

State of Rajasthan and ors. Vs. Smt. Urmila Devi and ors.

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Court : Rajasthan

Decided On : Jul-23-1996

Reported in : 1996(3)WLC703; 1996(2)WLN207

Judge : B.R. Arora and; G.C. Verma, JJ.

Appeal No. : D.B. Civil Special Appeal No. 290 of 1996

Appellant : State of Rajasthan and ors.

Respondent : Smt. Urmila Devi and ors.

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 20.2.96 passed by the learned Single Judge, by which the learned Single Judge allowed the writ petition filed by the petitioners and directed the respondents to revise the family pension of the petitioners giving them the benefit of Special Pensionary Allowance from the date the family pension became due after the death of the deceased employee, after deducting the amount already paid to them. The respondent-appellants were further directed to give the same benefit to all the other similarly situated persons although they have not approached this Court.

2. Late (Shri) Monohar Lal was employed as a Police Constable in the Police Department in Pali district. On 27.1.68, an information was received through one Mukhbir. The Police Party consisting of the Police Officials and Constables, including deceased Manohar Lal, in a jeep, went on police raid. During the raid, the jeep, in which the police party was travelling, met with an accident and Manohar Lal died. The legal representatives and dependants of deceased Manohar Lal were granted the family pension. Smt. Urmila - the widow of the deceased was granted the family pension of Rs. 40/- per month while the two sons of the deceased, viz., Shashi Kant and Kunj Bihari, were granted Rs. 5/- per month each as the family pension. The two sons, in whose favour though the family pension was sanctioned but they were not paid any amount towards the family pension while Smt. Urmila - the widow of the deceased - was getting the family pension of Rs. 576/- per month including the dearness allowance. The case of the petitioners further is that though the petitioners were entitled for the Special Pensionary benefits as per Chapter XXIII-B of the Rajasthan Service Rules, 1951 as the husband of petitioner No. 1 died while discharging the official duties but this benefit was not granted to the petitioners. Smt. Urmila, Shashi Kant and Kunj Bihari, therefore, filed the writ petition praying therein that the respondents may be directed to revise the family pension in accordance with Rule 268-I of the Rajasthan Service Rules, 1951 (for short, 'the Rules, 1951'). The writ petition filed by the petitioners was opposed by the respondents on the grounds that (i) the benefit of special pension is not available to the petitioners; and (ii) the writ petition filed by the petitioners deserves to be dismissed on the ground of unexplained laches and delay on their part in approaching the Court. The learned Single Judge, by His judgment dated 20.2.96, allowed the writ petition filed by the petitioners and directed the respondents to pay special pension to the petitioners. It is against this judgment dated 20.2.96 that the State and others have preferred this appeal.

3. It is contended by the learned Counsel for the appellants that the benefit, as per the judgment of the Division Bench of this Court in : Smt. Sasvita Yadav v. State of Rajasthan and Ors. (D.B. Civil Writ Petition No. 1668 of 1987-decided on 11.1.90) is applicable to the police personnel who died while discharging their duties, after 11.1.90 and not to the family members of the police personnel who died before the

delivery of the judgment in Savita Yadav's case. Shri Manohar Lal Constable, in the present case, died in the year 1969 and at that time the Special Pensionary Award/benefit as per Chapter XXIII-B of the Rules, 1951 was not applicable and as such the petitioners are not entitled for the special pensionary award. It is, also, contended by the learned Counsel for the appellant that there was an inordinate unexplained delay in approaching this Court and filing the writ petition and the writ petition, therefore, deserves to be dismissed on this score alone.

4. We have considered the submissions made by the learned Counsel for the appellants.

5. Chapter XXIII-B of the Rajasthan Service Rules, 1951, which deals with the Special Pensionary Award, was inserted by the Notification dated 31.12.1965 and was made effective w.e.f. 5.8.1965. Sub-rule (ii) of Rule 268-I deals with the applicability of Chapter XXIII-B of the Rules, 1951 to the police personnel and reads as:

268-I. Applicability.-This Chapter shall apply to the following categories of Government servants on pensionable establishment whether temporary or permanent who are in service on the 5th day of August, 1965 or who enter service on or after that date:

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(ii) The police personnel, whether in regular or irregular units, including R.A.C., upto the rank of Superintendent of Police (other than I.P.S. officers) and Class IV servants followers and other non-combatant staff attached to the Police Force, who are killed while on duty as a result of enemy action (including action by paratroopers and infiltrators from Pakistan).

