

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

(1) S.B. Civil Writ Petition No. 11923/2024

Sarla Devi Acharya D/o Late Shri Kashinath Vyas, W/o Late Shri Meghraj Acharya, Aged About 74 Years, Resident Of Acharyo Ka Chawk, Bikaner, Rajasthan.

-----Petitioner

Versus

1. The District And Sessions Judge, District Churu (Raj.).
2. Officer-In-Charge (Establishment), Office Of District And Sessions Judge, Churu (Raj.).
3. The Additional Director, Pension And Pensioners Welfare Department, Bikaner.

-----Respondents

Connected With

(2) S.B. Civil Writ Petition No. 11445/2024

Smt. Rajkumari Purohit D/o Late Radha Krishna Vyas, Aged About 75 Years, Resident Of 19, Prem Vihar Extension, In Front Of Chopasani School, Jodhpur.

-----Petitioner

Versus

1. The State Of Rajasthan, Through The Principal Secretary, Agriculture Department, Government Of Rajasthan, Secretariat, Jaipur.
2. The Joint Secretary To Government, Department Of Personnel (K-4/2), Government Of Rajasthan, Jaipur.
3. The Director, Pension And Pensioners Welfare Department, Government Of Rajasthan, Jaipur.

-----Respondents

(3) S.B. Civil Writ Petition No. 18031/2024

Keshar Devi D/o Late Shri Harnarayan Chhagani W/o Late Shri Hemraj Joshi, Aged About 64 Years, Resident Of Ward No. 11, Bisso Ki Gali, Pokhran, District Jaisalmer, Rajasthan.

-----Petitioner

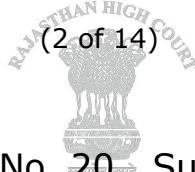
Versus

1. State Of Rajasthan, Through The Secretary, Pension And Pensioners Welfare, Department, Government Of Rajasthan, Jaipur.
2. The Additional Director, Pension And Pensioners Welfare Department, Jodhpur.
3. The District And Sessions Judge, District Jaisalmer (Raj.).

-----Respondents

(4) S.B. Civil Writ Petition No. 19773/2024

Smt. Kamla Devi D/o Late Shri Revat Singh, Aged About 64 Years, Resident Of Khinvana, Tehsil Degana, District Nagour At



Present Residing At Ward No. 20, Sujangarh, Tehsil Sujangarh,
District Churu, Rajasthan.

----Petitioner

Versus

1. The State Of Rajasthan, Through The Joint Government Secretary, Finance Department, Secretariat, Jaipur, Rajasthan.
2. The State Of Rajasthan, Through The Director, Directorate Pension And Pensioner Welfare, Rajasthan.
3. The Additional Director, Pension And Pensioner Welfare Office, Registered Office, Ajmer, Rajasthan.
4. The Block Education Office, Block Degana, District Nagour, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Pramendra Bohra
Mr. Dhanraj Khichi
Mr. Prateek Surana

For Respondent(s) : Ms. Meenal Singhvi for
Mr. Rajesh Panwar, AAG
Mr. Mahaveer Prasad Pareek

JUSTICE DINESH MEHTA

Judgment

Reportable :

05/12/2024

1. These writ petitions involve a question of seminal importance that whether a daughter of a Government servant, who becomes a widow or divorcee' after the death of such employee is entitled to family pension as per the provisions of Rules 66 and 67 of the Rajasthan Civil Services (Pension) Rules, 1996 (hereinafter referred to as 'Rules of 1996') or not.

2. Though they are being decided conjointly, but the facts of S.B. Civil Writ Petition No.11923/2024 : Sarla Devi Acharya Vs.

District and Sessions Judge, Churu & Ors. is being taken into consideration as the lead case.

2.1 One Kashinath Vyas had served as a Reader (Munsarim) in the office of Judicial Magistrate, Ratangarh, Churu. He retired on 31.01.1982 and after his superannuation, he used to get family pension as per the Rules of 1996 until he passed away on 20.09.2017.

2.2 The petitioner, the daughter of said Kashinath Vyas (hereinafter referred to as 'the deceased Government Servant'), was happily married to one Meghraj Acharya, until her father (the Government servant) passed away.

2.3 Petitioner's husband too passed away on 20.02.2023.

2.4 After death of her husband, the petitioner being daughter of the deceased Government servant (aged 73 years) moved an application for grant of family pension under the Rules of 1996 (on 09.02.2024).

2.5 The petitioner's application came to be rejected by the respondent No.1 by way of order dated 04.05.2024.

3. The petitioner has assailed above decision of the respondent No.1 on various grounds, including that the order impugned is non-speaking.

