

Pappu Devi (Mst.) Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Oct-23-2008

Reported in : 2009(2)WLN338

Judge : Vineet Kothari, J.

Appellant : Pappu Devi (Mst.)

Respondent : The State of Rajasthan and ors.

Judgement :

Vineet Kothari, J.

1. By this writ petition, the petitioner a widow of late Shri Shankar Lal. Who was working as Assistant Sub-Inspector of Police Department, has filed this writ petition for claiming special pensionary Award under Chapter XXIII-B of Rajasthan Service Rules on the ground that her husband Shri Shanker Lal died while on duty in the night intervening 16.12.1991 and 17.12.1991. The petitioner has submitted in the writ petition that the husband of the petitioner Shri Shankar Lal was appointed as Assistant Sub-Inspector in the police department on 20.08.1974 and was posted as ASI at Police Station Abu Road City, District Sirohi. On 16.12.1991 he was asked to go for investigation at 11:30 PM in the night vide entry No. 675 in Rojnamcha report maintained at the said police station vide Exhibit 1 and upon an information received at 1:45PM during the mid night between 16.12.1991 and 17.12.1991 that an accident has taken place of the motor cycle No. RJ 24 M 0249,

the other officials of the said Police Station visited the site and found that the said ASI Shankar Lal was involved in the said accident and he died as a result of the said accident which happened while doing his duty. The petitioner, widow of the said ASI Shankar Lal, was only paid the normal family pension i.e. half of the special pension in accordance with the relevant Rules in RSR. The petitioner preferred this writ petition in this Court on 25.03.1996 claiming aforesaid special pension under Chapter XXIII-B under the Rules 268I, 268J and 268K of the said Rules.

2. The State has filed a reply to the said writ petition and contested this writ petition.

3. Mr. Anil Vyas, learned Counsel appearing for the petitioner submits that as a matter of fact, the controversy involved in this writ petition is covered by a Division Bench decision of this Court in the case of Savita Yadav v. State decided on 11.01.1990 in D.B. Civil Writ Petition No. 1668/1987 which judgment has been produced as Exhibit 10 along with the writ petition. He further submits that after the said Division Bench decision, a coordinate Single Bench allowed the writ petition in similar circumstances namely Smt. Vinod Kumar v. State and Ors., S.B. Civil Writ Petition No. 2254/1993 decided on 21.09.2001. It would be appropriate to reproduce the relevant extract including the extract of the Division Bench Judgment from the judgment of learned Single Judge in Vinod Kanwar's case (*supra*).

2. The validity of these Rules was challenged before this Court in D.B.Civil Writ Petition No. 1668/1987 (Smt. Savita Yasav v. The State of Raj.). This Court held (*sic!* allowed) the said writ petition to the extent of introducing the word 'while discharging their duties' after the words 'killed or died' (in Rule 268J). The relevant part of the order is extracted as follows:

We find force in the submissions with respect of Rule 268 I and Rule 268 J. As regards Rule 268 I no distinction can be made when a police personnel is killed while on duty and when a police personnel is killed while on duty as a result of enemy action. Both die on duty so the benefit should be given to both whether they die on duty as a result of enemy action or they simply die while discharging

duty without any enemy action. The said part of sub-rule(ii) of Rule 268I appears to be violative of Article 14 of the Constitution and therefore that deserves to be struck down. So far as Rule 268 J is concerned that has to be read down so as to include police personnel who are killed or die while discharging their duty, so after the words 'killed or die' while discharging their duty should be read.

Accordingly, this writ petition is allowed. This part of Sub-Rule(ii) of Rule 268 I 'As a result of enemy action including action by paratroopers and infiltrators from Pakistan' is struck down and the consequence thereof is the petitioner would be entitled to benefits as provided in Rule 268 I of the Rajasthan Service Rules and the Rules 268J is read down by introducing the word 'while discharging their duty' after the words 'killed or die'. The State Government is, therefore, directed to give to the petitioner benefits as a result of striking down and reading down the Rules 268 I and the Rules 268 J.

Sd/-

M.C. Jain, Actg. C.J.

Sd/-

R.S. Verma, J

3. I am told that a special leave to Appeal filed by the State Government against the said judgment has been rejected by the Apex Court by order dt. 07.01.1991.

4. In View of the aforesaid, the petitioner is also entitled to the benefit as given in the aforesaid writ petition.

5. Consequently, this writ petition is allowed. The State of Rajasthan is directed to give the petitioner benefits as a result of striking down and reading down the Rules 268 I and Rule 268 J in the case of Smt. Savita Yadav (supra). She will be entitled to the higher pension with retrospective effect including the difference of pension, she has already received. This order shall be carried out within a period of four months from the date of receipt of this order.

Sd/-

(N.N. Mathur) J.

4. I have heard learned Counsel at length and given my thoughtful consideration to the facts of the case and the judgment cited at the Bar. It would be appropriate to reproduce the relevant Rules 268I, 268J, 268K, 268L and 268M from RSR here for ready reference:

Chapter XXXIII-B

Special Pensionary Awards

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-

(i) Police personnel, whether in Regular or Irregular Units including R.A.C. up to the rank of Commandant and Superintendent of Police (other than I.P.S. Officers) who die as a result of encounter with dacoits.

