

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P NO. 2232 of 2017

Between:

Syed Irfan Ali

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 16.08.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?

2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes

3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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! Counsel for the Petitioner : Mr G.Ravi Mohan

^ Standing Counsel for Respondents: G.P. for Services I

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P NO. 2232 of 2017

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Services-I.

2. This writ petition is filed to issue an order, direction or Writ more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in issuing Memo dated 15.06.2016 as illegal, arbitrary and in violation of principles of natural justice and consequently, set aside the same and direct the respondents to grant family pension to the petitioner.

3. The case of the petitioner, in brief, is as follows:

a) The Petitioner's father worked as sub- registrar in the 1st Respondent office and retired from service in the year 1955 and he was granted with pension till his death on 28.10.1981 and thereafter, the petitioner's mother late Hameeda Begum was being paid Rs.8,104/- towards pension till her death on 24.04.2004.

b) The Director of Medical and Health Department issued a revised medical bill for Rs.1,00,000/- under family pension.

c) The Petitioner is a crippled person having 90% disability and is not in a position to work in any manner. As per Rule 50, Category-1 (B)(iii) reads as under:

In the case of a son or daughter of a Government servant, who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the ages of son/daughter as specified in clause (i) and (ii) above the family pension should be payable to such son or daughter for life.

d) In view of physical status, the petitioner made representation on 16.03.2015 to sanction of family pension by disclosing the medical certificates showing 90% disability. Thereafter, the 4th respondent issued proceedings dated 12.01.2006 to the 2nd respondent to sanction pension and the 5th respondent issued a letter dated 02.06.2016 that he would not be entitled for pension as the petitioner was granted with compassionate pension, but not family pension.

e) The petitioner made another representation to the 1st respondent that the pension granted to his father was family pension and not compassionate pension. Thereafter the 5th

respondent issued proceedings dated 15.06.2016 directing the petitioner to approach the Government for necessary action.

f) The petitioner has already represented to the Government that his father and mother was paid family pension which is clear from the letter dated 14.12.2011 and 12.01.2006.

g) In spite of the petitioner making a representation for grant of pension on medical grounds as per the G.O.Ms.No.315, Finance (Pension-I) Department, dated 07.10.2010, the respondent has not taken any action till date. The Central Government issued notification, dated 15.09.2016 stating A.P. Administrative Tribunal does not have jurisdiction on the Telangana State. Hence, this writ petition.

4. The case of the 1st respondent, in brief, is as follows:

a) After the death of the petitioner's father, the family pension was released to his mother till her death. The mother of the petitioner was died on 24.04.2014. The petitioner submitted pension papers, that he is eligible for pension as per G.O.Ms.No.315, Finance (Pension-I) Department, dated

07.10.2010 as he is physically disabled. Vide letter No. A/1177/2015, dated 12.01.2016, the 4th respondent requested the Commissioner and Inspector General, Registration and Stamps, Telangana (C and IG) to supply the pension file along with Service Book of the petitioner's father as purported to have been retired from IG's Office as per the representation of the petitioner and it was confirmed by the C and IG that there was no Service Book available with their office pertaining to the petitioner's father in Memo.No.A2/305/2016, dated 23.02.2016 in reply to the 4th Respondent letter dated 1.02.2016.

b) The 4th Respondent through letter No.A/1177/2015, dated 27.02.2016 submitted three sets of pension papers along with physically handicapped certificate produced by the petitioner to the Accountant General, Hyderabad for taking necessary action.

c) The Accountant General, Telangana through letter FPCell/T-II/PV-7/III/E-2/FP-263/81-82/185027, dated 02.06.2016 has returned the proposal informing that the Petitioner is not eligible for grant of family pension since the deceased government servant retired on 31.10.1955 and the spouse of

the deceased government servant will be granted only compassionate pension which ceases on remarriage or death whichever is earlier however the same was granted till the Petitioner's mother death which was informed to the Petitioner through 4th Respondent Memo No.A/1177/15 dated 15.6.2016.

d) The C and IG through Memo.No.A2/305/2016, dated 29.08.2016 enclosed the Petitioner's representation dated 20.8.2016 directing to seek clarification from the Government as advised by the Accountant General, Telangana.

e) The Government informed the petitioner that he is not entitled for family pension as spouse of deceased Government servant was granted compassionate pension, the benefit of family pension to physically crippled is not admissible in respect of the compassionate pension through Memo No.21853/Regn.I/A1/2016-6 dated 2.6.2017. Hence, the writ petition is without merits and is liable to be dismissed.

