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sustained in view of the order of eviction already passed at the instance of the landlord against the tenant on the ground that the property has become unfit and unsafe for human habitation. Consequently, Civil Revision No. 1590 of 1980 has to be allowed and the impugned orders passed by the authorities below are to be set aside.

(6) The upshot of the above discussion is that Civil Revision No. 2217 of 1979 fails and is, therefore, dismissed. The order of ejectment passed by the learned Appellate Authority is affirmed. On the other hand, Civil Revision No. 1590 of 1980 is allowed. The orders of the authorities below directing necessary repairs are set aside. There shall, however, be no order as to costs in both the revision petitions.

(7) The tenants are allowed three months' time to vacate the house in dispute and handover its vacant possession to the landlords on the condition that they deposit the entire amount of arrears of rent along with future rent for three months, within one month from today in the Court of learned Rent Controller, failing which the landlords shall be entitled to take out execution of the ejectment order and recover possession from the tenants.

S.C.K.

Before D. V. Sehgal, J.

KAKO,—Petitioner.

versus

UNION OF INDIA and others,—Respondents.

Civil Writ Petition No. 4506 of 1987

January 14, 1988.

Constitution of India, 1950—Art. 14—Indian Air Force Family Pension Scheme, 1964—Para 4(c)(2)—Widow's entitlement to family pension—Marriage contracted after husband's discharge from defence service—Scheme not recognising right of widow from such marriage for benefit of family pension—Para 4(c)(2)—Whether based on reasonable classification and intra vires Article 14.

Held, that while undertaking the liability to pay family pension, the Government in its wisdom has taken into consideration the

family liability of a Government servant before he retires from service. If he incurs liability after the date of retirement i.e. by contracting a marriage or adopting a child, the government cannot be saddled with the liability of maintaining the widow or such dependent adopted child in case of the death of the retiree. The classification is apparently reasonable and there is decidedly a rationale behind it and, therefore, does not infringe Article 14 of the Constitution of India, 1950.

(Para 5).

Held, that the rule that a widow from a marriage contracted by a retiree after his retirement from service shall not come within the definition of 'family' in para 4(c)(2) of the Family Pension Scheme, 1964 for the purposes of the grant of family pension appears to be universal as similar provisions are to be found in Rule 54(14-A) of the Central Services Pension Rules and Rule 6.17 of the Punjab Civil Services Rules, Vol. II. The definition of 'family' ousting widow's from post-retirement marriages is based on reasonable classification.

(Para 7).

Petition under section 226/227 of the constitution of India praying that the Hon'ble Court may be pleased to issue writ in the nature of certiorari for quashing of order Annexure P-2 and issuance of writ of Mandamus directing the respondents to grant ordinary family pension to the petitioner.

Or

To issue any other writ or direction deemed fit and proper by this Hon'ble Court after calling for the relevant pension rules.

- (ii) *That the service of advance notice on the respondents be exempted.*
- (iii) *That filing of certified copies of Annexures may be dispensed with.*
- (iv) *That the petition be accepted with costs throughout.*

Malkeet Singh, Advocate, for the Petitioners.

H. S. Brar, Sr. Standing Counsel, Government of India, for the Respondents.

JUDGMENT

D. V. Sehgal J.

The petitioner is the widow of E/F Sarupa who joined the Royal India Air Force on 10th September, 1942 as a sweeper. After rendering service till 17th August, 1947 he was discharged from

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service on account of having contracted disability on 22nd August, 1947. He was granted disability pension at the rate of Rs. 11 and annas four with effect from 20th August, 1974 for life. He was a bachelor at the time of his discharge from service. He married the petitioner on 15th June, 1953 according to Hindu rites. The petitioner had been living with him as his wife till he died on 30th December, 1977. It is averred by the petitioner that her husband had been receiving the disability pension till his death but the same was discontinued thereafter, as obviously the disability pension was for his life.

(2) On the death of her husband, the petitioner applied to the Air Force authorities for grant of family pension. She was asked to submit the proof of her marriage, the death certificate of her husband and discharge certificate of the deceased from the Air Force. She submitted all these documents. She received a communication dated 28th February, 1986 that her case for grant of family pension had been forwarded to the Central Defence Accounts (Pension). She was, however, informed subsequently,—*vide* letter dated 7th January, 1987 Annexure P. 2 that she is not entitled to the grant of family pensionary benefits under the extended orders of the Government of India dated 8th August, 1985 as she had married the deceased after his discharge from service. In spite of her subsequent representations, no relief was granted to her. Therefore, she has approached this court by way of the present writ petition for quashing the order Annexure P. 4 and directing the respondents to grant her family pension.

(3) The writ petition has been opposed by the respondents and a written statement on their behalf has been filed. It is averred therein that the scheme of family pension was introduced for the first time,—*vide* order dated 14th April, 1964 Annexure R. 1 and it was made applicable to the officers and other ranks who were in service of the Air Force on 1st January, 1964 or who joined service thereafter and who died while in service or after retirement with a retiring or disability pension. The term 'Family' is defined in para 4 of this order as under:—

“‘Family’ for purposes of these orders will include the following relatives of the individual :—

- (a) Wife.
- (b) Minor sons ; and
- (c) Unmarried minor daughters.