(ii) Police personnel, whether in Regular or Irregular Units including R.A.C. up to 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).

(iii) Police personnel, whether in regular or irregular units including R.A.C. upto the rank of Commandant and Superintendent of Police (other than I.P.S. Officers) who die as a result of encounter with criminals or in the course of confrontation with mobs of crowds during agitation-riot or civil commotion or communal disturbances etc.

(iv) Personnel of Preventive Branch of the Excise Department upto the rank of excise Officer (preventive) who are killed or die as a result of injury sustained while undertaking raids.

268 J. Applicability of Award.- Award at the rates specified in 268 K shall be granted under this chapter to the family of:

(a) Police personnel who while in service on or after the 5th day of August, 1965 are killed or die under any of the circumstances mentioned in the relevant clauses of Rules 268I;

(b) Personnel of Preventive branch of the Excise Department who while in service on or after 18th day of April, 1988 are killed or die under the circumstances mentioned in Clause (iv) of Rule 268I.

268 K. Amount of Award.-Subject to the order provisions of this Chapter the amount of Award and concessions admissible under this Chapter will be as follows:

(i) Gratuity equal to emoluments for eight months.

(ii) Family pension equal to the monthly emoluments which the deceased was drawing at the time of his death payable upto the date when the deceased would have attained the age of superannuation had he survived;

Provided that where the deceased officer happens to be a member of a Contributory Provident Fund the pensionary equivalent of bonus and special contribution calculated at the age on last birth-day, given in Appendix II Chapter VIII of the Jodhpur Government Service Regulations will be deducted from amount of family pension payable under Clause (ii).

(iii) Family pension equal to half of the maximum of the scale i.e. which existed at the time of death and in which pay was being drawn by the deceased in substantive, officiating or temporary capacity from the date family pension ceases to be admissible under Clause (ii) above.

(iv) Children of the deceased shall be entitled to the facility of free education in Government Schools and Colleges within Rajasthan, to the extent as permissible to the children of low paid Government Servants, according to rules there on.

(v) The family of the deceased shall be entitled to expenses incurred on the funeral rites of the deceased upto an amount of Rs. 100/-.

268 L. For the purpose of this chapter.-(1) 'Family' will include the following relatives in order of precedence:

(i) Widow, and if there are more than one widow the oldest surviving widow.

(ii) Minor sons including step sons.

(iii) Unmarried and widowed daughters, including step daughters.

(iv) Adopted minor children.

(v) Minor brothers and unmarried or widowed sisters.

(vi) Father.

(vii) Mother.

(viii) Minor children of pre-deceased son.

(2) Emoluments will mean pay as defined in Rule 7 (24) plus dearness allowance (including dearness pay).

268 M. Conditions of grant.-(1) The grant of Award under this Chapter shall be in lieu of all service pensionary benefits admissible under Chapter XXII, XXIII, XXIII-A and XXXIV.

(2) The Award admissible under this Chapter will be payable to the member of a Officer's family in order of precedence given in Rule 268L(1).

(3) The Award admissible under this Chapter is non-transferable except that in the event of remarriage (including living in circumstances equivalent to re-marriage) or death of the widow, the Award admissible under Clause (ii) and (iii) of Rule 268K shall be re-granted to the person next lower in the order of precedence in Rule 268L(1).

Rule 268N deals with the procedure, therefore, the same is not reproduced here.

5. The learned Counsel for the petitioner further submits that since the Division Bench struck down the words 'as a result of enemy action (including action by paratroopers and infiltrators from Pakistan)' from Rule 268 I and introduced or added the words. 'while discharging their duty' after the words 'killed or died' in Rule 268 K of RSR on the reasoning that 'both die on duty so the benefit should be given to both whether they die on duty as a result of enemy action or they simply die while discharging duty without any enemy action', therefore, the learned Counsel contends that the classification sought to be made for grant of special pensionary award depending upon the special circumstances when a police personnel dies or is killed while on duty, has been obliterated by the aforesaid Divisional Bench judgment and the said judgment having been upheld by the Apex Court, it is no more open to the respondents to contend otherwise and to say that the special pension will not be given to the police personnel, if he dies or is killed while on duty.

6. On the side opposite, Mr. B.L. Tiwari, Additional Government counsel submits that the very purpose of grant of special pension under Chapter XXIII-B with reference to special circumstances was to give extra honour and privilege to the family of such police personnel's, who die or are killed while discharging special kind of duties and the same is a reasonable classification and is not hit by Article 14 of the Constitution of India.

7. He further submits that since the normal pension has already been paid to the present petitioner, therefore, she is not entitled to any special pension as the husband of the petitioner Shri Shankar Lal apparently died in a road accident in the mid night between 16.12.1991 and 17.12.1991. He submits that the reference to special circumstances in Rule 268 I of RSR were incorporated with a special motive in mind by the State Government and the case of the petitioner does not fall within the four corners of the said Rule 268 I and, therefore, the petitioner is not entitled to special pension.

