

No. Fin(Pen)A(3)-9/2002  
 Government of Himachal Pradesh  
 Finance (Pension) Department

From

The Principal Secretary (Finance) to the  
 Government of Himachal Pradesh  
 Shimla-171002.

To

The Deputy Accountant General (A&L),  
 Himachal Pradesh, Shimla-171003.

Dated: Shimla-171002

/3 July, 2006

Subject:

Clarification regarding transfer of family pension.

Sir,

I am directed to refer to your D.O.No. Pen-2/A-3(0)-02-2728 dated int. on the subject cited above and to say that as per provision contained in 10(n) (i) Govt. of Himachal Pradesh Finance Department (Pension Cell) O.M. No. (Pen)A(3)I 96-Part-I dated 31-8-1998 (copy enclosed) for the purpose of grant of family pension, the definition of family includes Parents who were wholly dependent on the Govt. servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child. Similar provision exists under Govt. of India decision No. (20) below Rule 54 of CCS(Pension) Rules, 1972 (copy enclosed). In the instant case the deceased Govt. servant had left behind a widow and family pension was originally sanctioned in her favour. Therefore, the family pension is not transferable to the mother of the deceased Govt. servant as clarified by Govt. of India Ministry of Personnel, P.G&Pensions vide their letter No. 1/11/06-P&PW(L) dated 19-6-2006 (copy enclosed).

(12)  
 Yours faithfully,

(Dr. R.N. Batta)

Additional Secretary (Fin-Pen) to the  
 Government of Himachal Pradesh.

evidence could not have been brushed aside on the ground that it was supported by any research or that there was any mistake. So long as evidence of Dr Thakur stands and has not been dislodged by reliable evidence, I think that the Deputy Commissioner was justified in relying on it and the Welfare Commissioner ought not to have exercised suo motu revision jurisdiction. He committed an error in doing so and we must, therefore, rectify that error.

3. In the result, we allow this appeal, set aside the order of the Welfare Commissioner and restore the order of the Deputy Commissioner, but make no order as to costs.

## (1997) II Supreme Court Cases 462

(BEFORE SUDHAKAR MANGHAR AND D.P. WADHWA, J.J.)  
M. JAMILI ABEYVI  
Appellant  
Versus

S. BALAGOPALAN  
Respondent  
Civil Appeal No. 4896 of 1997<sup>1</sup>, decided on July 17, 1997

**Service Law — Family pension — Contributory Family Pension Eligibility** — Where the widow had remarried and there were no relatives from cl. (c) to (f) of R. 90(6-A)(6) of Kerala Service Rules, the mother solely dependent on the deceased employee under cl. (g), held, eligible for pension. More so when there was a compromise decree to that effect — Kerala Service Rules, R. 90(6-A)(6), (7) & (9)

H.M/1/86992

## ORDER

1. Leave granted.

2. Under Rule 90(6-A) of the Kerala Service Rules, there is a provision for Contributory Family Pension being admissible to the parents, if they were solely dependent on the deceased for maintenance and they have no other source of income. This is subject to the condition that the employee had no wife at the time of death. In the present case, the widow of the employee is alive but has remarried. She is not, therefore, eligible for pension under sub-rule (7). Under sub-rule (6) pension is payable to relatives under clauses (a) to (e), the pension is payable to the father (f) and mother who is at (c). Wife is the first person entitled and stands at (a). Sub-rule (6) however, provides that if she remarries, pension will be paid to the minor children mentioned at (c) and (d). In the present case, there being no relatives from (e) to (f), the mother who is at (g) is eligible for pension.

3. The wife has also entered into a compromise with the appellant who is the mother of the employee under which the wife has agreed, inter alia, that

CALCUTTA MUNICIPAL CORPORATION v. S. HIBRAN SHAIKH

Contributory Family Pension should be paid over to the mother (the appellant herein). The mother was solely dependent on the deceased spouse. In view of this consent order between the widow of the deceased spouse and his mother, also we fail to see why, as per the agreed arrangement between the affected parties, the Contributory Family Pension should not be paid to the appellant.

4. The Accountant General is directed to pay Contributory Family pension to the appellant. We, however, consider this as not a fit case for being contempt proceedings against the Accountant General. The contempt proceedings are, therefore, set aside with the above directions.