Notes :—(1), (b) and (c) above will include children adopted legally before retirement.

(2) Marriage after retirement will not be recognised for purpose of these orders.”

The widows of erstwhile Government servants who had retired from service on 31st December, 1963 or prior to the said date and who were not covered by the Family Pension Scheme 1964 challenged the order Annexure R.1 before the Supreme Court by filing writ petitions claiming that the date 1st January, 1964 specified in the said order was arbitrary and discriminatory and that the benefit of family pension scheme may also be extended to them. The Union of India made a statement before the Supreme Court indicating the extent to which they would be prepared to accept the claim of such widows. Keeping in view the statement so made in the final Court, the matter was decided by it on 30th April, 1985 extending with effect from 22nd September, 1977 the benefits of family pension scheme 1964 to the families of those Government servants who were/are borne on pensionable establishment and are presently not covered by the 1964 scheme, namely, the families of those employees who retired/died on or before 31st December, 1963. Keeping in view this decision, instructions dated 8th August, 1985 Annexure R.3 were issued. It is, thus, contended on behalf of the respondents that the petitioner is not covered within the definition of the term 'Family' as given in Annexure R.1 and she is, therefore, not entitled to the grant of family pension.

(4) I have heard the learned counsel for the parties. No doubt it is a very hard case and a very paltry sum of family pension would have been payable to the petitioner had it been so granted by the respondents. The learned standing counsel for the Union of India in spite of my asking could not make any concession before me to provide succour to the petitioner who is a poor widow. I have, therefore, no option but to decide the case keeping in view the legal aspects of the family pension scheme, relief under which is sought by the petitioner.

(5) The learned counsel for the petitioner contended that the provision in Foot Note No. 2 of para 4 in the order Annexure R. 1 to the effect that marriage after retirement will not be recognised for purposes of these orders is discriminatory. He contends that no reasonable classification can be made between the widows of the Government servants out of the marriage contracted while their

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being in service and the marriage contracted after the date of their retirement from service for the purposes of family pension. In his support he relies on *D. S. Nakara and others v. Union of India* (1) and contends that neither it is a reasonable classification based on intelligible differentia nor is there any rationale behind it. I, however, do not agree with this submission. While undertaking the liability to pay family pension, the Government in its wisdom has taken into consideration the family liability of a Government servant before he retires from service. If he incurs liability after the date of retirement, i.e., by contracting a marriage or adopting a child, the Government cannot be saddled with the liability of maintaining the widow or such dependant adopted child in case of the death of the retiree. The classification is apparently reasonable and there is decidedly a rationale behind it.

(6) It would not be out of place to mention here that rule 54 (14-A) of the Central Civil Services Pension Rules, which also provides for payment of family pension to the family of the retired Government servant in case of his death, defines 'family' *inter alia* as under:—

“ ‘Family’ in relation to a Government servant means—

- (i) wife in the case of a male Government servant or husband in the case of a female Government servant, provided the marriage took place before retirement of Government servant.”

An almost analogous provision is contained in rule 6.17 of the Punjab Civil Services Rules Volume II, which makes provision for a family pension scheme. It defines 'family' as under :—

“(3) ‘Family’ for purposes of this Scheme will include the following relatives of the Government employee:—

- (a) wife in the case of a male Government employee and husband in the case of a female Government employee;
- (b) ...
- (c)

Note 1.—...

Note 2.—Marriage after retirement will not be recognised for purposes of this Scheme”.

(1) AIR 1983 S.C. 130.

(7) Thus, the rule that widow from a marriage contracted by a retiree after his retirement from service shall not come within the definition of 'family' for the purposes of grant of family pension appears to be universal and is based on reasonable classification. I thus, find no force in the contention of the learned counsel for the petitioner that the provision to this effect is either discriminatory or unconstitutional.

(8) Consequently, I am constrained to disallow this writ petition which is, therefore, dismissed. The parties are, however, left to bear their own costs.

R.N.R.

Before V. Ramaswami, C.J. and Ujagar Singh, J.

SURJIT SINGH,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Misc. No. 508-CI. of 1986 in R.F.A. No. 1623 of 1978

January 14, 1988.

Constitution of India, 1950—Article 136—Land Acquisition Amendment Act (LCVIII of 1984)—Section 30(2)—Amended provision—Benefit of—Pendency of proceedings—Meaning of—Special Leave Petition in Supreme Court—Scope of—Whether a proceeding pending.

Held, that Article 136 of the Constitution of India, 1950 has vested in the Supreme Court power to entertain on appeal in its discretion by granting special leave from any judgment, decree, determination, sentence or order in any case or matter passed by any Court or tribunal in the territory of India. Thus, the Supreme Court could have entertained an appeal from the judgment of this Court in L.P.A. No. 281 of 1981. The petition filed involving the jurisdiction of the Supreme Court under Article 136 of the Constitution is, therefore, clearly a proceeding pending within the meaning of Section 30 of the Land Acquisition (Amendment Act), 1984. The mere fact that it is a discretion vested in the Supreme Court to grant special leave, it could not be said that the proceedings were not pending.

(Para 1).