Before Vijender Jain, C.J. & S.S. Nijjar, J.

NATIONAL INSURANCE COMPANY LTD. AND OTHERS,—*Appellants*

versus

SMT. GURDEV KAUR AND ANOTHER,—*Respondents*

L.P.A. No. 502 of 2002
In C.W.P. No. 7612 of 1996

5th December, 2006

Constitution of India, 1950—Art. 226–General Insurance (Employees) Pension Scheme, 1995—Para 2(1)—Punjab Civil Services Rules, Vol. II-R1.6.17 (3)—Mother claiming family pension on death of son in harness—Rejection of claim on the ground that mother does not fall within purview of 'family'of deceased as per para 2(1) of the Scheme—Amended definition of 'family' in rule 6.17 (3) also includes parents dependent upon an employee—Provisions of Rl. 6.17 and provisions of para 2(1) of 1995 Scheme para-materia in nature—Judgment of Ld. Single Judge allowing family pension to mother of deceased employee upheld.

Held, that from the con-joint reading of provisions of Rule 6.17 (3) of Punjab Civil Service Rules, Vol. II and para 2(1) of the General Insurance (Employees) Pension Scheme, 1995, it is manifestly clear that the provisions of these two paragraphs with regard to definition of family are para materia in nature. Therefore, the learned Single Judge has correctly come to the conclusion that the writ petition has to be allowed on the ratio of the Division Bench judgment in State of Punjab and another *versus* Kharak Singh Kang and another, 1998 (1) RSJ 412.

(Para 13)

Ashok Aggarwal, Sr. Advocate with Mukul Aggarwal, Advocate.
for the appellants.

JUDGEMENT

VIJENDER JAIN, CHIEF JUSTICE

(1) The petitioner, the mother of the deceased employee Surinder Pal Sidhu, who died in harness on 15th August, 1988 had filed a writ petition under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing para 2(1) of the General Insurance (Employees) Pension Scheme, 1995. She had also challenged the order passed by the respondent on 13th February, 1996 which had been communicated to her by the Divisional Manager, National Insurance Company Limited, Hoshiarpur informing the petitioner that she does not fall within the purview of "family" of the deceased, as per para 2(1) of the Pension Scheme. The petitioner also prayed for issuance of a writ in the nature of mandamus directing the respondents to include Father and Mother in the definition of Family in the General Insurance (Employees) Pension Scheme. A further direction was sought to the respondents to release Family Pension to the petitioner.

(2) The petitioner claimed that her son namely Surinder Pal Sidhu was serving as Development Officer Grade-I with National Insurance Company. He died while in service on 15th August, 1988. He died issueless. At the time of death of her son, there was no provision for grant of Family Pension. However, in the year 1995, the respondents introduced a Pension Scheme, which was known as General Insurance (Employees) Pension Scheme, 1995. The criteria for grant of Family Pension was as under :—

> "(i) employee who was in service on 1st January, 1986 but died on or before 31st October, 1993 or had retired on or before 31st October, 1993 but died before 28th June, 1995.
>
> (ii) employee who joined service on or before 31st October, 1993 and died while in service after 1st November, 1993 but before 28th June, 1995.
>
> (iii) employee who joined service on or after 1st November, 1993 service before 28th June, 1995."

(3) The petitioner claimed that her case was covered under Clause (i) above. Her claim has, however, been rejected on the ground that she does not fall within the definition of Family as given in Clause-2(1) of the Pension Scheme, which is as under :—

> **"Definitions** : In this scheme unless the context otherwise requires :
>
> (a) to (k) X X X X
>
> (1) "Family" in relation to an employee means—
>
> (i) wife in the case of a male employee or husband in the case of a female employee;
>
> (ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the persons surviving was not held guilty of committing adultery ;
>
> (iii) son who has not attained the age of twenty-five years and unmarried daughter who has not attained the age of twenty-five years including such son or daughter adopted legally before retirement."

(4) On completion of pleadings and after hearing the learned counsel for the parties, the learned Single Judge allowed the writ petition.

