Kunhami Vs. Union of India (Uoi)

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Court : Kerala

Decided On : Mar-08-2006

Reported in : 2006(2)KLT661

Judge : K.K. Denesan, J.

Acts : Army Pension Regulations, 1961 - Regulations 215, 216, 219, 220, and 221; ;Constitution of India - Article 21

Appeal No. : W.P. (C) No. 32455 of 2004

Appellant : Kunhami

Respondent : Union of India (Uoi)

Advocate for Def. : V.K. Mohammed Youseff, A.C.G.S.C.

Advocate for Pet/Ap. : P.V. Asha and; K. Saritha, Advs.

Disposition : Petition allowed

Judgement :

K. Denesan, J.

1. Petitioner is the mother of Late Shri Kunjabdulla who died in a road accident on 21/01/1982 while serving the Indian Army in Pattiala. Consequent on his death, some amount was paid to his widow--Smt. Haleema, towards terminal benefits.

Ordinary family pension was sanctioned in favour of Smt. Haleema with effect from 22/01/1982. A sum of Rs. 4747/- was also paid on account of death gratuity. Smt. Haleema remarried and lost her right to receive family pension. Shri Kunjabdulla had no issues. On coming to know about the fact of remarriage, the respondents stopped payment of family pension to Smt. Haleema.

2. Parents of Shri Kunjabdulla who were depending on him for their livelihood, applied for family pension. Their request was turned down by the second respondent on 10/02/1984 stating that consequent on the disqualification of the widow to receive family pension, ordinary family pension cannot be authorised to the parents. According to the respondents, if any minor child of Shri Kunjabdulla was alive, claim for family pension will be maintainable on behalf of the child. They submitted in the year 2000, one more application for family pension before the Defence Ministry. This application was transmitted to the third respondent and pursuant to that, Ext.P3 communication dated 28/08/2000 was sent from the office of the third respondent to the petitioner, requesting her to fill up three sets of family pension claim forms which were forwarded to her alongwith the documents mentioned as (a) to (d) therein. With sigh of relief and renewed hopes, she forwarded all the documents to the third respondent. But was disappointed when the Senior Accounts Officer, Chief Controller of Defence Accounts, Allahabad as per letter dated 18/12/2000 took the stand that the petitioner's claim was untenable and liable to be rejected.

3. According to the respondents, parents of the deceased would become entitled to family pension only when the deceased had not left behind any other specific beneficiaries who have prior claim to family pension. Since the widow of the deceased had already been granted family pension, mother of the deceased cannot be regranted family pension, even after stoppage of payment of pension to the widow on her remarriage.

4. Seeking to set aside the above order, the petitioner approached the Director General of E.M.E. Some correspondence took place thereafter among the respondents. However, decision taken by the respondents, as could be seen from Exhibit P9 letter dated 07/01/2003 of the second respondent, was not favourable

to the parents of Shri Kunjabdulla. Feeling aggrieved, representations were filed before His Excellency the President of India. This was followed by other representations filed before the respondents. But the reply sent by the respondents was to the effect that the request made by the petitioner for grant of family pension was not allowable. Left with no other remedy, the parents of late Shri Kunjabdulla filed this Writ Petition praying to quash Exts.P2, P6, P9 and P13 by which they were informed that family pension cannot be granted to them. Petitioner has sought for a declaration that rules/ regulations/orders, if any, prohibiting regrant of family pension to the parents when the original grantee incurs disqualification, are illegal.

5. Third respondent has filed a counter affidavit for and on behalf of the other respondents as well. Contentions to justify the stand taken in the impugned orders are seen taken in the counter affidavit as well.

6. Heard both sides.

7. Facts are not in dispute.

8. Right of the members of the family of an army personnel, who dies while serving the Indian Army, for grant of family pension, will have to be examined in the light of the relevant provisions, namely, Regulations 215, 216, 219, 220 and 221 of the Pension Regulations of the Army, 1961 (for short, the Army Regulation). It is admitted position that if the widow had not contracted a second marriage after the death of late Shri Kunjabdulla, the respondents will continue to pay family pension to her. The same would be the position if any minor son or unmarried daughter of late Shri Kunjabdulla had survived him.

9. Regulation 216 of the Army Regulations enumerates the eligible members of the family of a deceased individual for the grant of family pension. They are

i. Widow lawfully married.

ii. Father

iii. Mother

iv. Son actual and legitimate

v. Daughter actual and legitimate

The above mentioned members of the family would become entitled for family pension in the order of preference, unless they incur disqualification,. Regulation 219 says that a relative specified in regulation 216 shall be eligible for the grant of family pension provided he or she is not in receipt of another pension from Government; he or she is not employed under Government; a widow has not remarried; a father above 50 years of age; a mother who is a widow at the time of her sons death or who becomes widow thereafter has not remarried; a son below the age of 18 years and a daughter who is not married.

10. Father of Shri Kunjabdulla who was the second petitioner in this Writ Petition died during the pendency of these proceedings. Hence, his name has been deleted from the party array. He was not receiving any pension from Government. He was neither employed nor earning any income. He had crossed the age of 50 on the date of death of Kunjabdulla. Same is the case with the petitioner. Now she has become a widow.

11. It is the policy of the Government as discernible from the Regulations that family pension will be paid to the dependent relative of the deceased army personnel. The only inhibition is that more than one such dependent relative shall not enjoy the benefit of family pension at the same time. Therefore, during the period the widow of deceased Kunjabdulla was the recipient of the family pension, the parents of Kunjabdulla, though impecunious, were not entitled to claim family pension. However, as soon as the widow incurred disqualification upon remarriage, the next among the dependent relative eligible as per regulations 216 and 219 of the Army Regulations would become entitled for the family pension contended the learned Counsel for the petitioner. It was submitted that in the facts and circumstances of this case, the petitioner has emerged as the next eligible dependent family member of deceased Kunjabdulla, because, she satisfies the qualifications prescribed for the grant of family pension and has not incurred any disqualification.

