**Vidya Devi Vs. the Union of India (Uoi) and ors.**

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**Court** : Patna

**Decided On :** Aug-06-2009

**Judge** : Shailesh Kumar Sinha, J.

**Appeal No.** : CWJC No. 2601 of 2007

**Appellant** : Vidya Devi

**Respondent** : The Union of India (Uoi) and ors.

**Judgement** :

**Shailesh Kumar Sinha, J.**

1. As prayed for on behalf of the petitioner, let Director General, Border Security Force, Pushpa Bhawan, Madan Giri, New-Delhi-62 be added as Respondent No. 6.

2. Heard learned Counsel for the petitioner and the State.

3. The claim of the petitioner is for payment of Family Pension upon death of her son who was working as a Constable in the Border Security Force.

4. The son of the petitioner died on 4.12.2002. The petitioner, thereafter, approached the authorities for sanction of Family Pension. The request for sanction of Family pension was rejected and communicated to the petitioner as per letter dated dated 21.11.2006 as contained in Annexure-8 enclosing the copy

of the letter number PAD/18-106680(42)/PN-III/BSF/2002 dated 13.11.2006 wherein it has been stated that on verification it is found that the annual income of the father of the deceased stood at Rs. 43,592/- out of which Rs. 42,592/-was from Pension which he was receiving as a retired Government servant. The only ground for rejecting the grant of Family Pension is the annual income which is found to be excess of ceiling income of Rs. 2550/- per month.

5. Learned Counsel appearing on behalf of the petitioner submits that the respondents have committed a factual mistake in arriving at the figure Rs. 42, 592/- being the amount of Pension of the father of the deceased for the purpose of rejecting the claim of Family Pension. It is further submitted that the income of Pension, if any, has to be taken into consideration as on the date of death i.e. 4.12.2002.

6. It is further submitted that on perusal of the copy of the Pass-Book in which the Pension of the father of the deceased or the husband of the petitioner is credited in the Bank is annexed in Annexure-9 from where it would appear that at least from beginning of the year 2003, the monthly Pension is being credited in the Bank as Rs. 2401/- per month only and taking that figure into consideration the annual income would come to Rs. 28,812/- and not Rs. 42,592/- as taken into consideration by the authorities vide Annexure-7 and as such denial of the Family Pension on the grounds stated in Annexure-7 and communicated through Annexure-8 can not be sustained in the eye of law and deserves to be quashed.

7. Learned Counsel appearing on behalf of the Respondent-Union of India, on the other hand, submits that for the purpose of assessing the annual income there were two Certificates of income available on the record issued by the Circle Officer, Revilganj, Saran vide Certificate at Serial 160 dated 5.3.2003 and another Certificate as contained at Serial 696 dated 28.8.2003, which have been annexed vide Annexures-1 and 2 respectively of the writ application. It is further submitted that in order to consider the income of the family afresh, the matter was referred to the Circle Officer-Rivilganj, Saran, which was replied by the Circle Officer as per Letter No. 138 dated 24.6.2009 as contained in Annexure-A to the supplementary counter-affidavit of the writ petition. As per the said letter, the Circle Officer

informed about Certificates granted by him as per Serial 160 dated 5.3.2003 which is Annexure-1 to the writ application. However, there is no mention with regard to the Certificate as contained at Sl. No. 696 dated 28.8.2003. Besides the above, the Circle Officer further communicated that on being asked to the petitioner to furnish the information regarding amount of Pension which her husband was getting per month as also the copy of Bank Pass-Book in order to find out as to what was the amount credited to the account of the husband of the petitioner as on the relevant date i.e. 4.12.2002, as such it could not be ascertained afresh with regard to the income of the husband of the petitioner as the above relevant documents were not produced.

8. Considering the submissions of the parties and their respective pleadings, it appears that the relevant consideration for sanction of Family Pension to the petitioner is as to what was the annual income of the petitioner on the date of death of her son i.e. 4.12.2002. In other words, the income of the family of the deceased for sanction of the Family Pension would be income of the family on the date of death of the son of the petitioner.

9. From perusal of copy of the Bank Pass-Book as contained in Annexure-9 to the writ application, the petitioner has made an attempt to show that the monthly income from Pension was only Rs. 2401/- at least from the beginning of the year 2003.

10. The learned Counsel for the Respondent-Union of India, however, submits that the relevant period is between April, 2002 to March, 2003 for assessing the income for consideration for sanction of the Family Pension.

11. Therefore, from the discussions above, it appears that the figure Rs. 42,592/- arrived at by the Respondents as an annual income from Pension does not appear to be correct for the purpose of assessing the income of the husband of the petitioner in the month of December, 2002, since it appears that the aforesaid figure Rs. 42,592/- has been taken into consideration in the year 2006 which is not relevant for consideration for sanction of the Family Pension which accrued immediately following the date of death.

12. In the above circumstances, in order to consider the matter afresh as to what was the income of the husband of the petitioner at the time of death of her son, so as to decide the entitlement of Family Pension, the matter is remitted to Respondent No. 6 to consider the relevant documents including the copy of the Pass-Book indicating the amount credited in the account of the husband of the petitioner on account of Pension income received by him or any other material in order to find out the annual income of the husband of the petitioner. Upon such consideration, in case it is found that the income of the husband of the petitioner is not more than Rs. 2550/- per month in the relevant year i.e. 2002, the competent authority of the Respondent-Union of India i.e. Respondent No. 6 shall immediately issue necessary order in connection with the sanction of Family Pension to the petitioner alongwith the statutory interest thereon. Such exercise and final decision be taken by Respondent No. 6 expeditiously preferably within a period of four months from the date of receipt/production of copy of this order, in accordance with law.

13. With the aforesaid observations/directions, the writ application stands disposed of.