

has already been paid an amount of Rs. 43,000 approximately and each of the Peons has been paid an amount of Rs. 36,000 approximately. He further submits that each of the workman has been reinstated since 1991, except respondent Nos. 4, 12, 14, 16, 17, and 19 in LPA No. 1334 of 1990. These respondents were offered reinstatement but they had not joined.

(11) In the circumstances of his case, we think that the offer made on behalf of the appellant-Bank is absolutely just and fair. Even though, we are not persuaded to up-hold the findings recorded by the Labour Court and the learned Single Judge, we think the ends of justice would be met if the respondents-workmen are allowed to continue on the posts held by them. They are further allowed to retain the amount already paid to them. However, since the respondent-workmen had not performed any duties during the period of litigation and fairly significant amounts have been paid to each one of them, it would not be fair to place any further financial burden on the appellant-Bank.

(12) Resultantly, the appeals are allowed to the extent that the finding that the Bank was guilty of unfair labour practice is reversed. However, we do not interfere with the order of reinstatement with continuity of service. It is, however, clarified that the workmen shall not be entitled to any payment beyond the amounts already received by them. No costs.

J.S.T.

Before Jawahar Lal Gupta & Iqbal Singh, JJ

STATE OF PUNJAB & ANOTHER,—Appellants

versus

KHARAK SINGH KANG & ANOTHER,—Respondents

L.P.A. No. 640 of 1990

20th January, 1998

Punjab Civil Services Rules, Vol. II—Rl. 6.17—'Family'—Rule cannot be sustained to the extent that it excludes parents of deceased employee from concept of family—Rule to be reasonable and not arbitrary.

Held, that every executive action and in particular a legislative measure like a statutory rule governing the grant of pensionary benefits should meet the test of reasonableness as contemplated under Article 14 of the Constitution. Admittedly, the parents of a deceased employee are eligible for the grant of gratuity. They are also eligible for the grant of certain kinds of pension. In the case of an employee who is not even married, they are not entitled to the grant of family pension. The rule has no rationale. It is totally arbitrary. It is not reasonable. Rule 6.17 of the Punjab Civil Services Rules, Volume II cannot, thus, be sustained to the extent it excludes the parents of the deceased Government employee from the concept of 'Family'.

(Para 10)

Charu Tuli, DAG, Punjab, *for the Appellants*.

Ravinder Chopra, Advocate, *for the Respondents*.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Can the parents of a deceased government employee be excluded from the definition of 'Family' and denied the benefit of family pension? The learned Single Judge has taken the view that "there is no justification for excluding father and mother of an unmarried deceased Government servant from the definition of 'Family' for the purposes of grant of family pension....." The State of Punjab questions the decision and has filed this appeal. A few facts may be noticed.

(2) Daljit Singh joined service as a Clerk in the office of the Inspector General of Police in the year 1973. He unfortunately expired in 1985. After his death, the parents of Daljit Singh applied for the grant of family pension. Their claim was declined. They filed Civil Writ Petition No. 11118 of 1989. They prayed for the issue of a writ of *mandamus* directing the respondents to release the family pension from the date of death of Daljit Singh.

(3) The State of Punjab contested this claim. A written statement was filed by Mr. Harbans Lal Kapoor, Superintendent of Police. It was averred that the petitioners were entitled to the payment of *ex-gratia* grant. However, the grant of family pension was covered by the provisions of Family Pension Scheme, 1964. Under the rules, "the parents (mother & father) do not fall under

the definition of 'family' for the grant of family pension in the case of death of their son." Consequently, it was prayed that the writ petition be dismissed.

(4) As already noticed, the learned Single Judge negatived the plea of the respondents and allowed the writ petition. Vide judgment dated the 6th February, 1990, the respondents were "directed to grant to the petitioners Family Pension at the rates admissible under the Family Pension Scheme, 1964, from the date of death of Daljit Singh...." In spite of the lapse of almost eight years, the directions have not been complied with.

(5) On behalf of the appellants, it has been contended that even though the parents of a deceased employee had been included in the the definition of 'Family' under the 1951 Scheme, they were excluded while promulgating the 1964 Scheme. Resultantly, they are not entitled to the grant of family pension and the directions given by the learned Single Judge deserve to be reversed.