8. In the considered opinion of this Court, once the Division Bench of this Court in Savita Devi Yadav's case (supra) has held that a police personnel, who dies or is

killed 'while on duty' irrespective of the circumstances whether an enemy action or otherwise or in a simple investigation duty in Clause (2) of Rule 268I, have to be treated at par and a police personnel dying or being killed while doing his duty, his family is entitled to special pension under Rule 268 K of RSR, then it is not permissible for the respondent State to contend in the present case that the case of the petitioner's husband who died in an accident in the mid night between 16.12.1991 and 17.12.1997 while he was assigned a particular duty to go on a particular site as per Exhibit 1 Rojnamcha entry, that the petitioner would not be entitled to special pensionary award. It appears that the reasoning given by the Division Bench was with specific observation and premise of treating the police personnels while on duty and those while not on duty only as the permissible classification for the purpose of grant of normal pension or special pension. The first category of police personnels dying or being killed while on duty were entitled to special pensionary Award and others who died while not on duty were entitled to normal or half of the special pension under the relevant Rules. It is true that the special circumstances have been enumerated in four clauses of Section 268I of RSR namely encounter with dacoits in Clause (i) enemy action in Clause (ii) agitation-riots in Clause (iii) raids by excise party in Clause (iv) and Rule 268J also refers to the words 'under any of the circumstances mentioned in the relevant clauses of Rules 268I' to make Chapter XXII-B itself applicable for grant of special pensions but in view of the said classification as far as Clause (ii) is concerned having been struck down by the Division Bench of this Court, it appears to the Court that the classification permissible is only between 'while on duty' and 'while not on duty'. Since the Division Bench clearly stated in its judgment that irrespective of enemy action, if a police personnel dies while on duty, both have to be treated as same, therefore, the special words relating to special circumstances contained in Clause (ii) of Rule 268I were struck down by the Division Bench. Likewise irrespective of special circumstances enumerated in other clauses of Rule 268I in Clause (i), (iii) and (iv) also, a police personnel dying or being killed while on duty would be entitled special pension under Chapter XXIII-B Rule 268K of RSR. The aforesaid conclusion by this Court appears to be the most reasonable conclusion in view of the Division Bench judgment which is binding on this Court in Single Bench. It can hardly be disputed and controverted by the learned Counsel

for the State that the husband of the petitioner, ASI Shankar Lal died while on duty. Even though he died in a road accident, as would be clear from the Rojnamcha entries in Exhibit 1, it cannot be disputed nor it has been done so in the reply filed by the respondents State that at that particular moment the husband of the petitioner, ASI Shankar Lal was on duty having been assigned the same at 11:30 PM and on 16.12.1991 vide entry No. 675 in Exhibit 1. Since the facts are not much in dispute, this Court has reason to draw the conclusion that the husband of the petitioner died while on duty and, therefore, the case of the petitioner would fall within the ambit and scope of Rule 268 I read with Rule 268J entitling her to special pensionary benefits in terms of Rule 268K of RSR.

9. Consequently, this writ petition is allowed and the respondents are directed to give the arrears of pension computing the same under Rule 268K of the Act with effect from the date of death of the husband of the petitioner on 17.12.1991 till date within a period of 3 months from today. The said arrears will bear interest at the rate of 12% per annum, if not paid within three months from today. The petitioner shall be further entitled to regular special pension as aforesaid on month to month basis in accordance with Rules 268K at the rate of monthly emoluments which the deceased ASI Shankar Lal was drawing at the time of his death, with further revision in pay scale and other benefits, had he remained in service till his age of superannuation.

10. Having said this and held in favour of the petitioner, this Court further directs the respondent State and responsible authorities of the Police Department to suo moto review and consider all such cases whether representations are pending before them or not and in order to give equal and fair treatment to all such similarly situated persons namely widows and family members of the police personnel dying or being killed while on duty after 5th August, 1965 when Chapter XXIII-B was inserted to give special pension under aforesaid Chapter XXIII-B of RSR to them irrespective of long lapse of time or limitation. In compliance of this direction, an Action Taken Report indicating as to how many cases have been so dealt with and decided and if not decided reasons therefore, in accordance with the aforesaid directions, by the police Department of the State Government be filed before this Court within a period of six months from today with reference to this

case. This is so because it is felt that State should scrupulously avoid unnecessary litigation and being a welfare State should act fairly and accord equal treatment to all similarly situated persons. Ever since the Division Bench judgment quoted above and two judgments of Single Benches including present one, the position with regard to interpretation of Rule 268I, 268J and 268K has become final as the Division Bench judgment has already been upheld by the Apex Court. This direction is issued so that the similar situated persons, who may or may not be aware of these judgments of this Court should also get the similar treatment at the end of respondent State and its higher authorities of the Police Department. The Action Taken Report or compliance report be placed before this Court in the month of may, 2009.

11. A copy of this judgment be sent by the registered post to the Chief Secretary & Director General of Police immediately.

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