



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S. B. Civil Writ Petition No. 4901/2014

Smt. Mishri Devi Wife of Late Shri Dayanand, aged about 45
yers, resident of Village and Post Thali, Panchayat Samiti
Buhana, District Jhunjhunu (Raj.)

----Petitioner

Versus

1. Director, Pension and Pensioners Welfare Department,
Pension Bhawan, Vidyut Marg, Jyoti Nagar, Jaipur. (Raj.)
2. Deputy Secretary, Revenue Group-I, Department,
Government of Rajasthan, Secretariat, Jaipur.
3. District Collector, Jodhpur. (Raj.)
4. Tehsildar, Shergarh, District Jodhpur (Raj.)

----Respondents

For Petitioner	:	Mr. Mahendra Singh Gurjar Advocate.
For Respondents	:	Mr. Umesh Chaudhary Advocate on behalf of Mr. V.D. Ghatala Additional Government Counsel. Mr. Shubham Gupta Advocate on behalf of Mr. Rahul Lodha Advocate.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

04/09/2025

1. Grievance raised by the petitioner is that her husband Late Shri Dayanand was initially appointed on the post of Lower Division Clerk vide order dated 26.09.1989. Perusal of appointment order would also make it clear that husband of the petitioner was appointed after following due process of law and on the basis of recommendation of the selection committee in the regular pay scale of Rs. 800-1680. Although, in the appointment order, appointment was shown to be purely temporary in nature,



yet the mode of appointment adopted in the case of husband of the petitioner was similar to that of regular appointment. After rendering services for more than one year, husband of the petitioner unfortunately expired on 29.10.1990.

2. After death of husband of the petitioner, treating husband of the petitioner to be substantive appointee in the respondent-department, compassionate appointment under the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1975 (hereinafter to be referred as 'the Rules of 1975') was also given to the petitioner which shows that the respondents were treating the husband of the petitioner to have been substantively appointed. However, only on account of the fact that term, 'purely on temporary basis' was mentioned in the appointment letter of husband of the petitioner, benefits of family pension as also death gratuity etc. were not extended to the petitioner.

3. Learned counsel for the petitioner further submits that Rule 268A of the Rajasthan Service Rules, 1951 (hereinafter to be referred as 'the Rules of 1951'), which was prevailing at the time of death of petitioner's husband, would make it absolutely clear that family pension shall be admissible to the dependents of Government servants where appointment is on temporary or permanent basis and it further points out that the aforesaid rule specifically excludes the persons paid from contingencies, work-charged staff; casual labour and contract officers. Husband of the petitioner was not falling in the exception category. Therefore, there was no justified reason for denying family pension and other



benefits to the petitioner. Learned counsel for the petitioner has also relied upon Division Bench decision of this Court in the case of **Union of India & Others Vs. Smt. Kaushlaya & Another, 2006 (4) RDD 2389 (Raj)(DB)**.

4. Per contra, learned counsels for the respondents opposed the writ petition and raised a preliminary objection that in spite of death of petitioner's husband in the year 1990, writ petition was filed in the year 2014 for claiming family pension, as such, writ petition is suffering from vice of delay and laches and cannot be entertained by this Court. Learned counsels for the respondents further submit that the matter with regard to family pension of the petitioner was referred by the respondent-department to Pension Department. However, the same was returned with the remark that since husband of the petitioner was merely a temporary employee, therefore, benefit of family pension cannot be granted to the petitioner.

5. I have considered rival submissions made by learned counsel for the parties and carefully perused the record.

6. Rule 268A of the Rules of 1951 lays down as under:

"268 A. Applicability.-This chapter shall apply to all Government servants on pensionable establishment whether temporary or permanent, who are in service on the 1st day of March, 1964 or who enter service on or after that date, but shall not apply to-

- (a) persons who retired before the 1st day of March, 1964, but may re-employed on that date or thereafter;
- (b) persons paid from contingencies;
- (c) work-charged staff;
- (d) casual labour; and
- (e) contract officers."

7. Bare reading of the aforesaid rule would make it clear that the dependents of any Government servant whether



appointed on temporary or permanent basis, but worked for more than one year, are entitled for family pension. In the instant case, before appointing husband of the petitioner, even the process for appointment was followed and husband of the petitioner faced the selection committee and only after recommendation of the selection committee, benefit of appointment was extended to the husband of the petitioner. Thus, the process adopted for his appointment was similar to the process of appointment of substantive employee. Therefore, benefits, which are otherwise admissible to substantive employees, cannot be denied to the dependents of the deceased Government servant only for the reason that term, 'purely on temporary basis' has been used in the appointment letter, more so, when Rule 268A of the Rules of 1951 mandates that dependents of Government servants irrespective of the fact that he was appointed on temporary or permanent basis, if worked for more than one year, shall be entitled for family pension.

8. As far as objection raised by the respondents that writ petition has been filed after delay of 24 years from the date of death of husband of the petitioner, suffice to observe that as per settled law, pension is not a bounty and it is the right of the employee or his/her dependents. The question of limitation or delay cannot be raised by the Government in order to deny legitimate benefits to the Government servant or his/her dependents. Hence, objection raised by learned counsels for the respondents in this regard is rejected.



9. Division Bench of this Court in the case of **Union of India & Others Vs. Smt. Kaushlaya & Another (supra)** has held as under:

"14. There is no denial of the fact that under the Rules of 1972, a person holding a pensionary post in substantive capacity, if dies in harness, in terms of Rule 54, is entitled to family pension. As noticed above, temporary employees have also been provided same benefit by dispensing with the condition of holding pensionary post on substantive capacity under the Central Government. Therefore, Rule 54 of the Rules, 1972 operates in the case of temporary employees of the Central Government also, which, undoubtedly, the deceased incumbent Patwari Ram was. Rules 54(2) envisages that without prejudiced to the provisions contained in Sub-rule (3), where a Government servant dies after completion of one year of continuous service or after retirement from service and on the date of death in receipt of pension, the family of the deceased shall be entitled to family pension under the Rules of 1964. The amount shall be determined in accordance with the table given under it. Apparently, there is no dispute about the fact that deceased Patwari Ram died after completion of one year of continuous service in temporary status.

15. In that view of the matter, shorn of all other details with which we are not concerned, the Tribunal was right in its conclusion that respondent original applicant was entitled to family pension in terms of Rule 54(2) of the Rules, 1972, benefit of which has been extended to temporary employees by dispensing with the condition that the incumbent must be holding pensionary post in substantive capacity. "

10. Thus, there appears to be no justified reason for denying family pension, death gratuity etc. to the petitioner and the delay caused by the respondents for the reasons which are contrary to the rules cannot be appreciated and the respondents are also held liable to pay interest for the delay caused in granting benefit of family pension, death gratuity etc. to the petitioner.

11. In view of above, writ petition filed by the petitioner is hereby allowed. The respondents are directed to sanction and release family pension as also post retiral benefits to the petitioner as per rules within a period of three months from the date of receipt of copy of this judgment. Arrears of family pension be also





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released to the petitioner within the aforesaid period. Since the delay in release of family pension is solely attributable to the respondents on account of denying the benefit for unjustified reasons, therefore, the respondents are directed to pay interest @ 9% per annum upon the arrears of family pension as well within the aforesaid period.

12. Pending application, if any, also stands disposed of.

(ANAND SHARMA),J

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