4. Mr. Pramendra Bohra, learned counsel for the petitioner in the beginning submitted that Rules 66 and 67 of the Rules of 1996 unequivocally includes widowed daughter and therefore, the petitioner (being a widow daughter of the deceased Government servant) is eligible to receive family pension under the Rules of 1996.

5. He invited Court's attention towards the clarification dated 16.01.2013 issued by the Pension and Pensioners Welfare Department (hereinafter referred to as 'Pension Department') and highlighted that in light of the clarification to the amended Rule 67 of the Rules of 1996, issued by the State Government, it is apparent that even if a daughter of a Government servant who becomes widow after the death of the Government servant, is entitled for family pension.

6. Learned counsel submitted that such clarification is/was binding upon the respondent No.1 and since the order impugned has been passed in contravention of such circular, the same be quashed and the respondents be directed to pay family pension to the petitioner.

7. Ms. Meenal Singhvi, learned counsel for the respondents, on the other hand submitted that the petitioner cannot claim pension in lieu of the services rendered by her father – deceased Government servant, who had passed away on 20.09.2017. She pointed out that as the wife of the deceased Government servant had already died, the payment of pension was stopped immediately on the death of the Government servant in September, 2017.

8. She submitted that the petitioner cannot claim pension and revival of the pension simply because her husband has subsequently passed away. She argued that the petitioner who was married on the date of death of the Government servant can neither claim her dependency upon her father nor can she claim pension under the provisions of Rules of 1996.

9. She argued that the clarification dated 16.01.2013 which has been relied upon by learned counsel for the petitioner is contrary to the statutory provisions and the scheme of the Rules of 1996 and therefore, the Rules of 1996 would prevail and not the clarification/circular issued by the Pension Department.

10. Notwithstanding above, she submitted that now the Finance Department has issued a clarification dated 26.06.2024 and accordingly, a daughter of the deceased Government servant who has become widow/divorcee', after the death of the Government servant cannot claim family pension.

11. While asserting that the subsequent clarification dated 26.06.2024 issued by the Finance Department is in accordance with the spirit of law, she argued that the earlier circular deserves to be ignored.

12. In support of her contention, learned counsel relied upon the following judgments:-

- (i) ***Union of India & Ors. Vs. Ratna Sarkar (WP.CT 10/2017)***, passed by Division Bench of Calcutta High Court, decided on 07.02.2022;
- (ii) ***Shri Ram Shridhar Chimurkar Vs. Union of India & Anr. (Civil Appeal No.386/2023)***, passed by Hon'ble the Supreme Court, reported in 2023 4 SCC 312;
- (iii) ***Union of India & Ors. Vs. Smt. Hemlata Sharma & Anr. (D.B. Civil Writ Petition No. 20922/2019)***, passed by Division Bench of this Court at Jaipur, decided on 18.11.2021.

13. Mr. Bohra, learned counsel for the petitioner, in rejoinder tried to distinguish the facts of the present case with that of Smt. Hemlata Sharma (supra) by saying that said case relates to a Central Government employee, in which case, a clarification/circular regarding right of a widowed daughter had already been issued by the Central Government negating such right, whereas in the case at hand the clarification/circular issued by the State Government on 16.01.2013 provides otherwise.

14. He argued that the circular issued by the State Government on 16.01.2013, being beneficial in nature is binding upon the respondents and also that the circular which has been relied upon by Ms. Meenal Singhvi, learned counsel for the respondents was issued on 26.06.2024, whereas petitioner's case had been rejected by the respondent No.1 on 04.05.2024, i.e. at least a month prior to issuance of such circular.

15. It is informed by Mr. Pramendra Bohra that many widowed and divorced daughters are receiving family pension after the death of the deceased Government servant, irrespective of the fact that they became divorcee' or widowed, after the death of the Government servant.

16. Heard learned counsel for the parties and given thoughtful consideration over the matter.

17. In order to grasp the legislative intent, it would be apt to bear in mind the legislative history and hence reproduction of Rules 66 and 67 of the Rules of 1996, which existed prior to the

amendment brought by the State (i.e. on 04.09.2012) would be imperative :-

"66. Definitions (Prior to 04.09.2012)

(1) 'Family' for the purpose of these rules will include the following relations of the Government servant:-

(a) wife, in the case of a male Government servant and husband, in the case of a female Government servant;

(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery;

(c) son / daughter including widows/divorced daughter till he/she attained the age of 25 years or on earning a monthly income exceeding Rs.2550/- or upto the date of his/her marriage/re-marriage, whichever is earlier. The term son/daughter shall also include son/daughter adopted legally and posthumous child of a Government servant.

(d) parents who were wholly dependant upon the Government servant when he/ she was alive provided the deceased employee had left behind neither a widow nor a child and the income of parent is not more than Rs.2550/- per month."