12. Regulation 220(a)(i) of the Army Regulations says that family pension shall be granted to him or her who is the nominated heir, alive and eligible. As per regulation 220(a)(ii), in a case where the nominated heir is dead or disqualified on the date on which the pension sanctioning authority decides the claim for family pension, pension shall be granted to the heir who stands in the highest of the living heirs specified in regulation 216 and is eligible under regulation 219. Regulation 220(b) says that when there is no nomination, family pension shall be granted to the living heir who stands highest in the list vide regulation 216 and who is eligible under regulation 219, on the date on which the pension sanctioning authority decides that the claim to pension is admissible.

13. Another important provision which has got a bearing on the question under consideration, is regulation 221 and Clause (b) thereof in particular. The same is therefore extracted below, for easy reference.

'221 (a) Subject to the regulation in Part II of these Regulations governing the payment of belated claims a family pension may be granted as soon as the admissibility of the claim can be verified and with effect from the date following that of casualty which created the claim.

(b) If however a claimant was eligible for a family pension on the date following that of the casualty but dies or becomes disqualified before the date on which the pension sanctioning authority decides that the claim is admissible and the grant is made to another eligible heir in consequence, the grant shall take effect from the date following that of death or from the date of disqualification of the immediately prior eligible claimant. The arrears prior to this date shall in the event of the claim being established and subject to the Regulations in Part II of these Regulations governing the payment of belated claims, be granted to the prior eligible claimant or claimants or to their estates up to the date preceding that of their disqualification, or up to the date of death, as the case may be.' Regulation 221 is intended to deal with claims decided belatedly. However, subregulation (b) of the aforesaid regulation justifies the contention of the petitioner that either on the death of the eligible member or on disqualification of the member who had the prior claim, the next eligible heir will become entitled to the family pension.

Regulation 221(b) speaks about the availability of an eligible claimant for family pension on the date following that of the casualty, delay on the part of the pension sanctioning authority in deciding the admissibility of the claim, in the mean time, the eligible member who had the prior claim dies or incurs disqualification and grant of family pension is made to the next eligible heir in consequence. This regulation provides the date from which the said grant shall be made available to the next eligible heir. What is thus provided is that the grant shall take effect from the date following that of death or from the date of disqualification of the immediately prior eligible claimant. This being the rule position, the claim for family pension made by the parents of late Kunjabdulla cannot be treated differently.

14. In the case on hand, the prior eligible claimant incurred disability on a day subsequent to the decision taken by the pension sanctioning authority to grant family pension to that claimant. If grant of family pension in favour of the next eligible person is permissible on the ground of delay on the part of the pension sanctioning authority to find out the eligible person having the prior claim and grant of family pension to that prior claimant till the date of death or incurring disqualification by that claimant and thereafter to the next eligible heir, denial of family pension to the parents of Kunjabdulla, who are the next eligible heirs, is irrational and unjust. If delay on the part of the sanctioning authority to decide the legally entitled prior claimant justifies payment of pension to another member of the deceased's family who comes within the list of eligible persons the mere fact that family pension was sanctioned to the primarily eligible person before the date of disqualification cannot be good ground to deny grant of pension to another eligible person even after the former dies or incurs disqualification subsequently.

15. Regulation 221 as also 215, 216, 219 and 220 are intended to do justice to the widow, father, mother, minor son and unmarried daughter of the deceased army personnel. These are benevolent provisions framed with the object of rendering financial assistance to the aforesaid category of persons. Hence a liberal interpretation consistent with the object and purpose of the grant is called for. Legislative policy discernible from the scheme of the Army Regulation favours the grant of family pension to deserving dependents of the relative of the deceased army personnel. The only inhibition is that the Pension Sanctioning Authority will

entertain and grant pension to only one at a time. When that dependent dies or incurs disqualification, the right shall pass on to the next eligible dependent. The view taken by the respondents that once family pension is granted to one of the relatives, other eligible members cannot claim family pension even if the former subsequently becomes ineligible to receive family pension, is too techinical, unreasonable and goes against the spirit of the Regulations. The Apex Court ruled that denial of pension to a deserving person amounts to violation of the fundamental right to life guaranteed under Article 21 of the Constitution of India (See S.K. Mastan Bee v. The General Manager, South Central Railway and Anr. : (2003)ILLJ561SC . The scheme of Army Regulations guarantees payment of family pension atleast to one of the eligible members at a time.

16. I, therefore, hold that the father of the deceased Shri Kunjabdulla became entitled to get family pension with effect from the date on which payment of family pension to Smt. Haleema was stopped due to her incurring disqualification. He was entitled to receive family pension till he died on 25/10/2005. Thereafter, the petitioner who is the mother of deceased Kunjabdulla has become entitled to get family pension. The impugned orders taking the contrary view are unsustainable. Those orders are hereby quashed.

17. Respondents are directed to grant family pension due to late Sri. T.E. Soupy, father of deceased Kunjabdulla, with effect from 8/8/1983 till 25/10/2005. Amount of pension thus due to him shall be paid to the petitioner, she being the widow of late Sri. T.E. Soopy. Respondents shall sanction and disburse family pension to the petitioner with effect from 25/10/2005, the date of death of the father of late Kunjabdulla. Arrears of family pension shall be disbursed to the petitioner within three months on receipt of a copy of the judgment. Family pension for the succeeding months shall be paid every month commencing from 01/04/2006. Writ Petition is allowed as above. No costs.