PERUSED THE RECORD

5. The Order impugned vide Memo No.A/1177/2015 dated 15.06.2016, reads as under:

“With reference to your representation in the reference 1st cited, it is to inform that the Accountant General, Hyderabad has informed in the reference 6th cited that as per clause (c) Rule 50(5) IB(iii) of APRPRs 1980, the benefit of family pension to physically crippled or mentally disabled children is only admissible in respect of Government employees who are entitled to family pension under the rules specified. Further, it was asked that the Government may be approached for any further clarification.”

6. Rule-50 Category-I (B)(iii) reads as under:

“In the case of a son or daughter of a government servant who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the ages of son/daughter as specified in Clause (i) and (ii) above the family pension shall be payable to such son or daughter for life.”

7. Letter No.A/1177/2015, dated 12.01.2016 of the Deputy Inspector General Registration and Stamps, Hyderabad addressed to the Commissioner and Inspector General, Registration and Stamps, Telangana State, Hyderabad, reads as under:

“Kind attention is invited to the reference cited, wherein Sri Syed Irfan Ali, S/o. Late Syed Ehsan Ali (Sub

Registrar retired) has submitted that after demise of his father Sri Late Syed Ehsan Ali (Sub Registrar) the family pension was sanctioned to Smt. Hameeda Begum, W/o. Sei Syed Ehsan Ali, with PPO. No. 06C001679. He further stated that his mother Smt. Hameeda Begum was expired on 25.04.2014. Further, he has requested to sanction family pension of his father as per the orders issued in G.O.Ms. No. 315, Fin (Pension-1), Department, dated 07.10.2010.

In this regard, it is to submit that as per certificate enclosed with pension papers, the individual is disabled physically with 90% of disability.

Therefore, it is requested to kindly supply the pension file along with Service Book of Sri Late Syed Ehsan Ali, Sub Registrar (retired) as the Commissioner and Inspector General(R&S), Hyderabad was competent authority to sanction pension to the Sub Registrars in the past.”

8) Letter dated 02.06.2016, vide FPCell/T-II/PV-7/III/E-II/FP-263/81-82/185027 and 185028 of the Senior Accounts Officer addressed to the Deputy Inspector General, Registration and Stamps, reads as under:

“Proposals received vide your letter cited are returned herewith.

The applicant is not eligible for grant of family pension, under G.O.No. 315 dated 7.10.2010 for the following reason Deceased Government servant retired on 31.10.1985 and the spouse of the deceased Government servant was granted only compassionate pension which ceases on remarriage or death whichever is earlier. However the same was granted till her death i.e., 25.4.2014.

As per clause (c) below Rule 50(5)IB(iii) of APRPRs 1980, the benefit of family pension to physically crippled or mentally disabled children is only admissible in respect of Government employees who are entitled to family pension under the rules specified.

Government may be approached for any further clarification in this regard.

9. Counter affidavit filed on behalf of respondent

No.2, relevant paras read as under:

“It is humbly submitted that the Department has forwarded the pension proposals of the Writ Petitioner for necessary action vide letter dated 27-2-2016. This Respondent office while considering the related Rule position on the date of death of the Government servant i.e 31.10.1955 and also considering Pension Authorization granted in favour of the mother of the Writ petitioner and widow of the deceased employee and also considering the fact that the said widow was paid the compassionate pension up to 25.4.2014, this

Respondent office vide letter dated 2-6-2016 informed the Department to approach the Government for further clarification