5. The appeal is disposed of accordingly.

## (1997) II Supreme Court Cases 463

(BEFORE K. RAMASWAMY AND S. SAGHU ALIYAR, J.J.)  
CALCUTTA MUNICIPAL CORPORATION  
AND ANOTHER  
Versus

Appellants  
Respondents  
CALCUTTA MUNICIPAL CORPORATION  
AND ANOTHER  
Versus  
Appellants  
Respondents  
K. RAMA MUKHERJEE AND OTHERS  
Versus  
Appellants  
Respondents  
S. SAGHU ALIYAR, J.J.

Respondents  
K. RAMA MUKHERJEE AND OTHERS  
Versus  
Appellants  
Respondents  
S. SAGHU ALIYAR, J.J.  
Civil Appeals Nos. 1549-1552 of 1997, decided on February 14, 1997  
Civil Appeals Law — Pay — Extra pay granted for discharge of A Service Law — Pay — Special Pay — Pay — Treated as normal duty outside hours assigned to a post — Treated as normal duty outside hours assigned to a post — (Paras 4 and 6)  
Pay for pay fixation — Pay — Pay Fixation — When

service law — Held, the senior is entitled to stepping up of pay with reference to junior's pay if the senior as well as the junior discharge the same duties under the same responsibility and not in different circumstances — Where senior junior gets more pay because of special pay received by him in the revised pay scale is taken into consideration while fixing his pay in the revised pay scale, the senior, held, is not entitled to stepping up of pay in the revised pay scale with reference to the junior's pay — Calcutta Municipal Corporation Regulations, Regn. 34-A

At some places in the judgment, reference has been made to the stepping up of pay in the same scale in which the senior and the junior are working, and is not a case of stepping up of pay scale.  
Regulation 34-A of the Calcutta Municipal Corporation Regulations is as follows : "If an employee on his promotion to a higher post under the head than his senior employee due to fixation of his pay in the higher post, the pay of the employee senior to him shall be fixed at the same stage and from the same date his junior draws the higher pay rates, or due to revision of pay scales, the pay of the employee senior to him shall be fixed at the same stage and from the same date his junior draws the higher pay irrespective of whether the ten in the lower post held by the senior employee is terminated at the time of revision of pay subject to the conditions that the senior and junior employees belong to the same cadre and same pay scale of the post in which they have been promoted are also identical. The benefit of this

<sup>1</sup> Arising out of S.R.P.(C) No. 26871 of 1996

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SWAMY'S — CCS (PENSION) RULES

[ RULE 54 ]

3. In view of the fact that Section 16 of the Hindu Marriage Act, 1955 as amended by Hindu Marriage Laws (Amendment) Act States "Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of Marriage Law (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this act, and whether or not the marriage is held to be void otherwise than on a petition under this act."

4. The rights of such children require to be protected and will accrue accordingly. It is therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rule 54 (8). It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same.

[ O.I., Dept. of P. & P.W., O.M. No. 1/16/96, P. & P.W. (P), dated the 2nd December, 1996.]

(19) Family Pension shall be at a uniform rate of 30% of pay last drawn.—Family Pension shall be calculated at a uniform rate of 30% of basic pay in all cases instead of slab system and shall be, subject to a minimum of Rs. 1,275 (Rs. 1,913 with effect from 1-4-2004) per month and a maximum of 30% of the highest pay in the Government. Rule 54 (2) relating to Family Pension, 1964 under Pension Rules shall stand modified to this extent and the existing table thereunder will be no longer operative.

The revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1-1-1996.

[ O.I., Dept. of P. & P.W., O.M. No. F. 45786/97-P. & P.W. (A), Part - I, dated the 27th October, 1997, Para. 7.1 as amended by O.M. No. 42/2/2004-P&P.W (G), dated the 15th March, 2004.]

(20) Dependent parents and widowed/divorced daughter also included in the definition of family from 1-1-1996.—For the purpose of grant of Family Pension, the definition of Family shall also include:

- (a) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.
- (b) Son/daughter including widowed/divorced daughter till he/she attains the age of 25 years or up to the date of his/her marriage/remarriage, whichever is earlier.

[ O.I., Dept. of P. & P.W., O.M. No. F. 45786/97-P. & P.W. (A), Part - I, dated the 27th October, 1997, Para. 7.2.]