Rule 268-J deals with the applicability of the award and provides that the award at the rate specified in Rule 268-1 shall be granted under this Chapter to the family of the police personnel, who, while in service on or after 5.8.65, were killed or died as a result of injury sustained in an encounter with the dacoits or died as a result of enemy's action.

6. Sub-rule (ii) of Rule 268-1 and Rule 268-J came-up for consideration before the Division Bench of this Court in : Smt. Savita Yadav's case (supra). The Division Bench of this Court struck down part of Sub-rule (ii) of Rule 268-1, namely, 'as a result of enemy action including action by paratroopers and infiltrators from Pakistan'. The Division Bench further explained that the consequence of striking down this part of the rule will be that Rule 268-J is to be read down by introducing the words 'while discharging their duties' after the words 'killed or died'. The judgment passed by the Division Bench of this Court in Smt. Savita Yadav's case is only explanatory/clarificatory in nature. The provisions of Rule 268- J, as clarified by the Division Bench, as well as Rule 268-I, the part of which has been struck down by the Division Bench have to be read in the same from 5.8.1965 - the date on which the rules were introduced in the Rajasthan Service Rules, 1951. Striking down of the part of Rule 268-1 shall, also, be deemed to be struck-down from the date the Rule came into force. The contention of the learned Counsel for the appellants that the effect of the judgment is only prospective in nature and is not applicable to the families of the deceased police personnel who died while discharging their official duties between the period from 5.8.1965 to 11.1.90, is benefit of any substance. The rule is applicable even to the family members of those police personnel who died while discharging the official duties during this period, also. The effect of striking down of the portion of Rule 268-I is that portion of the rule was not on the Statute Book from the very beginning and the explanatory interpretation given to Rule 268-J is that the benefit of Chapter XXIII-B relating to special Pensionary Award has to be given to all the family members of the police personnel who died while discharging their official duties on or after 5.8.1965, i.e., the date when the rule was introduced and not from the date of the judgment. This benefit of Special Pensionary Award is, therefore, available to all the dependents of the deceased police personnel who died while discharging his official duties on or after 5.8.1965 and is not limited only to the dependants of the police personnel who died after 11.1.90. The contention raised by the learned Counsel for the appellants is, therefore, bereft of any substance.

7. The next contention raised by the learned Counsel for the appellants is that there is an inordinate unexplained delay in approaching the Court by the petitioner-respondents. According to him, the pensionary benefits were awarded to

the petitioner- respondents in, the year 1969 and the benefit of the provisions of Chapter XXIII-B relating to Special Pensionary Award were applicable in the case of the petitioners on that day. It is not disputed that earlier to 1990, these benefits were not given by the State Government to the dependants of any police personnel who died while discharging the official duties and was limited only to the persons who were killed while on duty as a result of enemy action (including action by paratroopers and infiltrators from Pakistan). This part of Sub-rule (ii) of Rule 268-1 was struck down by the Division Bench of this Court in Savita Yadav's case on 11.1.90. Against that judgment, an S.L.P. was filed by the State, which was dismissed by Hon'ble the Supreme Court. After the judgment, the petitioners approached the High Court for the redressal of their grievances. Since the rule is applicable in the case of all the police personnel who died while in service on or after 5.8.1965, the benefit of this rule, therefore, cannot be denied to the petitioners merely on the ground of delay in approaching the Court. The petitioners are seeking their legal due as per the Rules. It was expected of the State Government, being an ideal employer, to have granted the Special Pensionary Award suo moto to all those persons who were entitled for the same instead of pleading the dismissal of the writ petition on technical ground like that of inordinate unexplained delay or latches. We are of the opinion that the delay in the present case, in the facts and circumstances of the case, is not fatal to the case of the petitioners and they are entitled for the relief claimed by them. The learned Single Judge was, therefore, justified in rejecting the contention raised by the learned Counsel for the State. The judgment passed by the learned Single Judge, therefore, does not require any interference.

8. In this view of the matter, we do not find any merit in this appeal and the same is hereby dismissed. The appellants are directed to revise the family pension of the petitioners in accordance with Chapter XXIII-B of the Rajasthan Service Rules, 1951 and grant them the Special Pensionary Award from the date the family pension became due to the petitioner-respondents. The appellants are further directed to extend the benefit of these special provisions enshrined in Chapter XXIII-B of the Rules, 1951 relating to the Special Pensionary Award and revise the family pension of family members of those police personnel, also, who may or may not have approached the appellants or the Court but died while discharging their

official duties, on or after 5.8.1965.

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