

Supreme Court of India

State Of H.P. And Anr. vs Kedar Nath Sood And Anr. on 8 January, 1998

Equivalent citations: AIR 1998 SC 2957, 1999 (81) FLR 975, JT 1998 (9) SC 157, 1998 LabIC 2994, (1999) IILLJ 483 SC, (1998) 2 SCC 361

Bench: K Venkataswami, A Misra

ORDER CA No. 14081 of 1996

1. This appeal is directed against the judgment and order of the Himachal Pradesh High Court in Civil Writ Petition No. 1888 of 1995 dated 8-12-1995.

2. By the judgment under appeal, the High Court had directed the appellants to grant family pension to the first respondent herein. Undoubtedly, this is a hard case. Having regard to the facts, strictly speaking, the Government should have come forward to the rescue of the first respondent, but, unfortunately, that was not done.

3. The High Court, purporting to follow a decision of this Court, has granted pension which does not appear to be the correct position. The relevant rule for grant of family pension in this case will be Rule 54(14)(b)(i) of the CCS (Pension) Rules, 1972, according to which the father will not be a member of the family or dependent to get the family pension. This fact is also not disputed. Interpreting a similar rule, this Court in State of Gujarat, through Chief Secy. v. Savitri Devi, has observed as follows:

"5. A reading thereof clearly indicates that the family consists of the relatives, namely, the widow (if he happens to be married) of the deceased in case of male government servant and husband in case of female government servant and minor sons and unmarried or minor daughter. In the case of the children, legally adopted children, before retirement/death also would become members of the family. If the widow remarries, she becomes disentitled to the pension as she ceases to be the member of the family. Obviously, for this reason, the widow Savitri Devi was not given pension after her remarriage in 1976.

6. The question is whether mother is a dependant. In view of the express definition of the family, mother has not been included as a member of the family to claim any family pension from the Government, much less after the maximum period of ten years. Under these circumstances, in either event, the decree of the trial court as affirmed by the appellate court and second appeal, are clearly illegal."

4. In the light of the above decision of this Court, the order granting pension cannot be sustained. Accordingly, the judgment of the High Court is set aside. The appeal is allowed. However, on the facts, namely, that the first respondent is a man of 80 years of age who has lost his young son and there is nobody to look after him, no one entitled to pension under the rule, we are inclined to direct the appropriate Government on these special facts and circumstances to pay to the first respondent a sum of Rs 10,000 as ex gratia in addition to the payments already made.

5. We may also indicate that it is time for the Government to consider the amendment of the Rules to cover the situation similar to the one that appear in this case. The appropriate Government will pay to the first respondent an ex gratia of Rs 10,000 within two months. It is made clear that the amounts already paid in terms of the High Court judgment shall not be recovered or adjusted.

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6. Leave granted.

7. For the reasons stated in the order in Civil Appeal No. 14081 of 1996, the order under appeal is set aside. The appeal is allowed. However, as observed in the other case, the first respondent as well deserves an ex gratia payment of Rs 10,000 on the facts and circumstances of this case. Accordingly, we direct the appropriate Government to pay a sum of Rs 10,000 to the respondent within two months. The amount, if any, already paid pursuant to the High Court order shall not be recovered or adjusted.