2. Income criteria:—The income criteria in respect of parents and widowed/divorced daughters will be that their earning is not more than Rs. 2,550 per month. The parents will get Family Pension at 30% of basic pay of the deceased employee, subject to a minimum of Rs. 1,275 per month. They also will have to produce an annual certificate to the effect that their earning is not more than Rs. 2,550 per month. Further, the Family Pension to

RULE 54 ] REGULATION OF AS

the widowed/ divorced daughters will 25 years or up to the date of her re-marriage.

3. It has also been decided by the recommendations of the Fifth Central Pay Board [O.M. No. 1/G printed] that the Family Pension i. widowed/divorced daughter will be discontinued when the payment should be discontinued when the daughter starts earning a sum of Rs. Government, the private sector, etc. that the Family Pension to the daughter attains 25 years of age or up to whichever is earlier. There is no admissibility of Family Pension in any disorder or disability of mind as mentioned in the OM, dated 18-1-1

4. Admissibility of Family I. daughter will be effective from 1-1- conditions. The cases where Father/son/daughters after 1-1-1998 best out imposition of earning condition.

5. These orders issue with the intent of Expenditure, *viz.* their U;

[ G.I., Dept. of P. & P.W., O.M. No.

**Clarification.**—\*\*\*

- (i) It is clarified that such subject to the following:
- (a) the parents are servant when he
- (b) the Government widower, eligible daughter, who the order indicates
- (c) all other present

The family pension will effect from 1-1-1996. The Pension is given to themselves, be other relevant wholly depend on him/her was all

GATE, MR. R. K. S. 5000

FAX NO - 23715087

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## SWAMY'S — CCS (PENSION) RULES

## RULE 54

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4. The rights of such children require to be protected and will accrue accordingly. It is therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rule 54 (8). It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same.

[ G.I., Dept. of P & P.W., O.M. No. 1/16/96, P. & P.W. (E), dated the 2nd December, 1996.]

(19) Family Pension shall be at a uniform rate of 30% of pay last drawn.— Family Pension shall be calculated at a uniform rate of 30% of basic pay in all cases instead of slab system and shall be, subject to a minimum of Rs. 1,275 (Rs. 1,913 with effect from 1-4-2004) per month and a maximum of 30% of the highest pay in the Government. Rule 54 (2) relating to Family Pension, 1964 under Pension Rules shall stand modified to this extent and the existing Table thereunder will be no longer operative.

The revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1-1-1996.

[ G.I., Dept. of P & P.W., O.M. No. F. 45/R6/97-P. & P.W. (A), Part - I, dated the 27th October, 1997, Part 7.1 as amended by O.M. No. 42/2/2004-P&PW (G), dated the 15th March, 2004.]

(20) Dependent parents and widowed/divorced daughter also included in the definition of family from 1-1-1996.— For the purpose of grant of Family Pension, the definition of Family shall also include:

(a) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.

(b) Son/daughter including widowed/divorced daughter till he/she attains the age of 25 years or up to the date of his/her marriage/remarriage, whichever is earlier.

[ G.I., Dept. of P & P.W., O.M. No. F. 45/R6/97-P. & P.W. (A), Part - I, dated the 27th October, 1997, Part 7.2 ]

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## RULE 54]

## REGULATION

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[ G.I., Dept. of P. & P.W., O.M.

## Clarification....

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The family pension will be effective from 1-1-1996. The pension will be given to the parents themselves, b other relevant dependents whom he/she was at

(33)

No. 1/11/06-P&PW (E)  
Government of India  
Ministry of Personnel, P.G. & Pensions  
Department of Pension & Pensioners' Welfare

L.N. Bhawan, Khan Market  
New Delhi - 110003  
Date: 16th May, 2006

To,

The Additional Secretary (Fin-Pen)  
Government of Himachal Pradesh  
Finance (Pension) Department  
Shimla.

RECEIVED  
FIN. DEPTT. (PEN. DIV.)  
MAY 16  
2006

Subject: Clarification regarding transfer of family pension.

Sir,

I am directed to refer to your Letter No.Fin(Pen)A(3)-9/2002 dated 14th June, 2002 on the subject mentioned above and to clarify that as per Government of India decision No.20 (Copy enclosed), for the purpose of grant of family pension, the definition of family shall include parents who are wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.<sup>1</sup> In the instant case, the Government servant had left behind a widow. As such, the family pension would not be transferable to the parents as per the Government of India decision quoted above. Government of Himachal Pradesh may kindly take further action accordingly.

Yours faithfully

  
(Geetha Nair)  
Under Secretary to the Government of India  
Tel. No. 24623107

Encl: one