(5) Aggrieved by the impugned order passed by the learned Single Judge the Insurance Company has filed the present Letters Patent Appeal. We have heard the learned counsel for the parties. Learned counsel for the appellants has, firstly, contended that the judgment of Supreme Court titled as **State of Punjab and another** *versus* **Devinder Kaur (1)** was not considered by the learned Single Judge. At the outset, we asked the learned counsel for the appellants whether the said judgment was cited before the learned Single Judge,

(1) J.T. 1999 (10) S.C. 549

the answer is negative. Let us assume that the judgment of the Supreme Court which was rendered in 1999 was to be considered by the learned Single Judge. Whether the learned Single Judge has gone wrong in answering the question, which was posed before him by the writ petitioner. In that case the Supreme Court considered the following question :—

> "The short question is whether the deceased Respondent Kharak Singh and his surviving widow who is now the sole Respondent representing his estate were entitled to get family pension on the demise of their unmarried son Daljit Singh who died in harness on 5th November, 1985 when he was in Government service of the Appellant State."

(6) After considering the peculiar facts of that case, the Supreme Court has noticed that in the Pension Rules, 1951, parents were included in the definition of "family". But that scheme underwent a metamorphosis in 1964 and the parents of the deceased employee were excluded, from the definition of "family". The Supreme Court has held that in Punjab Civil Service Rules, Vol. II Rule 6.17(3), earlier the parents were included in the definition of family. Thereafter by amendments parents were excluded from the definition of family. However, the scheme was further amended in 1998 w.e.f. 1st January, 1996 and included the parents who were dependent upon an employee in the definition of "family". The learned Single Judge rendered the judgment in 2001 when the parents were included in the definition of family pursuant to the amendment of 1998 with effect from 1st January, 1996. The Supreme Court, however, did not consider the question for striking down any part of the condition contained in the 1964 scheme. It was observed as follows :—

> "It is also pertinent to note that the rule has neither been challenged in the proceedings before the High Court nor before us. Therefore, there remains no occasion for the same to be read up or to remove any obnoxious part of the restrictive condition. On the contrary all that the learned Single Judge and the Division Bench have done is to add a new class of beneficiaries which is not a permissible

exercise for the court. A new policy is sought to be evolved by judicial intervention."

(7) On the other hand, Rule 6.17 and the provision of 1964 scheme, were specifically considered by a Division Bench of this Court in the case of **State of Punjab and another** *versus* **Kharak Singh Kang and another (2).**

(8) In that case, the Division Bench specifically considered the question :

"Can the parents of the deceased Government employee be excluded from the definition of family and denied the benefit of Family Pension."

(9) The learned Single Judge had taken the view that there is no justification for excluding the father and mother of an unmarried deceased government servant from the definition of family, for the purposes of grant of family pension. The State of Punjab had filed a Letters Patent Appeal.

(10) In that case it was argued that under the 1964 Family Pension Scheme, the parents (mother and father) do not fall under the definition of Family for the grant of Family Pension in the case of death of their son. The Division Bench held that Rule 6.17 was arbitrary and unreasonable and therefore, cannot be sustained.

(11) The second contention of the learned counsel for the appellants is that the Family Pension Scheme read with Punjab Civil Service Rules, Vol II Rule 6.17(3) is not applicable and para 2(1) of the General Insurance (Employees) Pension Scheme, 1995 was to be considered by the learned Single Judge. The Family Pension Scheme pursuant to Punjab Civil Service Rules 6.17(3) defines family as follows :—

"Family" for purposes of this Scheme will include the following relatives of the Government employee :—

(a) wife in the case of a male Government employee and husband in the case of a female Government employee;

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(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery, provided the marriage took place before the retirement of the Government employee and the person surviving was not held guilty of committing adultery ; and

1[(c) sons up to the age of twenty-five years.

(d) unmarried daughters upto the age of twenty-five years]

(12) Whereas, the notification issued by the appellants defining the family is to the following effect :—

(1) "Family" in relation to an employee means—

(i) wife in the case of male employee or husband in the case of a female employee ;

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the persons surviving was not held guilty of committing adultery ;

(iii) son who has not attained the age of twenty-five years and unmarried daughter who has not attained the age of twenty-five years including such son or daughter adopted legally before retirement."

(13) From the con-joint reading of aforesaid rules, it is manifestly clear that the provisions of these two paragraphs with regard to definition of family are paramateria in nature. Therefore, the learned Single Judge, has correctly come to the conclusion that the writ petition has to be allowed on the basis of the ratio of the Division Bench judgment in **Kharak Singh Kang's** case *(supra)*. In Kharak Singh Kang's case, the Division of this Court had held as under :—