(6) On behalf of the present respondents (the writ petitioners), Mr. Chopra has pointed out that Kharak Singh, the father of the deceased employee (respondent No. 1) has expired during the pendency of the appeal. The only surviving member of the family viz. mother has no source of livelihood. In spite of that, the directions given by the Court have not been complied with for the last about eight years. Furthermore, it has been contended that there is no rationale for excluding the mother and father from the definition of 'Family' for the purpose of grant of family pension. Learned counsel has placed reliance on the decision of their Lordships of the supreme Court in *Smt. Bhagwanti v. Union of India*, (1).

(7) It is not disputed that under the 1951 Scheme, the father and mother were included in the definition of 'Family', for the grant of Family Pension. It was specifically provided that the family "includes only wife, legitimate child, father or mother, dependent upon the deceased for support". Even today, under Rule 6.16-B, the father and mother (including adopted parents....) are included in the definition of family for the purpose of determining entitlement to the payment of death-cum-retirement gratuity. Similarly, they are also eligible for the grant of "Wound and other Extraordinary Pension" as contemplated in Chapter VIII of the

(1) (1989) 4 S.C.C. 397

Punjab Civil Services Rules, Volume II. Under Rule 8.34, it has been specifically provided that "if the deceased government employee has left neither a widow nor a child, an award may be made to his father and his mother individually or jointly and in the absence of the father and the mother, to minor brothers and sisters...." It is, thus, clear that the parents have been included in the definition of 'Family' for the purpose of grant of death-cum-retirement gratuity as well as for pension as contemplated under Chapter VIII. Yet, they have not been included in the 'Family' under Rule 6.17 for the grant of family pension. No rationale or reason has either been disclosed in the written statement or at the time of arguments even though the case was adjourned twice at the request of the counsel for the appellants.

(8) 'Next to God, thy parents' says the poet. Not even next to a judicially separated wife or husband is the mandate of Rule 6.17. Those who gave him birth and trained him up have no right to be included in his family ? It does not appeal to logic. We cannot say—Yes.

(9) The purpose of the rules relating to family pension is to provide means of sustenance to the members of the family of the deceased employee. It is not unknown that not only the widow and children but very often even the aged parents are dependent on their son for their livelihood. The provision for family pension has been made to help such dependents. There appears to be no valid basis for excluding the parents from the list of persons who should be entitled to the grant of family pension on the death of the employee.

(10) It is well settled that every executive action and in particular a legislative measure like a statutory rule governing the grant of pensionary benefits should meet the test of reasonableness as contemplated under Article 14 of the Constitution. Admittedly, the parents of a deceased employee are eligible for the grant of gratuity. They are also eligible for the grant of certain kinds of pension. In the case of an employee who is not even married, they are not entitled to the grant of family pension. The rule has no rationale. It is totally arbitrary. It is not reasonable. Rule 6.17 of the Punjab Civil Services Rules, Volume II cannot, thus, be sustained to the extent it excludes the parents of the deceased government employee from the concept of 'Family'.

(11) It is unfortunate that the State has not complied with

the directions given by the Court as far back as February, 1990. Daljit Singh had expired in November, 1985. More than 12 years have passed since then. His mother has not been given even the minimum means of sustenance as contemplated under the Regulations for the grant of family pension. The action of the respondents is highly unfair and arbitrary. It verges on contempt. Irrespective of technicalities of law, the action of the department in not carrying out the directions given by the court, is wholly unfair and illegal.

(12) In view of the above, the question posed at the outset is answered in the negative. It is held that the parents of a deceased employee cannot be excluded from the definition of 'Family' or denied the benefit of family pension.

(13) Resultantly, the appeal is dismissed. It is sad that respondent No. 1, the father of the deceased employee has already passed away. The award has become posthumous so far as he is concerned. However, it should not be allowed to become so even in the case of the mother. Accordingly, we direct that the amount of money due on account of family pension shall be released to the second respondent within 30 days of the receipt of a copy of this order. She will also be entitled to the interest on this amount @ 12% per annum from the date of accrual of pension till the date of payment. We also award token costs of Rs. 1000 to the respondent.

(14) A copy of this order shall be given *dasti* to the counsel for the parties on usual terms.

J.S.T.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

RAGHUBANSH,—Appellant

versus

STATE OF HARYANA & OTHERS,—Respondents

L.P.A. No. 422 of 1991

3rd February, 1998

Limitation Act, 1963—S.5—Regular First Appeal filed after a delay of 12 years—Application filed to condone the delay stating financial constraints and lack of legal knowledge as grounds for