It is humbly submitted that as per G.O.Ms.No. 315 dated 7-10-2010, Family pension can be granted under physically crippled & mentally disabled children category only when Family pension was granted. It is further submitted that from the enclosures filed by the Government in the Counter Affidavit the said Department approached Government vide its Letter dated 6-9-2016. The Government vide their order dated 2-6-2017 has informed the said department about the rejection of the proposals of the Writ Petitioner

In view of the said rejection of the pension proposals finished by the Department and the rejection of the proposals by the government, the Petitioner is not entitled for any relief and consequently the impugned letter of 4th respondent dated 15-6-2016 as well as the letter addressed by the Department to the Government on 6-9-2016 has no consequence now. Hence, the averments made by the Petitioner against this Respondent office are incorrect and each one is denied. It is humbly submitted that the Family pension is not admissible to the handicapped son (petitioner), Sri. Syed Irfan Ali.

3. She was granted Compassionate pension but not Family pension.

10. The relevant portion of G.O.Ms.No.315, dated 07.10.2010, Finance (Pension-I) Department, read as under:

“2 (iv) In the case of Physically/Mentally disabled sons/daughter throughout their life;

4.(A) Category I (ii) (b) Sons/daughters who are physically/mentally disabled throughout their life subject to the conditions specified therein.”

7(I) CATEGORY I:

B.(iii) In the case of a son or daughter of a Government servant who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the ages of son/daughter as specified in clause (i) and (ii) above the family pension shall be payable to such son or daughter for life subject to the following conditions, namely;

(iii)(c) The benefit of family pension to physically crippled or mentally disabled children, however, is only admissible in respect of Government employees who are entitled to family pension under this rule or under the rules specified in part II of these rules;

(iii)(f) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate

obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child;

CATEGORY II:

(B) II (ii) Sons/daughters, including such so/daughter adopted legally before retirement or son/daughter born after retirement, and also including physically/mentally disabled son/daughter.

11. The counter affidavit filed by the respondent No.1, in particular, Paragraph No.2 reads as under:

A representation was received on 16.12.2015 from the petitioner Sri Syed Irfan Ali, S/o. Late Syed Ehsan Ali, wherein petitioner submitted that his father late Ehsan Ali retired while working as Sub-Registrar, Inspector General, Registration and Stamps, Hyderabad and was died on 28th October, 1981; and after the death of petitioner's father, the family pension was released to his mother Smt Hameeda Begum till her death.

12. Letter dated 14.07.1982 of the Inspector General of Registration and Stamps, Hyderabad addressed to the Accountant General PV 7 Section, A.P., Hyderabad, read as under:

"Please refer to the reference cited.

2) The family pension papers in duplicate of Smt Hameeda Begum W/o late Sri Ehsan Ali, retired sub-Registrar, are herewith retransmitted to the Accountant General (AP) Hyderabad along with the marriage certificate of Smt Hameeda Begum with late Sri Ehsan Ali as advised. As the correct date of retirement is not available in this office records, the information is given below as furnished by the party in her letter dt. Nil and a copy of the same is enclosed herewith for information.

i) Date of retirement of Sri Ehsan Ali, 1.11.1955.

ii) Date of marriage of the deceased with Hameeda Begum 8.1.1955. As regards item 2 of your letter, the compassionate pension statements are countersigned by Gazetted Officer.

3) I request you to issue the verification report in this case at an early date.

SANCTION ORDER

Sanction is hereby accorded for the payment of family pension in favour of Smt. Hameeda Begum, W/o late Sri Ehsan Ali, retired Sub-registrar, as found admissible by the Accountant General (AP) Hyderabad under the rules."

13. The Joint Director, Pension Payment Officer, M.J. Road, Hyderabad pension payment certificate on 03.07.2015 to Hameeda Begum as follows:

“Certified that Smt Hameeda Begum, holder of P.P.O.No.06C001679 she is drawing pension of Rs.3,678/-00 D.A. of Rs.4,426/- PM totaling Rs.8,104/- per month.

She draws the pension from this office through Vijaya Bank, Malakpet. This certificate is issued to Sri Syed Rizwana Ali (son) of his application dated 29.04.2015 in connection with obtaining legal heir certificate purpose of his/her son/daughter.”