(2) 'Emoluments' means emoluments as defined in Rule 45 of Rajasthan Civil Services (Pension) Rules, 1996, which the deceased Government servant was drawing on the date of his death while in service or immediately before his retirement; if on the date of his death while in service or immediately before his retirement such Government servant has been absent from duty on leave (including extraordinary leave) or suspension, emoluments means the emoluments which he drew immediately before proceeding on such leave or suspension.

67. Condition of grant

The family pension shall be admissible to -

(a) a widow/widower, up to the date of death or remarriage, whichever is earlier;

(b) unmarried son till he attains the age of twenty five years or on earning a monthly income exceeding Rs.2550/-;

(c) daughter including widowed/divorced daughter till she attains the age of 25 years or on earning a monthly income exceeding Rs.2550/- per month or upto the date of her marriage/re-marriage, whichever is earlier.

(d) parents who were wholly dependent upon the Government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child and the income of parent is not more than Rs.2550/-.

Provided that if the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years, the family pension shall be payable to such son or daughter for life, subject to the following conditions, namely, -

(i) If there are more than one such children suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them will get the family pension only after the elder next above him/her ceases to be eligible;

(ii) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning livelihood evidenced by a certificate obtained from a medical officer not below the rank of Chief Medical & Health Officer/Medical Jurist setting out, as far as possible, the exact mental or physical incapacity; and

(iii) the person receiving the family pension as natural/legal guardian of such son or daughter or such son or daughter not receiving the family pension through the guardian, shall produce every three years a certificate from a medical officer not below the rank of Chief Medical & Health Officer/Medical Jurist to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

EXPLANATIONS :

(1) A son/daughter shall become ineligible for family pension from the date he/she gets married or on earning a monthly income exceeding Rs.2550/- per month. He/she will be required to produce six monthly a certificate regarding marital status and an annual certificate regarding monthly income.

(2) In such a case, it shall be the duty of the natural/legal guardian or daughter, to furnish a certificate to the Treasury or Bank, as the case may be, every year that she has not yet married.

(3) Family pension to an eligible Government servant/pensioner is payable in addition to his/her pay or pension, in cases where both husband and wife are Government servants."

18. It is to be noted that on 04.09.2012, an amendment was brought by the State Government in Rule 67 of the Rules of 1996 and clause (c) of Rule 67 was amended in such a way that the upper cap of Rs.2,550/- per month was modified to Rs.6,000/- per month, while the age limit of 25 years was obliterated altogether and a new clause (d) was inserted making specific provision for widowed/divorced daughter. Rule 67 of the Rajasthan Civil Services (Pension) (Amendment) Rules, 2012 is reproduced hereunder:-

"67. Condition of Grant

The family pension shall be admissible to -

(a) a widow/widower, upto the date of death or remarriage, whichever is earlier;

(b) unmarried son till he attains the age of twenty five years or on earning a monthly income exceeding Rs.6000/- per month, whichever is earlier.

(c) unmarried daughter upto the date of her marriage or on earning a monthly income exceeding Rs.6000/- per month whichever is earlier.

(d) widowed/divorced daughter of any age upto the date of remarriage or till the date

she starts earning a monthly income exceeding Rs. 6000/- per month or upto the date of death whichever is earlier.

(e) parents who were wholly dependent upon the Government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child and the income of parent is not more than Rs.6000/-."

19. Pertinently, on 04.09.2012, only Rule 67 of the Rules of 1996 was amended without there being any corresponding amendment in the Rule 66 of the Rules of 1996. The requisite amendment came to be introduced in the Rule 66 of the Rules of 1996 on 27.06.2018, in order to bring it in harmony with the Rule 67 of the Rules of 1996.

20. Thereafter, on 27.06.2018 not only Rule 66 but also Rule 67 of the Rules of 1996 stood amended, particularly in relation to the upper cap of monthly income, which was amended to Rs.9,500/- per month in place of Rs.6,000/- per month.

21. If the legislative history is taken into account, it is clear that Rules 66 and 67 of the Rules of 1996 did provide pension to widowed/divorced daughter and what has been changed by virtue of amendments brought on 04.09.2012 and 27.06.2018 is the upper cap; so far as age barrier of 25 years is concerned, the same was obliterated while also amending the income ceiling from time to time. The essence/soul of the Rules still remained intact.

22. But the moot question is, whether a married daughter whose matrimonial ties are severed due to death of her husband or dissolution of marriage, that too on a date posterior to the death

of the Government servant is entitled to pension under the Rules of 1996 or not?

23. According to this Court, the relevant date for the purpose of reckoning the right of family to receive family pension is the date of retirement or the date of death of Government servant if he dies in harness. Such legal position emanates from Rule 4 of the Rules of 1996, which reads thus:-

"4. Regulation of claims to pension or family pension

(1) Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.

