

Smt. Jamna Devi Vs. State and ors.

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Court : Rajasthan

Decided On : Sep-04-2002

Reported in : 2003(1)WLC225; 2003(1)WLN72

Judge : Prakash Tatia, J.

Appeal No. : S.B. Civil Writ Petition No. 1327 of 1997

Appellant : Smt. Jamna Devi

Respondent : State and ors.

Disposition : Petition dismissed

Judgement :

Prakash Tatia, J.

1. Heard learned Counsel for the petitioner as well as learned Counsel for the respondents.

2. The petitioner submitted in the writ petition that his husband Shri Ambalal who was an employee of Government of Rajasthan, being a member of Rajasthan Police, died in the year 1967. In the affidavit filed by the petitioner along with the writ petition her age has been shown as 30 years. In para 4 of the writ petition, it is mentioned that in the year 1970, the family pension pertaining to the petitioner was stopped by the respondents and the family pension, which has already been paid

from 19.9.1970 to 31.11.1970, was also recovered from the petitioner and she was directed to deposit her PPO with the State Government. In para 5 of the writ petition, it is mentioned that pension account of the petitioner was closed by saying that the petitioner got re-married with one Shri Vikramchand Nayak in the month of September, 1970. According to the petitioner, she never re-married with any person after death of her husband Shri Ambalal. The petitioner submitted number of representation to the respondents mentioning therein that she never got re-married with any person but she could not get any relief from the respondents. It is also stated by the petitioner that respondent--Treasury Officer, Udaipur also informed the petitioner that re-commencement of her family pension shall be subject to result of enquiry pending with regard to re-marriage of the petitioner. The petitioner, thereafter, again submitted number of representations to the respondents and, ultimately, the petitioner received communication from the respondents dated 6th June, 1997 (Annex. 3). According to the petitioner, the allegations of re-marriage is absolutely false and denial of the family pension to the petitioner is absolutely illegal. Learned counsel for the petitioner relies upon the decision given by the Division Bench of this Court in the case of Smt. Rukma v. State of Rajasthan and Ors. 2000 (3) RLW (Raj.) Page 1536. As the matter of pension case is a recurring cause of action and therefore, there is no question of any delay or latches.

3. It is clear from the facts mentioned in the writ petition itself that it is not a simple case for seeking relief of family pension but, in fact, even as per the petitioner herself, a direction was issued to the petitioner to deposit the pension payment with the State Government as back as in the year 1970. She was also directed to make payment back, which was paid to the petitioner on account of family pension for the period of 19.9.1970 to 30.11.1970. The order of stoppage of the pension as well as order of recovery of amount from the petitioner was accepted by the petitioner as back as in the year 1970. She complied with the order also and she refunded the amount paid to her. The pension payment order was also surrendered by the petitioner in the year 1970 and, therefore, there was a final order of stoppage of the pension and it is found that petitioner was wrongly paid family pension. This order also become final and accepted order.

4. Whatever cause of action which was in the nature of recurring before passing of the above order and acceptance by the petitioner, became concluded and final and character of recurring cause of action, came to an end. The order of the stoppage of the pension, recovery of the pension amount and direction to deposit PPO do not give rise to a recurring cause of action. The recurring cause of action may in facts of the case loses its character of recurring cause of action and this is a case in which the alleged recurring cause of action of the petitioner has come to an end in the year 1970. These orders which we passed in the year 1970 are not under challenge even till today and rightly they have not been challenged as challenge of these orders could have been made only within reasonable period of time and could not have been challenged after about 27 years of the passing of the order as present writ petition has been filed in the year 1997.

5. In case any relief is granted to the petitioner in this writ petition and orders of stoppage of the pension and direction to deposit PPO remains then there will be two contradictory orders, one for grant of pension in the writ petition and other for a order of stoppage of the family pension to the petitioner. Both cannot co-exist. The writ petition filed by the petitioner is not maintainable without challenging the orders passed as back as in the year 1970.

6. Therefore, writ petition of the petitioner deserves to be dismissed and is hereby dismissed.