

Madhya Pradesh High Court

Smt.Sampat Bai vs The State Of Madhya Pradesh on 27 August, 2010

W.P.NO.3495/2009 (S)

27.8.2010

Shri Sanjay K. Sharma, learned counsel for the petitioner.

Shri B.N. Mishra, learned Govt. Advocate for respondent

State.

Grievance put-forth by the petitioner in the present petition is against non-grant of family pension in lieu of death of her husband employed as Jeep Driver on regular contingency establishment in the department of Horticulture who expired on 29.10.1986.

Husband of the petitioner was initially appointed in the Horticulture Department on 23.12.1978 on daily-wages. Thereafter, w.e.f. 1.4.1980 he was brought in the regular work- charged establishment as Jeep Driver. While discharging his duties as Jeep Driver on regular work-charged establishment, husband of the petitioner died while in service on 29.10.1986. After his death, petitioner approached the authorities for settlement of retrial dues including family pension. The request of the petitioner for grant of family pension was turned down by the respondents by letter dated 25.6.1997; whereby, petitioner was informed that since her husband has not rendered 10 years of service in the regular work-charged establishment and has thus not qualified for pension under Madhya Pradesh (Work Charged & Contingency Paid Employees) Pension Rules, 1979; therefore, she is not entitled for family pension. Aggrieved of the denial of family pension the petitioner has filed this petition.

It is contended that the respondents have misconstrued the provisions of Rules of 1979 in denying the family pension which she is entitled for as per provisions contained under Rule 4 A. It is further contended that for grant of family pension the requirement of minimum 10 years of service in regular work- charged establishment is not necessary and if a person engaged on a regular work-charged establishment even for a day his dependent would be entitled for family pension in case of his death while in service.

Respondents on their turn embedded to the stand that petitioner is not entitled for family pension because her husband did not render qualifying service of 10 years as per Rule 6 of the Rules of 1979. It is urged that since the petitioner has no right for family pension the petition deserves to be dismissed.

Rule 4 A of the Rules of 1979 and Rule 6 thereof respectively provide for:

"4 A. Notwithstanding anything contained in rule 4 the family of a permanent employee, who dies while in service or after retirement on pension on or after the 1st April 1981 shall be entitled to family pension at the rate of 30% of his/her pay drawn at the time of death/retirement subject to minimum, of Rs.40/- per month and

maximum of Rs.100/- per month subject to other conditions of Rule 47 of Madhya Pradesh Civil Services (Pension) Rules, 1976 except sub-rule (3) of the said Rules.

6. Commencement of qualifying service.- (1) Subject to the provisions of Chapter III of the Madhya Pradesh Civil Services (Pension) Rules, 1976 or section IV of the Madhya Pradesh New Pension Rules, 1951 as the case may be, for calculating qualifying service of a permanent employee who retires as such, the service rendered with effect from the 1st January, 1959 onwards shall be counted.

(2) On absorption of a permanent employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1959 onward shall be counted for pension as if such service was rendered in a regular post.

(3) On absorption of temporary employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1974 onwards, if such service is of less than six years shall be counted for pension as if such service was rendered in a regular post.

When the aforesaid two Rules are read together, it is clear as crystal that the provisions which govern the family pension has a different field of operation than the provisions regarding pension to an employee who retires from the work-charged establishment and are governed by Rule 6 of Rules of 1979.

By virtue of Rule 4 A the provisions as contained under Rule 47 of the M.P. Civil Services (Pension) Rules, 1976 are attracted. The said Rule provides for

47. Contributory Family Pension. - (1) The provisions of this rule shall apply:-

(a) to a Government servant entering service in a pensionable establishment or on after 1st April 1966, and

(b) to a Government servant who was in service on 31st March, 1966 and came to be governed by the provisions of the Family Pension Scheme for State Government Employees, 1966 contained in Government of Madhya Pradesh Finance Department memo No. 1963/C.R903-IV-R. II dated 17th August, 1966 as in force immediately before the commencement of these rules.

(2) Subject to the provision of sub-rule (5) and without prejudice to the provisions contained in sub-rule (3), where a Government servant dies-

(a) during the period of service he was found medically fit at the time of appointment,

(b) after retirement from service and was on the date of death in receipt of a pension or compassionate allowance, referred to in Chapter V other than the pension referred to in Rule 34, on the date of death, the family of the deceased shall be entitled to a contributory family pension

(hereinafter in this rule referred to as Family pension) the amount of which shall be determined as follows:-

Pay of Government Servant Amount of monthly Family Pension

- (i) Below Rs.400 30 per cent. Of pay subject to minimum of Rs.60 and a maximum of Rs.100.
- (ii) Rs.400 and above but not 15 per cent of pay subject to exceeding Rs.1200. minimum of Rs.100 and a maximum of Rs.160.
- (iii) Above Rs.1200 12 per cent. Of pay subject to a minimum of Rs.160 and a maximum of Rs.250.

A harmonious reading of Rule 4 A of Rules, 1979 and Rule 47 (2) (a) of Rules, 1976 would fresco that if a person employed in a regular work-charged establishment dies while in service, his family cannot be deprived of the pension which it would be entitled for by virtue of Rule 4 A of Rules, 1979.

In view of above the decision taken by the respondent authority depriving the petitioner of the family pension on the anvil that her husband did not complete 10 years of service in regular work-charged establishment is without any basis and is hereby set aside. The respondents are directed to settle family pension in favour of the petitioner within a period of three months from the date of communication of this order. Petitioner would also be entitled for interest at the rate of 6% from the date of entitlement till final payment.

In the result petition is allowed to the extent above. However, no costs.

(SANJAY YADAV) J U D G E Vivek Tripathi