14. The petitioner filed reply affidavit, in particular, paras 3, 4 and 5 read as under:

“3. It is submitted that admittedly in the present case the Petitioner father was an employee of the State Government who worked as Sub-Registrar (Registrar and Stamps Department) who retired from his services in the year 1955 and he was granted with pension till his death i.e. on 28-10-1981 and thereafter Inspector General of Registrar of Stamps Hyderabad was pleased to issue a letter dated 14- 07-1982 to the 2nd Respondent sanctioning order for the payment of family pension in favor of Smt. Hameeda Begum, W/o. Late Ishan Ali (retired SRO) as per the rules. The said letter clearly discloses that the Petitioner father was released with PP No. 75082 and consequent to his death, his wife Smt. Hameeda Begum was granted with family pension. It is submitted that as it is a family pension, the Petitioner is entitled for the family pension.

4. It is submitted that there was no compassionate pension granted to the Petitioner's father at any point of time. It is submitted that compassionate allowance and pension will be granted to the Government servant who is dismissed or removed from service provided that the appropriate authority should sanction the compassionate allowance not exceeding 2/3rd pension or gratuity. It is submitted that in the present case it is not the case of removal or dismissal from service, the Petitioner's father retired from service. In view of the same the Petitioner mother was also sanctioned with family pension since 1982 to till date of death 25-04-2014. Hence, the allegation that the Petitioner was paid compassionate pension is absolutely illegal and incorrect.

5. It is submitted that a family pension would be entitled for medical bills. Accordingly, when the Petitioner's mother was fell ill she got an approval from Director of Education, Hyderabad for disbursement of amount of Rs.1,00,000/-. The said document is filed herewith.

DISCUSSION AND CONCLUSION

DISCUSSION

15. A bare perusal of the order impugned dated 15.06.2016 of the Deputy Inspector General, Registration and Stamps, Hyderabad vide Memo No.A/1177/2015, clearly indicates that

the petitioner's representation dated 16.12.2015 for sanction of Family Pension as per Clause (c) Rule 50 (v) (I)(B) (iii) of A.P.R.P.Rs, 1980 had been examined by the Accountant General, Hyderabad and that he had informed through letter dated 02.06.2016 that the benefit of family pension to physically crippled or mentally disabled children is only admissible in respect of the Government Employees, who are entitled to family pension under the rules specified. Further the petitioner was asked to approach the Government for any further clarification. A bare perusal of the order impugned clearly indicates neither the request of the petitioner having been allowed in petitioner's favour or having been rejected.

16. A bare perusal of the counter affidavit filed by the 2nd respondent, the relevant portions referred to and extracted above indicate that the contention of the 2nd respondent is that the mother of the petitioner and widow of the deceased employee was paid compassionate pension up to 25.04.2014 and not family pension and family pension could be granted under physically crippled and mentally disabled children category only.

17. A bare perusal of the counter affidavit filed by the 1st respondent on the other hand, very clearly at para 2 (referred to and extracted above) indicates that the family pension was released to the petitioner's mother Smt Hameeda Begum after the death of the petitioner's father i.e. the deceased employee.

18. The petitioner in his reply affidavit at paras 3, 4 and 5 (referred to and extracted above) specifically contended that the petitioner's father was an employee of State Government, who worked as Sub-registrar, Registrar of Stamps Department and had been retired from his service in the year 1955 and paid pension till his death i.e. o 28.10.1981 and thereafter, Inspector General of Registrar of Stamps, Hyderabad issued letter dated 14.07.1982 to the 2nd respondent sanctioning order for the payment of family pension in favour of Smt Hameeda Begum W/o Eshan Ali retired SRO as per the rules. A bare perusal of the said letter dated 14.07.1982 filed as material document in support of the reply affidavit filed by the petitioner herein clearly indicates the PPO.No.75082. A bare perusal of the contents of the sanction order dated 14.07.1982 clearly indicates that the

sanction is accorded for payment of family pension in favour of the mother of the petitioner and not compassionate pension as putforth and contended by respondent No.2 in his counter affidavit filed in the present writ petition. A perusal of the other documents filed along with the reply affidavit by the petitioner i.e. pension payment certificate dated 03.07.2015 and the bank extracts showing deposit of ECS pension PPO in favour of the petitioner's mother in Ac.No.404301010004345 of Vijaya Bank, Hyderabad, and the pension proposals dated 23.11.1982 of the 2nd respondent herein forwarded to the 3rd respondent also indicate the petitioner's mother Smt Hameeda Begum as Government Pensioner.

