

A

UNION OF INDIA AND ORS.

v.

REKHA MAJHI

APRIL 6, 2000

B

[V.N. KHARE AND Y.K. SABHARWAL, JJ.]

*Railways Services (Pension) Rules, 1993.*

*Rule 21—Object and interpretation of.*

C

*Pensioner-Employee—Whether entitled to draw two dearness reliefs—One on the salary and other on the family pension.*

D

*Railway employee—Death—Widow getting family pension—Subsequently appointed on compassionate ground—Held widow is not entitled to draw two dearness reliefs one on the salary and other on family pension—Held object of Rule 21(ii) is that a pensioner cannot enjoy two dearness reliefs simultaneously, one on his pension and the other on his salary if he takes up re-employment—The expression “re-employed”, if construed in the light of the object behind the Rule and facts of this case, would also include first regular appointment in the service—Denying the respondent dearness reliefs on her family pension was justified—However on the facts of the case recovery of excess pension paid to the respondent is not justified on legal and equitable grounds.*

E

*Union of India & Ors. v. G. Vasudevan Pillay & Ors., [1995] 2 SCC 32, relied on.*

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 679 of 1997.

From the Judgment and Order dated 28.4.95 of the Central Administrative Tribunal, Calcutta in O.A. No. 968 of 1994.

Praveen Swarup, A.K. Sharma, Mrs. Rekha Pandey for the Appellants.

G

R.K. Gupta, H.V.P. Sharma, Rajesh, M.K. Singh for the Respondent.

The following Order of the Court was delivered :

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The sole question that arises in this case is whether the respondent herein is entitled to dearness relief on the family pension admissible to her even after getting appointment on compassionate ground in the railways.

It is not disputed that the husband of the respondent was a railway employee and he died in harness. It is not disputed that the family pension as well as gratuity, provident fund and all other retirement benefits which were admissible to the husband of the respondent were given to her. In addition to that, the railways gave compassionate appointment to the respondent. The respondent continued to draw salary as a railway employee as well as family pension till 25th January, 1994 when it was discovered that the respondent was not entitled to draw two dearness reliefs i.e. one on the salary and the other on the family pension. Consequently, the appellants re-fixed the family pension of the respondent after deducting dearness reliefs and issued orders for recovery of dearness relief paid to her on family pension. Aggrieved by this order the respondent filed an O.A. before the Central Administrative Tribunal, Calcutta. The Tribunal was of the view that since the respondent was not re-employed as contemplated under rule 21(ii) of the Rules, she was entitled to draw dearness relief on the salary as well as on the family pension. Consequently, the O.A. was allowed. It is against this order the appellants are in appeal before this Court.

Rule 21 of the Railways Services (Pension) Rules, 1993 reads thus :

“Rule 21. *Dearness relief on pension or family pension*

(i) .....

(ii) *If a pensioner is re-employed under the Central or a State Government or a Corporation, Company, Body or Bank under such Government in India or abroad including permanent absorption in such Corporation, Company, Body or Bank he shall not be eligible to draw dearness relief on pension or family pension during the period of such re-employment.”*

On the strength of the said rule it is contended by the counsel for the appellants that the respondent having become employee of the railways, she was not entitled to draw dearness relief on the family pension given to her. Whereas the contention of the respondent's counsel is that it is not a case of re-employment but is a case of first regular employment in the railways and, therefore, Rule 21 has no application in the present case and she is entitled to draw dearness relief on the salary received by her as well as on the family pension given to her.

It is well-known that dearness relief or allowance is being paid to

A compensate the employees against rise in the price index. The question that arises is, whether such an employee is entitled to draw two dearness reliefs - one on the salary and the other on the family pension paid to him.

B We have heard learned counsel for the parties. A perusal of Rule 21(ii) shows that the object behind framing the Rule is that a pension cannot enjoy two dearness reliefs simultaneously, one on his pension and the other on his salary if he takes up re-employment, and, therefore, in such a situation to deny dearness relief on the pension. It is not disputed that the respondent is getting family pension and, therefore, she is a pensioner. That being the object of the Rule, we have to give wider meaning to the expression "re-employed" which finds place in Rule 21(ii) of the Rules. The expression "re-employed", if construed in the light of the object behind the Rule and facts of this case, would also include first regular appointment in the service.

C In a case titled *Union of India and Others v. G. Vasudevan Pillay and Others*, [1995] 2 SCC 32, wherein this Court held :

D *"In some of the cases, we are concerned with the denial of dearness relief on family pension on employment of dependants like widows of the ex-servicemen. This decision has to be sustained in view of what has been stated above regarding denial of DR on pension on re-employment inasmuch as the official documents referred on that point also mention above denial of DR on family pension on employment. The rationale of this decision is getting of dearness allowance by the dependants on their pay, which is drawn following employment, because of which dearness relief on family pension can justly be denied, as has been done."*

F The ratio of the decision in the case of *Union of India & Others* (supra) is, that a pensioner cannot draw two dearness reliefs - one on the salary and the other on pension. Once it is accepted that the respondent is a pensioner it is immaterial whether such employment of the pensioner is first, regular or temporary appointment or re-appointment. In view of such a legal position, the case of the respondent would fall within the four corners of clause (ii) of Rule 21 of the said Rules. The respondent being a widow of an employee, who died in harness, was given an employment in the railways on compassionate grounds. Technically the respondent has come in employment in substitution of her husband. Simultaneously, the railways have given her family pension and as such she is a pensioner. Therefore, in such circumstances Rule 21

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would be attracted and the case of the respondent being a pensioner would be governed by the said Rules. Consequently, the respondent was legally not entitled to draw two dearness reliefs - one on the salary and the other on family pension paid to her. We are, therefore, of the opinion that the appellants are legally justified in denying the respondent dearness reliefs on her family pension.

Learned counsel for the respondent then urged that in any case the appellants are not entitled to recover the dearness reliefs on the family pension paid to the respondent between 26.1.87 to 25.1.94. Learned counsel for the appellants has not drawn to our notice any circular or rule prior to 1993. Rule 21 finds place in the Rules which was published in 1993. It, therefore, appears that the dearness relief on the pension paid to the respondent was voluntarily and after a conscious decision taken in respect thereof. And it was only after the Rules 1993 was promulgated and orders for re-fixing her pension and recovery of excess amount on family pension paid to her were issued. Moreover, it is stated that the respondent who is a widow is the lone bread earner of the family and her financial condition is not such as to pay back the excess amount she has already drawn. Under such circumstances, we are of the view that the recovery of excess pension paid to the respondent is not justified on legal and equitable grounds.

For the aforesaid reasons, the judgment and order under appeal is set aside. The appeal is allowed. There shall be no order as to costs.

T.N.A.

Appeal allowed.