7. It is not disputed that under the 1951 Scheme, the father and mother were included in the definition of 'Family' for the grant of Family Pension. It was specifically provided

that the family "includes only wife, legitimate child, father or mother, dependent upon the deceased for support". Even today, under Rule 6.16-B, the father and mother (including adopted parents....) are included in the definition of family for the purpose of determining entitlement to the payment of death-cum-retirement gratuity. Similarly, they are also eligible for the grant of "Wound and other Extraordinary Pensions" as contemplated in Chapter VIII of the Punjab Civil Services Rules, Volume II. Under Rule 8.34, it has been specifically provided that" if the deceased government employee has left neither a widow nor a child, an award may be made to his father and his mother individually or jointly and in the absence of the father and the mother, to minor brothers and sisters.....". It is, thus, clear that the parents have been included in the definition of 'Family' for the purpose of grant of death-cum-retirement gratuity as well as for pension as contemplated under Chapter VIII. Yet they have not been included in the 'Family' under Rule 6.17 for the grant of family pension. No rationale or reason has neither been disclosed in the written statement or at the time of arguments even though the case was adjourned twice at the request of the counsel for the appellants.

8. 'Next to God, the parents' says the poet. Not even next to a judicially separated wife or husband is the mandate of Rule 6.17. Those who gave him and trained him up have no right to be included in his family ? It does not appeal to logic. We cannot say-yet.

9. The purpose of the rules relating to family pension is to provide means of sustenance to the members of the family of the deceased employee. It is not unknown that not only the widow and children but very often even the aged parents are dependent on their son for their livelihood. The provision for family pension has been made to help such dependents. There appears to be no valid basis for excluding the parents from the list of persons who should be entitled to the grant of family pension on the death of the employee.

10. It is well settled that every executive action and in particular a legislative measure like a statutory rule governing the grant of pensioner benefits should meet the test of reasonableness as contemplated under Article 14 of the Constitution. Admittedly, the parents of a deceased employee are eligible for the grant of gratuity. They are also eligible fo the grant of certain kinds of pension. In the case of an employee who is not even married, they are not entitled to the grant of family pension. The rule has no rationale. It is totally arbitrary. It is not reasonable. Rule 6.17 of the Punjab Civil Services Rules, Volume II cannot, thus, be sustained to the extent it excludes the parents of the deceased government employee from the concept of 'Family.

(14) While interpreting although in different context the relevance of excluding the mother from the definition of family in Pension Rules, my brother Justice S.S. Nijjar has spoken for the Bench in **Daljeet Kaur** *versus* **Union of India and others (3)** as under :—

"2. Love of a mother for her children has, since time immemorial, been placed at the highest pedestal. When a mother loses a hale and hearty child in some unfortunate accident, she suffers a tragedy which is personal to her and is of such magnitude that it defies description in mere words. The love of the mother is very akin to the love of the earth for its inhabitants. It is perhaps this boundless love which prompts and compels the entire mankind to revere this planet as the "MOTHER-EARTH". It is well known that the mother-earth keeps replenishing its natural resources to support the humanity, inspite of the mindless plunder committed upon it by us. We are of the opinion that keeping such like sentiments in view, the Union of India has been promulgating various schemes to give special benefits in cases of death and disability in service including the payment of ex-gratia lump sum compensation. The reasons have been set out in the instructions of the Government of India, Ministry of Defence letter No.

(3) 2003 (4) SLR 78

20(1)/98/D (Pay/Services) dated 22nd September, 1998 as amended,—*vide* Government of India Letter No. 20(1)/98/D9 (Pay/Services) dated 3rd August, 1999. The instructions give objects and reasons for enacting special provisions in these words.

"The graded structure of ex-gratia lump sum compensation takes into account the hardship and risks involved in certain assignments, the intensity and magnitude of the tragedy and deprivation that families of government servants experience on the demise of bread winner in different circumstances the expectations of the employer from the employee to function in extreme circumstances etc. The compensation is intended to provide an additional insurance and security to employees who are required to function under trying circumstances and are exposed to different kinds of risks in the performance of their duties.

3. Alas even these provisions will, at best, go only a little way towards assuaging the feeling of utter devastation of the mother who loses a son, whilst performing his patriotic duties for the protection of the Nation.

4. Can the benefits sought to be given to the unfortunate legal heir of a deceased military personnel whose case falls clear within these instructions, be permitted to be negated by a bureaucratic army officer sitting in his Ivory Tower by sheer mis-interpretation of the instructions, is the significant question of law which arises in this petition. We are constrained to give a preference to this judgment with the aforesaid remarks, due to the peculiar facts and circumstances of this, which we now notice."

(15) Taking into consideration totality of the circumstances in the present case, we do not find any merit in this appeal and the same is dismissed.

R.N.R.