19. The other correspondence on record, letter No.A/1179/2015, dated 27.02.2016 of the 4th respondent addressed to the 2nd respondent indicates that the petitioner has 90% of disability and that the 3rd respondent office at Hyderabad could not trace the service book of the deceased sub-Registrar to submit any further information. A bare perusal of the letter dated 02.06.2016 of the 2nd respondent addressed to the 4th respondent shockingly indicates that the

applicant is not eligible for grant of family pension vide G.O.Ms.No.315, dated 07.10.2010 for the following reasons:

The deceased Government servant retired on 31.10.1955 and the spouse of the deceased Government servant was granted only compassionate pension which ceases on re-marriage or death whichever is earlier. However, the same was granted till her death i.e. on 25.04.2014.

As per Clause (c) Rule 50(5) (IB)(iii) of APRPRs 1980 the benefit of family pension to physically crippled or mentally disabled children is only admissible under the rules specified.

20. A bare perusal of the relevant extract of G.O.Ms.No.315, dated 07.10.2010 clearly indicates that there is no dispute with regard to the legal position that the benefit of family pension to physically crippled or mentally disabled children is admissible in respect of the Government employees, who are entitled to family pension under this rule. As per the definition of 'family' in relation to Government Servant's it is defined as sons/daughters including such son/daughter adopted legally before retirement or son/daughter born after

retirement and also including physically/mentally disabled son/daughter.

CONCLUSION

21. In view of the fact that the entire material borne on record clearly indicates that family pension was sanctioned to the mother of the petitioner and not compassionate pension as stated in the counter affidavit filed by the 2nd respondent and the said fact having been admitted that the petitioner's mother received family pension and not compassionate pension as stated in the counter affidavit filed by the 1st respondent and further the clear legal position as per G.O.Ms.No.315, dated 07.10.2010 Clause (c) Rule 50(5) (I)(B)(iii) of APRPRs 1980 (referred to and extracted above), this Court opines that there is no justification in directing the petitioner to approach the Government for further clarification without the respondents considering the petitioner's representation dated 16.12.2015 on merits on the ground that the petitioner's mother late Hameeda Begum received family pension and not compassionate pension, and the

plea that the petitioner received compassionate pension is in fact totally contrary to the entire material placed on record before this Court. This Court opines that the petitioner herein is suffering with 90% disability and is being put to serious hardship by driving the petitioner from pillar to post since 2014 for his entitlement for family pension legally as per G.O.Ms.No.315, dated 07.10.2010 clause (c) Rule 50(5) (I)(B)(iii) of APRPRs 1980 as amended in G.O.Ms.No.203, Finance (Pension-I) Department, dated 04.06.2010 which clearly stipulates that physically, mentally disabled son/daughter are entitled for family pension throughout their life.

22. Taking into consideration of the aforesaid facts and circumstances of the case, the writ petition is allowed as prayed for and the impugned order vide Memo No.A/1177/2015, dated 15.06.2016 is set aside and the respondents are directed to reconsider the petitioner's representation dated 16.12.2015 as per clause (c) Rule 50(5) (I)(B)(iii) of APRPRs 1980 duly following principles of natural justice and by giving a

reasonable opportunity to the petitioner in accordance to law, within a period of two weeks from the date of receipt of a copy of this order duly examining the entire record placed before this Court evidencing the fact that the petitioner's mother late Hameeda Begum received family pension and not compassionate pension, which is the stand adopted by the 2nd respondent herein unfortunately to deny grant of relief to the petitioner as prayed for vide his representation dated 16.12.2015 and pass appropriate orders granting family pension to the petitioner, and duly communicating the said decision to the petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 16.08.2023

Note: L.R.Copy to be marked.

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