(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The day of death shall also be treated as a working day.

Provided that in the case of a Government servant who is retired prematurely or who retires voluntarily under sub rule (1) of rule 53 and sub-rule (1) of rule 50, as the case may be, the date of retirement shall be treated as a non-working day."

24. The Government servant herein (Kashinath Vyas) had passed away on 20.09.2017 after having retired on 31.01.1982. Hence, in the instant case relevant date is 20.09.2017 and if on that date, he had any widowed/divorced daughter(s), then she would certainly be entitled to get family pension in accordance with the Rules of 1996.

25. However since the Government servant had passed away on 20.09.2017 and on such fateful day, the petitioner was having a

surviving matrimony and as she was obviously not a widowed daughter, she cannot be brought within the realm of definition of "family" defined under the Rule 66 of the Rules of 1996 by any stretch of statutory interpretation.

26. For a daughter to be eligible to earn pension under the Rules of 1996, she must have a status of widow or a divorcee' - her status subsequent to the death of the Government servant cannot clothe her with a right to claim family pension under the subject Rules.

27. The Rules of 1996 has an avowed object that a daughter, who is dependent on her father's pension income on the relevant date, should not be rendered helpless. The petitioner's age at the time of filing application was 73 years. Her husband passed away on 20.02.2023; she cannot claim that she was dependent upon her father for 40 years (who had retired on 31.01.1982). A perusal of Form No.14 which the petitioner has filed shows that she has 6 more siblings (Page No.31). That apart, the affidavit given by her and her siblings is ex-facie incorrect if not false - para No.4 of said affidavit (page No.27) recites that said Sarla Devi after death of her husband Late Shri Meghraj Acharya was totally dependent upon said Government servant. Concededly, petitioner's father who was a Government servant passed away on 20.09.2017 while her husband Meghraj Acharya died on 20.02.2023, as is evident from perusal of Annexure-1 and Annexure-4.

28. Afore view of this Court has aptly been pronounced by the Division Bench of Calcutta High Court in the judgment dated

07.02.2022 rendered in the case of Ratna Sarkar (supra). The relevant part is reproduced hereunder:-

"As the legislative intent is demonstrated, the scheme of family pension never included a daughter of a pensioner who was married at the time of the death of the pensioner. The legislature has extended the benefit of family pension to a child/children of a family pensioner on his/her demise under different circumstances as enumerated in the relevant rule. As an instance, a mentally retarded child is bestowed with the legislative blessings to have family pension throughout his life after the demise of his/her parent. But, such benefit is not extended to a married daughter. Extending family pension to a child in distress of the deceased family pensioner is a policy decision of the government. A daughter who became widowed after the demise after her father/mother does not possess any fundamental or statutory right to claim family pension. In the absence of any legislation in this regard, the benefit of family pension cannot be extended to a daughter of a family pensioner who was married at the time of the death of her father/mother. It will be unwise on the part of this Court to exercise its extraordinary or discretionary power to come to any inference contrary to the policy decision of the Government."

29. In light of what has been observed by Division Bench of this Court in the case of Smt. Hemlata Sharma (supra), the circular dated 16.01.2013, so zealously relied upon by the petitioner loses its ground. Relevant part of said judgment rules thus:-

"By administrative circulars, a new class or category which otherwise was not included for the purposes of grant of family pension, could not be included as that would amount to supplanting the rules. The purpose & object of issuing administrative circular is to make more workable the existing rules and not to create a

new class or category of beneficiaries, not contemplated under the rules framed by the rule making authority.

None of the provisions contained in Rule 75 of the Rules of 1993 indicate that the rule ever sought to include a divorced/widowed daughter, who was otherwise leading a married life on the date of death of her father, the retired employee or even on the date of death of her widowed mother, who was getting family pension.

That could have never been the intention of the rule making authority. The purpose of grant of family pension is to provide financial benefits to those, who on the death of the employee were actually dependent on him. To relate back a notional dependency by fiction to a daughter, who was divorced long after death of her father and mother, would amount to include, for the purposes of family pension, the relatives who were actually not dependent on the deceased employee/widow on the date of their death.

30. This Court, therefore, does not find any substance in the petitioner's claim of family pension.

31. Maybe, the State Government had issued a circular dated 16.01.2013, conveying benefit of family pension to daughters who got divorced or are widowed after the death of the Government servant, but such circular being completely contrary to the scheme of the Rules, more particularly Rule 4 of the Rules of 1996 cannot be given any credence.

32. As a result of the above discussion, all the captioned writ petitions are dismissed.

33. The stay applications also stand dismissed, accordingly.

(DINESH MEHTA),J