided, as indicated in Smt. Poonamal's case, is frustrated if children born after retirement are excluded from the benefit of the family pension. Prospect of children being born at such advanced age (keeping the age of normal superannuation in view) is minimal but for the few that may be born after the retirement, family pension would be most necessary as in the absence thereof,. in the event of death of the Government servant such minor children would go without support. The social purpose which was noticed in some pension cases by this Court would not justify the stand taken by the Union of India in the counter-affidavit. It is not the case of the Union Government that as a matter of public policy to con- tain the growth of population, the definition has been so modified. Even if such a contention had been advanced it would not have stood logical scrutiny on account of the position that the Government servant may not have any child prior to retirement and in view of the accepted public policy that a couple could have children upto two, the only child born after superannuation should not be denied family pension.

Considered from any angle, we are of the view that the two limitations incorporated in the definition of 'family' suffer from the vice of arbitrariness and discrimination and cannot be supported by nexus or reasonable classification. The Words 'provided the marriage took place before retire- ment of the Government servant' in clause (i) and 'but shall not include son or daughter born after retirement' in clause

(ii) are thus ultra vires Article 14 of the Constitution and cannot be sustained.

The writ petitions are allowed. The respondent Union of India shall have a direction to extend to each of the peti- tioners in the two writ petitions family pension as admissi- ble under the respective schemes from the date the husband of each of petitioners died.

Since these writ petitions were instituted on the basis of letters received by the Court and treated as public interest litigation and were supported by the Supreme Court Legal Aid Committee through their counsel, there shall be no order as to costs.

Y. Lal Petitions allowed.